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# Cal/OSHA Reveals a Draft of Its Proposed "Permanent" COVID-19 Regulation

By [Andrew J. Sommer](#)

Cal/OSHA has used up all of its "re-adoptions" of its COVID-19 Emergency Temporary Standard, so if COVID-19 regulatory requirements are to remain in effect in California into 2023, the Cal/OSHA Standards Board will need to adopt a "Permanent" COVID-19 rule. At a meeting of the Cal/OSH Standards Board last week, the Division of Occupational Safety and Health (DOSH) revealed a proposed Permanent COVID-19 rule. 

[Andrew J. Sommer](#), the Head of CMC's Cal/OSHA Practice, was interviewed by InsideOSHA about these developments. [Here's a link](#) to the article with that detailed interview, and below is some additional context and background about the rulemaking.

The draft permanent rule is intended to replace the COVID-19 ETS that is set to expire at the end of 2022. Here is a link to the agency's [draft regulatory text](#) for the permanent rule. The proposed permanent rule is expected to remain in effect for two years, except for the record-making and recordkeeping provisions that would remain effective for three years.

While DOSH previously indicated that the "permanent" rule would be consistent with the ETS, there are a few significant changes we have identified. Most troubling among them, the definition of "close contact" has been made consistent with California Department of Public Health (CDPH) guidance removing the 6-foot, 15-minutes standard. Instead, 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 technically already part of the current COVID-19 ETS. The current ETS 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)*, and on June 8<sup>th</sup>, CDPH issued an "order" defining close

containing the information (e.g. medical records)."

The CDPH's June 8<sup>th</sup> Order is available here: [State Public Health Officer Order of June 8, 2022](#).



Cal/OSHA's 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."

The proposed rule also drops the specific training topics required per the ETS. Instead, the proposed permanent rule dictates that employees "shall receive training regarding COVID-19" consistent with the Injury and Illness Prevention Program training requirements.

Like the ETS, the proposed rule provides a standard for the exclusion of COVID-19 cases, while deferring to CDPH guidance on the exclusion of individuals who 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 are organizing an employer and trade group coalition to work on Cal/OSHA's Permanent COVID-19 regulation – submitting written comments in advance of the public hearing, which has not yet been scheduled, participating in the public hearing(s), and hopefully serving on the Advisory Committee to the agency about this rule, as we have done throughout the emergency rulemaking phase. [Contact Andrew Sommer](#) if your organization may be interested in participating in this fee-based coalition to push Cal/OSHA to adopt the most reasonable version of a COVID-19 rule possible.

