JUNE 21, 2022 | LEGISLATIVE & STANDARDS BOARD UPDATES

Cal/OSHA's Proposed "Permanent" COVID-19 Rule Has Just Issued

Cal/OSHA's rulemaking process does not allow for any more "re-adoptions" of the COVID-19 emergency rule, so if COVID-19 regulatory requirements are to remain, the Cal/OSHA Standards Board will need to adopt a permanent COVID-19 rule. While clarity had been lacking over the content and timing of any such rule, at a meeting of the Standards Board last week, the Division of Occupational Safety and Health (DOSH) revealed a proposed permanent COVID-19 rule. This draft permanent rule is intended to replace the COVID-19 emergency rule, which presently expires at the end of 2022. Here is a link to the draft regulatory text.

The proposed permanent rule is expected to remain in effect for two years, except for the recordkeeping provisions that would be effective for three years. While DOSH previously indicated that the "permanent" rule would be consistent with the emergency rule, there are a few significant changes we've highlighted.

Most troubling, the definition of close contact has been made consistent with California Department of Public Health (CDPH) guidance removing the 6 foot/15 minutes standard. The draft defines close contact as "***sharing the same indoor airspace*** as a COVID-19 case for a cumulative total of 15 minutes or more over a 14-hour period during the COVID-19 case's infection period, as defined by this section …." This new definition comes from CDPH guidance and is already part of the current COVID-19 emergency rule based on a CDPH order just issued supplanting the emergency rule's definition with CDPH's. The current emergency rule provides that its definition of close contact gives way to CDPH's where that term is "defined by regulation or order of the CDPH." *Sec. 3205(b)(1)*. On June 8th, the CDPH issued an "order" defining close contact as 15 minutes within the same "indoor airspace (e.g., home, clinic waiting room, airplane etc.)." The CDPH's June 8th order is available here: State Public Health Officer Order of June 8, 2022.

The proposed permanent rule otherwise scales back the COVID-19 Prevention Program requirements, removing the enumerated elements to be incorporated into the employer's program document. Instead, under the current proposed rule, the employer's written program need only include its "COVID-19 procedures."

Nor does the proposed rule include the specific training topics required per the emergency rule. Rather, employees "shall receive training regarding COVID-19" consistent with the Injury and Illness Prevention Program training requirements.

Like the emergency rule, the proposed rule provides a standard for the exclusion of COVID-19 cases, while

deferring to CDPH guidance on the exclusion of individuals experience a close contact. Notably, however, the proposed permanent rule does not require exclusion pay, which is currently available under the state's 2022 COVID-19 Supplemental Paid Sick Leave law.

As we have done throughout the pandemic, we will be organizing an employer and trade group coalition to work on this permanent rule – submitting written comments in advance of the public hearing, which has not yet been scheduled, to advocate for some sanity in this process.