

CRA INDUSTRY INSIGHT: WHAT CALIFORNIA RESTAURANTS NEED TO KNOW ABOUT CAL/OSHA'S NON-EMERGENCY COVID-19 STANDARD

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California restaurants were hit especially hard during the COVID-19 pandemic, and were asked to quickly comply with the ever-changing rules, regulations, and mandates imposed at the federal, state, and local levels.

Adding to that complexity has been the ever-shifting regulation by Cal/OSHA. In November 2020, Cal/OSHA imposed a significant and far-reaching emergency temporary standard (ETS) on California businesses. The ETS was modified and extended several times.

However, the ETS expired on February 3, 2023 and was replaced by a new [non-emergency COVID-19 regulation](#), which will be in effect for two years.

What do California restaurants need to know about the non-emergency COVID-19 regulation?

NO MORE EXCLUSION PAY

The biggest change between the non-emergency regulation and the prior ETS is the elimination of “exclusion pay.” The non-emergency regulation does not require restaurants to pay employees while they are excluded from work (although other state or local laws may apply). Instead, the regulation requires employers to provide employees with information regarding COVID-19 related benefits they may be entitled to under federal, state, or local laws, their own leave policies, or leave guaranteed by any applicable collective bargaining agreement.

WRITTEN PLAN FLEXIBILITY

Restaurants are no longer required to maintain a standalone COVID-19 Prevention Plan. Instead, restaurants must now address COVID-19 as a workplace hazard under their Injury and Illness Prevention Program (IIPP) and include their COVID-19 procedures in their written IIPP or a separate document.

REFER TO CDPH GUIDANCE FOR ISOLATION/QUARANTINE

The non-emergency regulation continues to refer California employers to California Department of Public Health (CDPH) guidance regarding exclusion and return-to-work criteria



for COVID-19 cases and close contacts. Restaurants should closely monitor developments as this CDPH guidance can change over time.

For example, CDPH recently changed their guidance to provide as follows:

- **COVID-19 Cases Without Symptoms** – There is no infectious period for purposes of isolation and exclusion for COVID-19 cases without symptoms. Therefore, such individuals are not required to be excluded from the workplace. However, such employees must mask for 10 days and avoid contact with people at higher risk for severe COVID-19 for 10 days.
- **COVID-19 Cases With Symptoms** – For COVID-19 cases with symptoms, employees must be excluded for a minimum of 24 hours from the day of symptom onset. Employees may return to work if 24 hours have passed without a fever, without the use of fever-reducing medications, and symptoms have improved. Upon return to work, such employees must mask for 10 days and avoid contact with people at higher risk for severe COVID-19 for 10 days.
- **Close Contacts** – Asymptomatic close contacts do not need to be excluded. Testing for close contacts is only recommended (within 5 days) for people who are higher risk of severe COVID-19 or have contact with people who are at higher risk of severe COVID-19. Close contacts with symptoms should test and mask right away.

NOTIFICATION REQUIREMENTS AND NEW FLEXIBILITY

The non-emergency regulation requires employers to notify employees and independent contractors who had a close contact, as well as any employer with an employee who had a close contact. Notice shall be provided “as soon as possible” and in no case longer than the time required to ensure that any exclusion requirements are met.

ADDITIONAL REQUIREMENTS

Some of the requirements of the non-emergency regulation are the same as those under the ETS. However, there are some modified requirements as well.

The non-emergency regulation requires restaurants to do the following:

- Provide effective COVID-19 hazard prevention training to employees.
- Provide face coverings when required by CDPH and provide respirators upon request.
- Identify COVID-19 health hazards and develop methods to prevent transmission in the workplace.
- Investigate and respond to COVID-19 cases and certain employees after close contact.



- Make testing available at no cost to employees following a close contact at work, including to all employees in the exposed group during an outbreak or a major outbreak.
- Notify affected employees of COVID-19 cases in the workplace.
- Maintain records of COVID-19 cases and immediately report serious illnesses to Cal/OSHA and to the local health department when required.

In addition, employers must now report major outbreaks to Cal/OSHA.

WHAT SHOULD CALIFORNIA RESTAURANTS DO NOW?

California restaurants should work closely with HR and legal counsel to ensure compliance with the non-emergency regulation and monitor closely for future changes and related developments to the regulation.

For the language of the Cal/OSHA COVID-19 Prevention Non-Emergency Regulation, [click here](#).

For more information about the Cal/OSHA COVID-19 Prevention Non-Emergency Regulation, [click here](#).

