

Non-Emergency COVID-19 Prevention Regulations



A Notice from BHHC

Dear Policyholder,

On December 15, 2022, the Occupational Safety and Health Standards Board voted to adopt non-emergency COVID-19 Prevention regulations. These regulations will take effect once they are approved by the Office of Administrative Law (OAL) in the month of January 2023 and include some of the same requirements found in the COVID-19 Prevention Emergency Temporary Standards (ETS), as well as new provisions. Once approved by the (OAL), the new regulations will remain in effect for two years.

Until approved by (OAL), the current COVID-19 Prevention Emergency Temporary Standards will continue to remain in effect. Also, COVID-19 Tracking Requirements (AB1751) and COVID Reporting and Outbreak Notification (AB2693) will extend these requirements beyond January 1, 2023.

DIR has issued a news release providing details about the new provisions and DOSH has created a new COVID-19 Prevention Non-Emergency Regulation webpage that contains a fact sheet on What Employers Need to Know that will soon include additional resources, such as frequently asked questions and a model written program for employers to use as an example.

Key elements in the new non-emergency COVID-19 Prevention Regulations include:

- **COVID workplace measures:** Employers are legally obligated to provide and maintain a safe and healthy workplace for employees, including by taking measures to prevent COVID-19 exposure. Employers must maintain an effective written Injury and Illness Prevention Program (IIPP) that addresses COVID-19 as a workplace hazard and includes measures to prevent workplace transmission, employee training, and methods for responding to COVID-19 cases at the workplace. Employers may address COVID-19 workplace measures within their written IIPP or in a separate document.
- **COVID Testing:** Employers must make COVID-19 testing available at no cost and during paid time to employees following a close contact, except for returned

cases.

- **Ventilation:** For all indoor locations regardless of size, employers must review applicable CDPH guidance and implement effective measures to prevent transmission through improved filtration and/or ventilation.
- **Close Contact Definition:** Close contact is defined by the size of the workplace:
 - For indoor spaces of 400,000 or fewer cubic feet per floor, a close contact is defined as sharing the same indoor airspace as a COVID-19 case for a cumulative total of 15 minutes or more over a 24-hour period during the COVID-19 case's infectious period, as defined in the regulations, regardless of the use of face coverings.
 - For 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 during the COVID-19 case's infectious period, as defined in the regulations, regardless of the use of face coverings.
 - Offices, 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.
- **Infectious Period Definition:** The regulations use the definition of "infectious period" found in the most recent California Department of Public Health (CDPH) State Public Health Officer Order.

Currently, Infectious Period is defined as:

- For symptomatic infected persons, 2 days before the infected person had any symptoms through Day 10 after symptoms first appeared (or through Days 5–10 if testing negative on Day 5 or later), and 24 hours have passed with no fever, without the use of fever-reducing medications, and symptoms have improved, OR
- For asymptomatic infected persons, 2 days before the positive specimen collection date through Day 10 after positive specimen collection date (or through Days 5–10 if testing negative on Day 5 or later) after specimen collection date for their first positive COVID-19 test.

For the purposes of identifying close contacts and exposures, infected persons who test negative on or after Day 5 and end isolation are no longer considered to be within their infectious period. Such persons should continue to follow CDPH isolation recommendations, including wearing a well-fitting face mask through Day 10.

Cal/OSHA is updating its resources to assist employers with understanding their obligations required by the COVID-19 Prevention Regulations. The COVID-19 Prevention Resources webpage contains an executive summary that describes the regulations. When the new regulation becomes effective, Cal/OSHA will publish an updated set of FAQs and model program.

For any questions, please reach out to your designated Loss Control Consultant or email us at losscontrol@bhhc.com