

Checklist for Confirmed Cases at Workplace

Under Cal/OSHA's Emergency Temporary Standards, AB 685, and SB 1159

By ZALLER LAW GROUP, PC | February 25, 2021

EXCLUSION AND NOTIFICATION REQUIREMENTS

- Immediately send home employee who has had a positive COVID-19 test, is diagnosed with COVID-19 by a licensed healthcare provider or is ordered to isolate for COVID-19 by a public health department.
- Ask infected employee to list all co-workers who he or she came into close contact with while he or she had symptoms or within 2 days (48 hours) before symptoms appeared or positive test specimen collected.
 - Recommended: Map locations of where employee worked within location.
 - Recommended: List of all employees who had a COVID-19 exposure with infected employee.
 - Cal/OSHA defines "COVID-19 exposure" as being within six feet of a COVID-19 case for a cumulative total of 15 minutes or greater in any 24-hour period within or overlapping with the "high-risk exposure period."
 - The high-risk exposure period is:
 1. for people with symptoms: from two days before they first develop symptoms until 10 days after symptoms first appeared, and 24 hours have passed with no fever, without the use of fever-reducing medications, and symptoms have improved; or
 2. for people who test positive but never develop symptoms: from two days before until 10 days after the specimen for their first positive test for COVID-19 was collected.
- Within 1 business day of notification of potential exposure, notify co-workers who may have had COVID-19 exposure (maintain sick employee's privacy and do not disclose identity) and provide employees with information about COVID-19 benefits under federal, state, and local laws.
 - Check employees who may have had contact for symptoms (fever, cough, shortness of breath, acute respiratory conditions) and take temperatures.
 - Inform other employees of the dates that the affected individual was on the worksite but should not share any identifying information.
 - Information about benefits include workers' compensation, company sick leave, state-mandated leave, supplemental sick leave, negotiated leave, and anti-retaliation and anti-discrimination protections.
 - Notice must be provided in both English and any other language understood by the majority of employees in a way that the employer usually contacts employees (hand delivery, e-mail, text message, etc.).
 - Employers must retain any written notices they provide for at least 3 years.
- Exclude employees who have tested positive or who had COVID-19 exposure from the workplace.
 - If the positive employee is symptomatic, he/she may not return to work until all of the following conditions are met: (1) at least 24 hours have passed since a fever of 100.4 or higher has resolved without the use of fever-reducing medications; (2) COVID-19 symptoms have improved; and (3) at least 10 days have passed since COVID-19 symptoms first appeared.
 - If the positive employee is asymptomatic, he/she must stay home for 10 days from the time of his/her first positive test.
 - If an employee believes he/she has been exposed to the virus, the employee may return to work 10 days from last exposure if the employee remains asymptomatic the entire time.
 - Symptoms include: fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, and diarrhea.
 - Employers should not require employees to disclose medical information unless required by law.
 - Employers cannot require a negative test as a condition for excluded employees to return to work, and a negative test cannot be used to shorten exclusion times.



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Disclaimer

Please note that this is a summary of the requirements of these laws, and different standards will apply to certain health care providers, emergency responders, and health facilities, among others. Please contact us for specific guidance that may pertain to your industry. This report was reviewed and updated in 4/2021 by Zaller Law Group.



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EXCLUSION AND NOTIFICATION REQUIREMENTS CONTINUED

- To promote transparency and if appropriate, communicate positive case of COVID-19 (while maintaining individual's privacy) to the larger affected workforce.
- Inform employees of disinfection and safety plans on the worksite.
 - Follow any state or local health department guidance.
 - Follow CDC guidance on cleaning: <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>
 - Post CDC poster: https://www.cdc.gov/coronavirus/2019-ncov/downloads/Essential-Critical-Workers_Dosand-Donts.pdf
 - Usually, the facility does not need to be shut down. If it has been less than 7 days since the sick employee was in the facility, close off any areas or shared equipment used for long periods of time by the infected employee. Wait 24 hours before cleaning and disinfecting, or if not feasible, wait as long as possible. During this period, open outside doors and windows to allow air circulation in these areas.

TESTING REQUIREMENTS

- Provide testing to all employees who had potential exposure to COVID-19 in the workplace, regardless of whether there has been an outbreak.
- In case of an outbreak, provide testing to all employees at the exposed workplace except for employees who were not present during the period of the outbreak.
 - An outbreak is defined as 3 or more cases within a 14-day period.
 - If there has been an "outbreak," employees must be tested immediately, again one week later, and then continuous testing for employees who remain at the workplace at least once a week until there are no new COVID-19 cases in the workplace for a 14-day period.
- Testing must be offered at no cost to the employees and employers must pay for the time it takes to have the test and reimburse employees for travel costs if not administered at the workplace.
- Additional testing is required for major outbreaks (20 or more COVID-19 cases within a 30-day period).

PAY REQUIREMENTS

- Cal/OSHA "Exclusion Pay"
 - Must pay employees while excluded from work due to workplace exposures.
 - If the employee is "able and available to work," the employer must continue to provide the employee's pay and benefits. An employer may require the employee to exhaust paid sick leave benefits before providing exclusion pay, to the extent permitted by law, and may offset payments by the amount an employee receives in other benefit payments. (Please refer to the **Labor Commissioner's COVID-19 Guidance and Resources** for information on paid sick leave requirements.) These obligations do not apply if an employer establishes the employee's exposure was not work-related.
 - Cal/OSHA's FAQs provide that if an employee is unable to work because of his or her COVID-19 symptoms, then he or she is not eligible for exclusion pay and benefits. The employee may be eligible for Workers' Compensation or State Disability Insurance Benefits. This standard is not entirely clear, and it is recommended for employers to pay employees if they have COVID-19 symptoms and are excluded from work, unless the symptoms are so bad that the employee would be unable to work at all.
 - This pay requirement is being challenged in court in various lawsuits alleging that Cal/OSHA does not have the authority to require this exclusion pay. Continue to monitor status of cases for updates, but until a court rules this provision invalid, follow the ETS requirements.

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PAY REQUIREMENTS CONTINUED

- Length of time entitled to pay:
 1. An employee would typically receive pay for the period the employee is quarantined, which could be up to 14 days. Under the Governor's Executive Order N-84-20 and current CDPH quarantine guidance, while a 14-day quarantine is recommended, an exposed employee who does not develop symptoms of COVID-19 may return to work after 10 days have passed since the date of last known exposure.
 2. If an employee is out of work for more than a standard quarantine period based on a single exposure or positive test, but still does not meet the regulation's requirements to return to work, that extended quarantine period may be an indication that the employee is not able and available to work due to illness. The employee would therefore likely not be entitled to exclusion pay, but may be eligible for temporary disability or other benefits.

Federal and California Supplemental Paid Sick Leave

Comply with any local Supplemental Paid Sick Leave requirements.

- For example, the City of Los Angeles requires employers with either 500 or more employees in the City of Los Angeles or 2,000 or more employees in the U.S. to provide paid leave. This requirement remains in place until two calendar weeks after the expiration of the COVID-19 local emergency period.
- Some other cities with similar requirements: Long Beach, San Francisco, San Mateo County, and Sacramento.

Permit employees to use California's Healthy Workplace Healthy Family Act of 2014 or other similar local required Paid Sick Leave

REPORTING REQUIREMENTS

If there have been 3 or more COVID-19 cases among workers at the same worksite within a 14-day period, employers must report outbreaks to the local health department within 48 hours after the employer knows or should have known about the cases.

- Information that should be reported includes names, phone number, occupation, and worksite of employees who may have COVID-19 or who are under a COVID-19 isolation order from a public health official.
- Contact information and any available electronic reporting resources for your local public health authority can be found here: <https://www.cdph.ca.gov/Programs/CCLHO/Pages/LHD-Communicable-Disease-Contact-List.aspx>
- The Los Angeles County electronic reporting portal can be found here: <https://dphredcap.ph.lacounty.gov/surveys/?s=RERMHDTWAR>
- Continue to update the local health department of any additional COVID-19 cases that occur in the workplace.

Report any serious illness, serious injury, or death of an employee at work or in connection with work to Cal/OSHA within 8 hours of learning of the case.

- This includes inpatient hospitalizations and deaths among workers.
- Employers must report to Cal/OSHA even if work-relatedness is uncertain.
- Contact information for the various Cal/OSHA district offices can be found here: <https://www.dir.ca.gov/dosh/districtoffices.htm>

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REPORTING REQUIREMENTS CONTINUED

- Notify your workers' compensation claims administrator when you know or reasonably should know that an employee has tested positive for COVID-19.
 - For these purposes, the positive test must come from an FDA approved PCR (polymerase chain reaction) test, or other test of equal or higher sensitivity, that detects the presence of viral RNA.
 - Provide the following information to your workers' compensation claims administrator:
 1. The fact that an employee has tested positive. Do not reveal the employee's identity unless the employee has stated that the infection is work-related or has filed a workers' compensation claim form regarding the infection.
 2. The date the specimen was taken for the employee's positive test.
 3. The employee's place of employment during the 14 days before the employee's positive test.
 4. The greatest number of employees who reported to work at the infected employee's workplace in the 45 days before the last time the infected employee was onsite.

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