OCTOBER 18, 2022 | LEGISLATIVE & STANDARDS BOARD UPDATES

Governor Newsom to End COVID-19 State of Emergency, While Standards Board Marches On

In major news yesterday, Governor Newsom announced that California's COVID-19 State of Emergency will end on ***February 28, 2023.*** See the following excerpts from the governor's press release:

- "With hospitalizations and deaths dramatically reduced due to the state's vaccination and public health efforts, ***California has the tools needed to continue fighting COVID-19 when the State of Emergency terminates at the end of February, including vaccines and boosters, testing, treatments and other mitigation measures like masking and indoor ventilation.*** As the State of Emergency is phased out, the SMARTER Plan continues to guide California's strategy to best protect people from COVID-19."
- "Throughout the pandemic, we've been guided by the science and data – moving quickly and strategically to save lives. ***The State of Emergency was an effective and necessary tool*** that we utilized to protect our state, and we wouldn't have gotten to this point without it," said Governor Newsom. ***"With the operational preparedness that we've built up and the measures that we'll continue to employ moving forward, California is ready to phase out this tool."***
- "To maintain California's COVID-19 laboratory testing and therapeutics treatment capacity, the Newsom Administration will be ***seeking two statutory changes immediately upon the Legislature's return: 1) The continued ability of nurses to dispense COVID-19 therapeutics; and 2) The continued ability of laboratory workers to solely process COVID-19 tests."***

In contrast to Governor Newsom's announcement, however, the Cal/OSHA Standards Board continues to advance a proposed non-emergency COVID-19 rule, with a two-year fixed term extending well beyond the end of the State of Emergency. Just last Friday, the Standards Board issued a revised draft of the non-emergency rule providing a 15-day notice period for comments. The revised non-emergency rule provides the following substantive changes:

- The "close contact" definition is updated to incorporate the CDPH's new definition announced last Thursday in a public health order. Specifically, "close contact" means the following (unless otherwise defined by regulation or order of CDPH, in which case the CDPH definition applies):
  - In indoor spaces of ***400,000 or fewer cubic feet per floor***, a close contact is defined under the existing definition requiring the close contact ***"share the same indoor airspace as a COVID-19 case***...."
  - In indoor spaces of ***greater than 400,000 cubic feet per floor***, a close contact is defined as being within ***six feet of the COVID-19 case*** for a cumulative total of 15 minutes or more over a 24-hour period...."

- The definition also incorporates the provision from the public health order that *"[o]ffices, suites, rooms, waiting areas, break or eating areas, bathrooms or other spaces that* ***are separated by floor-to-ceiling walls shall be considered distinct indoor spaces."***

- "Exposed group" definition
  - For the exception concerning individuals who momentarily pass through a work area, the text has eliminated the requirement that "everyone [be] wearing face coverings." The revised text reads: *"For the purpose of determining the exposed group, a place where persons momentarily pass through without congregating, is not a work location, working area, or a common area at work."*
- "Returned case" definition
  - The revised draft changes the time period (from 90 to 30 days) in which individuals who previously had COVID-19 are considered "returned cases." The text now reads: "A person shall only be considered a returned case for ***30 days after the initial onset of COVID-19 symptoms*** or, if the person never developed COVID-19 symptoms, ***for 30 days after the first positive test.*** If a period of other than 30 days is required by a CDPH regulation or order, that period shall apply."
- Ventilation
  - Eliminates language requiring employers to "evaluate" whether the current ventilation is adequate to prevent transmission. Instead, the revised language uses seemingly obligatory language stating that "Employers shall develop, implement, and maintain effective methods to prevent transmission of COVID-19 including one or more of the following actions to improve ventilation [maximize supply of outside air to the extent feasible, or provide MERV-13 or greater ventilations system or HEPA filtration units]."
- Reporting and recordkeeping
  - Eliminates language requiring employers to report COVID-19 cases and outbreaks to the local health department.
  - Removes language requiring employers to keep a record of persons who had a close contact, including name, contact information and date of notice of close contact.
- Outbreaks
  - Slightly increases the threshold for ending an outbreak. The text now reads: "This section shall apply until there are ***one or fewer*** new COVID-19 cases detected in the exposed group for a 14-day period."
  - Eliminates language requiring employers to "immediately" review COVID-19 policies, procedures and controls and implement changes as needed to prevent further spread of COVID-19. Instead, the employer must perform such review "when this [outbreak] section initially applies and periodically thereafter."

Notably, exclusion pay was ***not*** added into the proposed rule, despite zealous lobbying by organized labor.

The proposed non-emergency rule is expected to come up for a vote by the Standard Board's December 2022 meeting, to replace the expiring emergency rule.

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