

Cal/OSHA's Revised ETS

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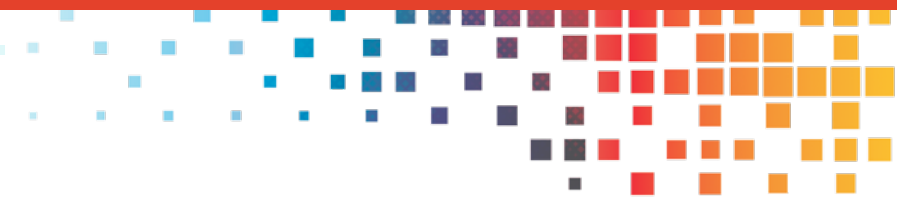
Status – Where Are We?

- Federal (CDC, Federal OSHA)
- State (CDPH, State of CA, Cal/OSHA)
- Local (Counties and Cities)

Status – Where Are We?



- Original ETS went into effect on November 30, 2020
- After much back and forth (multiple drafts and meetings), the revised ETS became ***effective June 17, 2021***



FACE COVERINGS





Face Coverings

- Employees who are **fully vaccinated** no longer need to wear face coverings
- Better alignment with CDPH/CDC updated guidance
- No more “everyone in the room vaccinated” standard from the prior proposed versions
- *Note – CDPH guidance still requires face coverings (regardless of vaccination status) in public transit, K-12 educational facilities, health care and long-term care settings, correctional and detention facilities, and shelters (homeless or emergency shelters and cooling centers)*



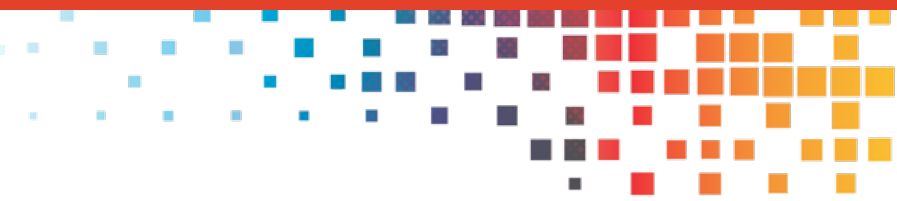
Face Coverings

- **Unless there is a more restrictive order requiring face coverings regardless of vaccination status, under Cal/OSHA, employers must provide face coverings and ensure they are worn by employees who are **not fully vaccinated** when indoors or in vehicles with others**
- **Face coverings no longer required **outdoors**, regardless of vaccination status**
- Same limited exemptions apply for those who are not fully vaccinated (employees alone in a room or vehicle, while eating or drinking, etc.)



Face Coverings – local orders

- Due to the Delta variant, local orders have been implemented by counties in California mandating face coverings indoors again
- Counties/cities with mask mandate regardless of vaccination status:
 - Los Angeles County
 - Cities of Long Beach and Pasadena are exempted from the LA County order, but both cities have implemented their own
- Ventura and several other counties have not mandated masks indoors, but are highly encouraging that everyone wear masks regardless of vaccination status
- We expect that more local orders will be issued in the coming weeks



DOCUMENTATION & VACCINES





“Documenting” Vaccination Status

- Employer “**has documented**” that employee is fully vaccinated
- “Acceptable options” include:
 - 1) Employees provide proof of vaccination (vaccine card, image of vaccine card or healthcare document showing vaccination status) and employer maintains a copy
 - 2) Employees provide proof of vaccination – the employer maintains a record of the employees who presented proof, but not the vaccine record itself
 - 3) ***Employees self-attest to vaccination status and the employer maintains a record of who self-attests***

A Few Vaccine Considerations to Keep in Mind

Be Careful How You Ask and What You Ask

- Employers may inquire about vaccination status
- Employers should instruct employees not to disclose any additional medical or other family medical information and must maintain this information as confidential
- Covered employers must also provide notice pursuant to the California Consumer Privacy Act (CCPA)

A Few Vaccine Considerations to Keep in Mind

What if an employee declines or refuses to disclose their vaccination status?

Cal/OSHA Revised FAQs:

- *“An employee has a right to decline to state if they are vaccinated or not”*
- *“In that case, the employer must treat the employee as unvaccinated and must not take disciplinary or discriminatory action against an employee”*

PHYSICAL DISTANCING

Regulations

Physical Distancing

- Say goodbye!
- This went into effect *immediately* (June 17th)
- **No physical distancing or barrier requirements regardless of employee vaccination status**

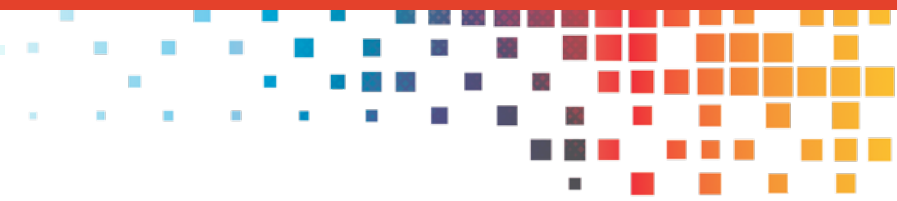




Physical Distancing

A few exceptions to keep in mind:

- Employers must **“evaluate”** whether it is necessary to implement physical distancing and barriers during an outbreak
- Employers **must** implement physical distancing and barriers during a major outbreak
- Nothing prohibits employers from **voluntarily** maintaining physical distancing and barriers



RESPIRATORS



Provision of Respirators (N95s)



- Respirators must be provided for voluntary use to unvaccinated employees **“upon request”**
- In a “major outbreak” must be offered for voluntary use to all employees in the exposed group (regardless of vaccination status)



Training and Respirators

- **Training (in general) must include:**
 - The employer's policies for providing respirators
 - The right of employees who are not fully vaccinated to request respirators
- **Whenever respirators are provided for voluntary use must include:**
 - How to properly wear the respirator provided
 - How to perform a seal check each time the respirator is worn and the fact that facial hair interferes with a seal
 - *Cal/OSHA FAQs describe this as "basic instruction on how to get a good seal or fit."*
- **5144 Appendix D Acknowledgement**

N95s vs. KN95s

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KN95 Face Mask, 30 Pack Individually Wrapped, 5-Ply Breathable & Comfortable Safety Mask, Filter Efficiency $\geq 95\%$, Protective Cup Dust...

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NIOSH Approved N95 Mask Particulate Respirator - Pack of 20 Face Masks - Universal Fit

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More Buying Choices
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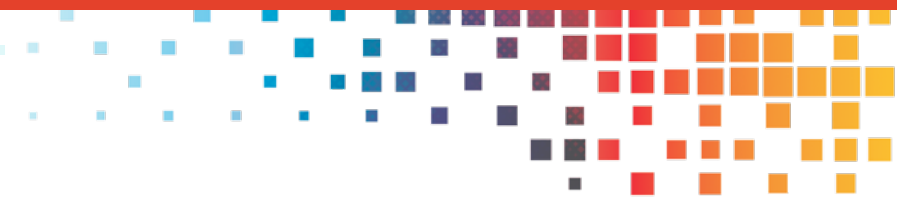
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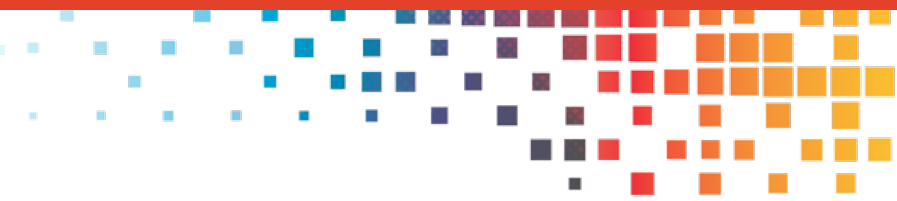
EXCLUSION OF EMPLOYEES



What does the Amended ETS Say?

“Close Contacts” – Must be excluded **unless**:

- 1) Fully vaccinated before the close contact and have no symptoms;
or
- 2) Were previously COVID-19 cases who returned to work and have remained symptom free for 90 days after initial onset of symptoms or after first positive test if never developed symptoms (“natural immunity”)



NOTICE REQUIREMENTS





The “Good” News

- Mainly conform to requirements of AB 685:
 - Must be “written”
 - Must be provided to “all employees at the worksite during the high risk exposure period” (as opposed to all employees who “may” have been exposed)
 - May include personal service, email or text message if it can reasonably be anticipated to be received by the employee within one business day



The “Bad” News

New **Verbal** Follow-Up Requirement:

*If the employer should **reasonably know** that an employee has not received the notice, or has **limited literacy** in the language used in the notice, the employer shall provide verbal notice, as soon as practicable, in a language **understandable** by the employee.*

- Many vague and undefined terms
- May be best to provide the initial notice in the employees’ native language if a high percentage of non-English speaking employees



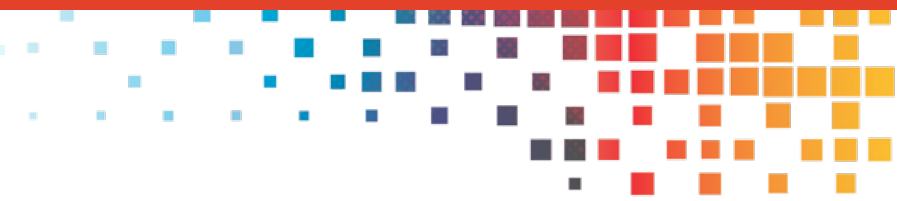
NEW TESTING OBLIGATION FOR NON- VACCINATED EMPLOYEES





New Testing Obligation

- Begins **immediately upon effective date**
- Must make testing available at no cost to employees with COVID-19 **symptoms** who are **not fully vaccinated** during employees' paid time



TESTING FOLLOWING COVID-19 CASES IN THE WORKPLACE



Testing After One COVID-19 Case

- Provides that testing must be made available to all employees who had “**close contact**” (as opposed to all employees who had “potential COVID-19 exposure”)
- Do **not** need to provide testing to:
 - 1) Employees who were fully vaccinated **before** the close contact and do not have COVID-19 symptoms; or
 - 2) Employees who were previously a COVID-19 case, met the return-to-work criteria and have remained symptom free for 90 days after initial onset of symptoms or after first positive test if never developed symptoms (“natural immunity”)

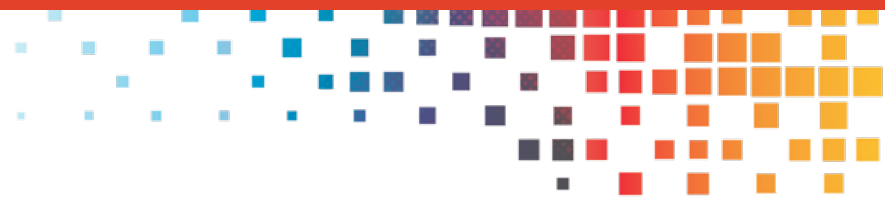


KEY ORIGINAL ETS PROVISIONS THAT REMAIN IN EFFECT

Regulations

Key Original ETS Provisions That Remain in Effect

- Must establish, implement and maintain an effective WCPP
- Continue symptom screening
- Must provide training and instruction to employees on how COVID-19 is spread, infection prevention techniques, and information regarding COVID-19-related benefits that affected employees may be entitled to under applicable federal, state, or local laws- additionally must provide information regarding testing and vaccination
- Notification requirements
- Employers must exclude employees who have COVID-19 symptoms and/or are not fully vaccinated and have had a close contact from the workplace and, if that close contact is work-related, ensure continued wages
- Testing requirements
- Outbreaks and Major Outbreaks
- Employer-provided housing and transportation



NEXT STEPS/ACTION PLAN





Next Steps/Action Plan

- 1) Review the [Amended ETS](#) and [Insight](#)
- 2) Review your Written Plan COVID-19 Prevention Program, notices and other policies that need to be modified.
- 3) Fisher Phillips has an updated compliance packet of documents, sample communications, policies and other templates. If you previously purchased this packet, you may contact your Fisher Phillips attorney for updated (and additional) documents. If you are interested in purchasing this compliance packet, contact your Fisher Phillips attorney or one of us.
- 4) Review the vaccine considerations discussed above and evaluate how you are going to handle documenting vaccination status
- 5) Stock up on N95s



Thank You!

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