

# Checklist for COVID-19 Cases at Workplace

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

By ZALLER LAW GROUP, PC

### EXCLUSION AND NOTIFICATION REQUIREMENTS

- ☐ Exclude COVID-19 cases until they are no longer an infection risk from the workplace.
  - **“COVID-19 case”** is defined as a person who (1) has a positive COVID-19 test, (2) has a positive COVID-19 diagnosis from a licensed health care professional, (3) is subject to a COVID-19-related order to isolate issued by a local or state health official, or (4) has died due to COVID-19.
- ☐ Determine when the COVID-19 case was last in the workplace, and if possible, the date of testing and onset of symptoms.
- ☐ Determine which employees may have been exposed to COVID-19 through a “close contact” and exclude these employees.
  - Recommended: Map locations of where COVID-19 case worked or visited within location during the high-risk exposure period.
  - Recommended: List of all employees who worked at the same time as the COVID-19 case was present.
  - Cal/OSHA defines **“close contact”** 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.”** This definition applies regardless of the use of face coverings, but employees wearing respirators are not considered close contacts. The **high-risk exposure period** is defined as:
    1. for COVID-19 cases with symptoms: from two days before they first develop symptoms until all of the following are true: it has been 10 days since symptoms first appeared, 24 hours have passed with no fever, without the use of fever-reducing medications, and symptoms have improved; or
    2. for COVID-19 cases who never develop symptoms: from two days before until 10 days after the specimen for their first positive test for COVID-19 was collected.
  - Employees who had a close contact do not need to be excluded if either (1) they were fully vaccinated before the close contact and do not develop COVID-19 symptoms or (2) they were previously COVID-19 cases who have returned to work and remained free of COVID-19 symptoms, if the close contact occurs within 90 days since the initial onset of symptoms, or 90 days after the first positive test if asymptomatic and continue to have no symptoms (“natural immunity”). However, vaccinated employees or those with natural immunity who have symptoms or test positive must be excluded.
- ☐ Within 1 business day of the time the employer knows or should have known of a COVID-19 case, the employer shall give written notice, in a form readily understandable by employees, that people at the worksite may have been exposed to COVID-19.
  - The writing can be handed out, texted, or emailed if it is reasonably anticipated to be received within 1 business day of sending. The writing must include the disinfection plan required under Labor Code section 6409.6(a)(4)
  - Must be provided to employees at the worksite during the high-risk exposure period.
  - If the employer should reasonably know that the employee has not received the notice, or may not understand the language used in the notice, the employer shall provide verbal notice, as soon as practicable, in a language understandable by the employee.
  - During an outbreak, employers must give notice to employees in the exposed group of their right to request a respirator for voluntary use if they are not fully vaccinated.
  - Advise employees who may have had contact to report if they develop symptoms (fever of 100.4 degrees Fahrenheit or higher, 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, or diarrhea).
  - Inform other employees of the dates that the affected individual was on the worksite but do not share any identifying information.



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- Provide 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.
- Ensure notice requirements under AB 685 are complied with to employees and local health departments (**more information about AB 685 can be found [here](#)**).

☐ Determine when COVID-19 cases and employees who had a close contact who have been excluded may return to work.

- COVID-19 cases may return to work under the following scenarios:
  1. If the 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.
  2. If the employee is asymptomatic, he/she must stay home for 10 days from the time of his/her first positive test.
- Close contact cases may return to work under the following scenarios:
  1. People who had a close contact but never developed COVID-19 symptoms may return to work when 10 days have passed since the last known close contact.
  2. People who had a close contact and developed COVID-19 symptoms cannot 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. Alternatively, the person may return to work if the person tested negative for COVID-19 using a **polymerase chain reaction (PCR) COVID-19 test** with the specimen taken after the onset of symptoms, and at least 10 days have passed since the last known close contact, and the person has been symptom-free for at least 24 hours, without using fever-reducing medications.
- **COVID-19 symptoms** means: "fever of 100.4 degrees Fahrenheit or higher, 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, or diarrhea, unless a license health care professional determines the person's symptoms were caused by a known condition other than COVID-19."
- Employers should not require employees to disclose medical information unless required by law. Any medical information received should be kept confidential.
- The ETS does not require an employee to have a negative test to return to work.
- Employers cannot require a negative test as an additional condition for excluded employees to return to work, and a negative test cannot be used to shorten exclusion times.

## TESTING REQUIREMENTS

- ☐ Make testing available to all employees with COVID-19 symptoms who are not fully vaccinated (employers must pay for testing, employee's time for the test, and travel costs if not administered at workplace). This is a new requirement effective June 2021.
- ☐ Make testing available to all employees who had a close contact in the workplace, regardless of whether there has been an outbreak.
- Testing is not required to be provided to:
    1. Employees who were fully vaccinated before the close contact and do not have COVID-19 symptoms.
    2. COVID-19 cases who returned to work pursuant to the Cal/OSHA regulations and have remained free of COVID-19 symptoms, for 90 days after the initial onset of COVID-19 symptoms or, for COVID-19 cases who never developed symptoms for 90 days after the first positive test.



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## TESTING REQUIREMENTS CONTINUED

- ☐ In case of an outbreak, provide testing to all employees at the exposed group except for employees who were not present during the high-risk exposure period.
  - An **“outbreak”** is defined as 3 or more COVID-19 cases among employees in an **“exposed group”** within a 14-day period.
  - **“Exposed group”** is defined as “all employees at a work location, working area, or a common area at work, where an employee COVID-19 case was present at any time during the high-risk exposure period. A common area at work include bathrooms, walkways, hallways, aisles, break or eating areas, and waiting areas.” (See ETS for exceptions that apply).
  - If there has been an “outbreak,” make testing available to all employees in the exposed group and exclude positive cases and exposures from work.
  - Employer must continue to offer testing one week later, and at least weekly thereafter to all employees who remain at the workplace until there are no new COVID-19 cases detected in the exposed group 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 requirements apply 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: 1) the employee was not assigned to telework during that time; and 2) the employee did not receive Disability Payments or Workers’ Compensation Temporary Disability Payments during the exclusion period. If denying exclusion pay based on one of these exceptions, employer must inform employee of the denial and applicable exclusion.
  - Employers may require employees who are excluded from work under the ETS to first exhaust 2021 Supplemental Paid Sick Leave (SPSL) under Labor Code section 248.2. More information about California’s SPSL can be found [here](#) and [here](#).
  - Employers may not require employees to use the standard paid sick leave required under Labor Code section 246, even when there has been a workplace exposure and the employer is required to exclude employees under the ETS.
  - Cal/OSHA’s FAQs provide that an employer need not maintain the exposed employee’s earnings and benefits if the excluded employee is unable to work because of reasons other than exposure to COVID-19 at work (e.g., a non-work exposure, business closure, caring for a family member, disability, or vacation). Such employees may be eligible for other leave, including sick leave, or other benefits such as Disability Insurance, Paid Family Leave, or Unemployment Insurance Benefits.
  - Length of time entitled to pay:
    - The FAQs provide that an “employee would typically receive pay for the period the employee is excluded, which could be 10 or more days. If an employee is out of work for more than a standard exclusion period based on a single exposure or positive test, but still does not meet the regulation’s requirements to return to work, the employee may be entitled to other benefits, such as Temporary Disability, Disability, or Supplemental Paid Sick Leave.”
- ☐ Federal Families First Coronavirus Response Act (FFCRA) and California Supplemental Paid Sick Leave may still apply.
- ☐ 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 (but do not require) employees to use California’s Healthy Workplace Healthy Family Act of 2014 or other similar local required Paid Sick Leave.



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## 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 information about COVID-19 cases and outbreaks to the local health department whenever required by law.
  - Employer must also maintain records of steps taken to implement the written COVID-19 Prevention Program.
  - COVID-19 Prevention Program shall be made available at the workplace to employees, and representatives of Cal/OSHA upon request.
  - Employers must record and track all COVID-19 cases including:
    1. The employee's name
    2. Contact information
    3. Occupation
    4. Location where the employee worked
    5. Date of the last day at the workplace
    6. Date of positive COVID-19 test
- ☐ 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.

**\*\* 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 legal counsel for guidance and for specific guidance that may pertain to your industry.**

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