

ADDENDUM IV OSHA COVID-19 Emergency Temporary Standards Frequently Asked Questions

Updated January 8, 2021: <https://www.dir.ca.gov/dosh/coronavirus/COVID19FAQs.html#effDate>

Scope of Coverage

Q: Which employers must comply with the [COVID-19 emergency temporary standards \(ETS\)](#)?

A: The ETS applies to all employers, employees, and to all places of employment with three exceptions:

- Workplaces where there is only one employee who does not have contact with other people
 - Employees who are working from home
 - Employees who are covered by the [Aerosol Transmissible Diseases](#) regulation
2. **Q:** Does the ETS apply for employees who split their work time between home and the workplace?
- A:** Yes, however, the regulation applies only when the employees work at the workplace, or are exposed at work, but not when they work from home.
3. **Q:** Does the regulation apply to workplaces with only one employee who has brief contact with other persons?
- A:** Yes, the regulation applies to such workplaces (other than the home); however, the measures that the employer must implement to comply with the ETS will reflect this type of limited exposure.
4. **Q:** Does the regulation apply for employees who are working from remote locations other than their home?
- A:** No, the regulations do not apply to employees an employer assigns to telework but who choose to work elsewhere, such as at a hotel or rental property. The regulation on employer-provided housing (3205.3) applies when a person is working from a hotel arranged for or provided by the employer; however, the rule would not impose additional requirements for business travel by employees not sharing a room or suite.
5. **Q:** Does the regulation apply to any facility that is subject to the Aerosol Transmissible Diseases (ATD) standard?
- A:** The ETS applies to employees at these facilities who are not identified in the employer's Aerosol Transmissible Diseases Exposure Control Plan, as required under California's Aerosol Transmissible Diseases (ATD) standard ([CCR section 5199](#)), as having occupational exposure to aerosol transmissible diseases, such as administrative employees who work only in an office environment separated from patient care facilities.
6. **Q:** The regulation exempts "Employees when covered by section 5199". Can an employee in a single workplace be subject to both the ETS and section 5199 at different times?
- A:** No. In a facility or operation that is within the scope of section 5199, employees with occupational exposure to aerosol transmissible diseases (ATDs), as defined in

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section 5199, are covered by the requirements of section 5199, and not the ETS. This is true even when an employee who has occupational exposure performs tasks that do not include exposure to ATDs, e.g., when a hospital nurse who performs patient care spends time in the hospital's human resources office.

7. **Q:** Can an employer at a workplace covered by section 5199 deem all employees on site to have occupational exposure to COVID-19 and exempt them from the ETS?
A: If the employer provides all employees with protections under its ATD Exposure Control Plan and has incorporated those employees into the plan in accordance with section 5199 because they have an occupational exposure to COVID-19, then those employees would not be subject to the ETS.

Effective Date

8. **Q:** When must employers comply with the ETS?
A: November 30, 2020, the day the Office of Administrative Law approved the ETS.
9. **Q:** What if an employer is unable to comply with the ETS by its effective date?
A: Many of the provisions of these regulations have already been required under [employers' Injury and Illness Prevention Programs](#) (IIPP), including the requirement to identify and address hazards, use of face coverings, and physical distancing. As employers implement the new regulations, Cal/OSHA enforcement personnel will consider an employer's good faith efforts in working towards compliance, but some aspects, such as eliminating hazards and implementing testing requirements during an outbreak, are essential.

Enforcement

10. **Q: How will Cal/OSHA enforce the ETS as employers implement the rule?**
A: All employers are expected to comply with all provisions of the ETS, and Cal/OSHA will enforce the ETS, taking into consideration an employer's good faith efforts to comply.

In addition to consideration of an employer's good faith effort to comply before issuing a citation, for the first two months the rules are in effect (i.e., through February 1, 2021), Cal/OSHA will cite but not assess monetary penalties for violations of the ETS that would not have been considered a violation of the employer's Injury and Illness Prevention Program, respiratory protection program or other applicable Cal/OSHA standard in place prior to November 30, 2020. This brief period of relief from monetary penalties will allow Cal/OSHA and employers to focus on obtaining compliance, while ensuring workers still benefit from the protections in the ETS. This policy will not apply where an employer fails or refuses to abate a violation of the ETS Cal/OSHA has identified, or in the case of imminent hazards.

The COVID-19 Prevention Program

11. **Q:** What are the main requirements of the ETS?
A: To comply with the ETS, an employer must develop a written COVID-19

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Prevention Program or ensure its elements are included in an existing [Injury and Illness Prevention Program](#) (IIPP). The employer must implement the following in accordance with their written program:

- Communication to employees about the employer's COVID-19 prevention procedures
- Identify, evaluate and correct COVID-19 hazards
- Physical distancing of at least six feet unless it is not possible
- Use of face coverings
- Use engineering controls, administrative controls and personal protective equipment as required to reduce transmission risk
- Procedures to investigate and respond to COVID-19 cases in the workplace
- Provide COVID-19 training to employees
- Provide testing to employees who are exposed to a COVID-19 case, and in the case of multiple infections or a major outbreak, implement regular workplace testing for employees in the exposed work areas
- Exclusion of COVID-19 cases and exposed employees from the workplace until they are no longer an infection risk
- Return to work criteria
- Maintain records of COVID-19 cases and report serious illnesses and multiple cases to Cal/OSHA and the local health department, as required

Cal/OSHA has posted a [Model COVID-19 Prevention Program](#) on its website for employers to use.

Communication with Employees

12. **Q:** What does the ETS require employers to communicate to employees?

A: Requirements include:

- How to report COVID-19 symptoms, exposures and hazards to the employer without fear of reprisal
- COVID-19 hazards in the workplace and the employer's policies and procedures to address them
- Any procedures the employer may have for accommodating employees with elevated risk factors for COVID-19, which can be found on the CDC's website (this is an obligation to communicate about existing procedures, not to create new ones, although reassigning employees with elevated COVID-19 risk factors to jobs with less exposure risk is encouraged and may be required under federal and state disability laws)
- How the employee can obtain testing for COVID-19, such as through the employer's workplace-based testing program, or through the local health department, a health plan, or at a community testing center
- Notice of potential exposure to COVID-19

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- Cleaning and disinfection protocols
- How to participate in workplace hazard identification and evaluation

Identifying, Evaluating and Correcting COVID-19 Hazards

13. Q: What must an employer do to identify, evaluate and correct workplace hazards?

A: Identifying, evaluating and correcting workplace hazards includes:

- Developing and implementing a process for screening employees for and responding to employees with COVID-19 symptoms
- Reviewing state and local guidance and orders on hazard prevention, [including industry-specific guidance found on Cal/OSHA's website](#) or at [Covid19.ca.gov](#)
- Reviewing existing practices for controlling COVID-19
- Conducting a site-specific evaluation of where COVID-19 transmission could occur, including interactions between employees and any other persons, and places employees may congregate or interact with members of the public
- Allowing employees or employees' authorized representatives to participate in hazard identification and evaluation
- Ensuring a process is in place to immediately address COVID-19 cases
- Conducting periodic inspections of the workplace to ensure compliance with the ETS and check for new hazards
- Implementing procedures to correct identified hazards

14. Q: How does an employer allow employees or employees' representatives to participate in hazard identification or evaluation?

A: The employer has flexibility in how it allows worker participation in hazard identification and evaluation. The rule does not explicitly require employee participation, but employers must allow it. Cal/OSHA encourages the participation of employees and employees' authorized representatives in hazard identification and evaluation.

Physical Distancing, Face Coverings and Other Controls

15. Q: What are the physical distancing requirements of the ETS?

A: An employer must ensure that employees maintain at least six feet of distance from other persons unless it is not possible, in which case employees should be as far from others as possible. Momentary contact closer than 6 feet while in movement, such as in a hallway or aisle, would not be considered a violation. An employer must be prepared to demonstrate to Cal/OSHA why physical distancing of at least six feet is not possible.

Methods of physical distancing include: telework or other remote work arrangements; reducing the number of persons in an area at one time, including visitors; visual cues such as signs and floor markings to indicate where employees and others should be located or their direction and path of travel; staggered arrival,

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departure, work, and break times; and adjusted work processes or procedures, such as reducing production speed, to allow greater distance between employees.

16. **Q:** How should an employer measure between people when implementing the physical distancing requirement?

A: The ETS does not specify a method of measuring 6 feet of physical distancing, or in the cases of workers being transported to and from work in a vehicle, 3 feet of physical distancing. Measuring the space between two peoples' bodies or measuring the distance between two peoples' breathing zones (distance between their heads) are both methods Cal/OSHA would accept.

17. **Q:** What are the engineering requirements if physical distancing is not possible?

A: In addition to maximizing physical distance, at fixed work locations an employer must install cleanable solid partitions that reduce the risk of aerosol transmission (such as Plexiglas barriers).

18. **Q:** What is a "fixed work location" that would require solid partitions?

A: A "fixed work location" is a workstation where a worker is assigned to work with minimal movement from that location for extended periods of time. Examples include cashiers, greeters, receptionists, workers at desks or in cubicles, and food production line workers. It does not include construction or maintenance work.

19. **Q:** How large should partitions be?

A: They should be large enough to reduce the risk of aerosol transmission. Unless they are complete barriers, partitions do not eliminate the risk of transmission between workers. Workers within six feet of one another are considered a close contact for determining COVID-19 exposure, regardless of partitions.

20. **Q:** What are the face covering requirements of the ETS?

A: The ETS requires employers to provide employees with face coverings (or reimburse employees for the cost) and ensure they are worn over the nose and mouth when indoors and when outdoors, and within 6 feet of another. Exceptions include: when an employee is alone in a room, when eating or drinking, when using a respirator or other respiratory protection, when an employee cannot use a face covering due to a medical or mental condition; if hearing impaired or communicating with a hearing-impaired person; or when specific work tasks cannot be performed with a face covering. Other measures to protect against COVID-19 infection must be implemented when face coverings cannot be used.

21. **Q:** What engineering controls, administrative controls, and personal protective equipment must an employer implement?

A: Requirements include:

- Engineering controls
 - Install cleanable solid partitions that reduce the risk of aerosol transmission between fixed work locations where it is not possible to physically distance (such as Plexiglas barriers)

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- Maximize the amount of outside air to the extent feasible, unless there is poor outside air quality (an AQI of 100 or higher for any pollutant) or some other hazard to employees such as excessive heat or cold
- Administrative controls
 - Implement effective cleaning procedures of commonly touched surfaces, such as doorknobs, elevator buttons, equipment, tools, handrails, handles, controls, bathroom surfaces, and steering wheels
 - Inform employees and employees' authorized representatives of cleaning and disinfection protocols and planned frequency and scope of cleaning
 - Minimize to the extent feasible the sharing of tools, equipment and vehicles
 - If tools, equipment and vehicles must be shared, disinfect between users
 - Clean areas where a COVID-19 case has been during the "high risk period", as defined in these FAQs
 - Provide for, encourage and allow time for frequent hand washing, and provide hand sanitizer
- Personal protective equipment (PPE)
 - Evaluate the need for PPE, including but not limited to gloves, eye protection and respiratory protection as required by Cal/OSHA standards
 - Provide eye and respiratory protection for employees exposed to procedures that aerosolize saliva or other potentially infectious materials, such as some dental procedures
 - Prohibit the sharing of PPE

Ventilation

22. Q: How can employers who rent buildings or workspace in buildings over which they do not have control comply with the requirements regarding maximizing outdoor air and increase filtration efficiency of the ventilation system?

A: Employers in these circumstances should request that the building operator assist with compliance with the emergency regulation. It should be noted that if the building operator has employees that work on the premises, it is also subject to the rule.

23. Q: What if an employer has processes that prevent the use of outdoor air?

A: The ETS requires, with some exceptions, the employer to maximize the use of outdoor air to the extent feasible. Cal/OSHA will consider the processes or environments necessary to perform the work when assessing feasibility.

Vaccines

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Q: Once an employee is vaccinated, must the ETS still be followed for vaccinated persons?

A: For now, all prevention measures must continue to be implemented. The impact of vaccines will likely be addressed in a future revision to the ETS.

Training

25. Q: What training must an employer provide employees under the ETS?

A: Employee training must cover:

- Employer policies and procedures to protect employees from COVID-19 hazards
- COVID-19 related benefit information, from either the employer or from federal, state or local government, that may be available to employees impacted by COVID-19. Information on COVID-19 benefits such as paid sick leave and workers' compensation benefits is posted on the [Department of Industrial Relations' Coronavirus Resources](#) webpage.
- The fact that COVID-19 is an infectious disease that can be spread through the air when an infectious person talks or vocalizes, sneezes, coughs, or exhales; that COVID-19 may be transmitted when a person touches a contaminated object and then touches their eyes, nose, or mouth, although that is less common; and that an infectious person may show no symptoms
- The importance of physical distancing and wearing face coverings
- The fact that particles containing the virus can travel more than six feet, especially indoors, so physical distancing must be combined with other controls, including face coverings and hand hygiene, to be effective
- The importance of frequent hand washing for at least 20 seconds and use of hand sanitizer when handwashing facilities are not available
- Proper use of face coverings, and the fact that they are not respiratory protection
- The symptoms of COVID-19 and the importance of not coming to work and getting tested if an employee has symptoms

Cal/OSHA will provide training resources on its website for employers to use to supplement site-specific training to comply with the ETS.

Addressing COVID-19 Cases in the Workplace**Q:** What must an employer do to investigate and respond to a COVID-19 case?

A: Investigating and responding to a COVID-19 case in the workplace includes the following:

- Determining when the COVID-19 case was last in the workplace, and if possible the date of testing and onset of symptoms
- Determining which employees may have been exposed to COVID-19

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- Notifying employees of any potential exposures within one business day (and notifying any other employer who has potentially exposed employees in the workplace)
- Offer testing to potentially exposed employees at no cost and during working hours
- Investigate the exposure, whether workplace conditions could have contributed to the risk of exposure, and what corrections would reduce exposure

Testing

Q: What are the testing requirements in the ETS?

A: An employer's testing obligations are the following:

- Inform all employees on how they can obtain testing. This could be through the employer, local health department, a health plan, or at a community testing center. The only obligation to all employees is to provide information.
 - Offer testing to an employee at no cost and during working hours in the event of a potential COVID-19 work-related exposure.
 - Provide periodic (at least weekly or twice per week depending on the magnitude of the outbreak) COVID-19 testing to all employees in an "exposed workplace" during an outbreak.
 - Testing must be provided in a manner that ensures employee confidentiality.
28. **Q:** Is there a difference between "offer testing" and "provide testing" in the ETS?
A: No. The meaning is the same for both terms.
29. **Q:** Does the employer have to provide testing to employees at their work location?
A: No. The employer may provide testing to employees at a testing site separate from their work location.
30. **Q:** Can employers send their employees to a free testing site for testing (e.g., run by their county) and is this considered to be "at no cost to employees?"
A: Yes, as long as employees incur no cost for the testing. Ensuring that an employee does not incur costs would include paying employees' wages for their time to get tested, as well as travel time to and from the testing site. It would also include reimbursing employees for travel costs to the testing site (e.g., mileage or public transportation costs).
31. **Q:** What do employers do if employees refuse to take the tests required by various provisions of the emergency regulations?
A: An employer that offers a test at no cost to the employee does not violate the regulation if an employee declines or refuses to take it. The employer is not required to obtain a signed declination from employees who refuse to take a COVID-19 test offered by the employer.
32. **Q:** What does "during their working hours" or "during employees' working hours" mean, in relation to providing COVID-19 testing?
A: These terms, as used in the regulations, mean that the test must be provided

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during paid time. While the employee must be compensated for their time and travel expenses, the employer is not obligated to provide the test during the employee's normal working hours.

33. Q: What kinds of tests are acceptable to comply with the regulations' testing requirements?

A: Tests approved by the United States Food and Drug Administration (FDA) or that have an Emergency Use Authorization (EUA) from the FDA to diagnose current infection with the SARS-CoV-2 virus may be used. These include both PCR and antigen tests. The test must be administered in accordance with the FDA approval or FDA EUA, as applicable.

34. Q: In a non-outbreak setting, how does an employer determine which employees may have had a COVID-19 exposure?

A: Employers must: determine which if any employee was within 6 feet of a COVID-19 case for a cumulative total of 15 minutes within any 24-hour period during the COVID-19 case's "high risk exposure period." The high-risk exposure period is:

- For COVID-19 cases who develop COVID-19 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.
- For persons who test positive but never develop COVID-19 symptoms, from two days before until ten days after the specimen for their first positive test for COVID-19 was collected.

35. Q: In a non-outbreak setting, what are employers required to do when they learn that one or more of their employees had a COVID-19 exposure at the workplace?

A: Employers must:

- Notify all employees and employees' authorized representatives who may have had COVID-19 exposure within one business day in a manner that does not reveal the COVID-19 case's personal identifying information
- Offer testing at no cost to any employee potentially exposed to COVID-19 in the workplace, and provide applicable benefit information. The time an employee spends being tested is considered compensable hours worked.
- Exclude from the workplace employees who test positive for COVID-19 and employees with COVID-19 exposure, and follow the requirements for preserving their pay and benefits
- Follow the return to work criteria for returning excluded employees to work
- Investigate the exposure and address hazards
- Follow all recordkeeping and reporting requirements for employee COVID-19 cases.

Outbreaks and the "Exposed Workplace"

36. Q: In an outbreak (three or more COVID-19 cases in an "exposed workplace" within a 14-day period or identified as an outbreak by a local health department), what are

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an employer's requirements?

A: In addition to the requirements for non-outbreak settings, an employer must:

- Immediately provide testing to all employees in the exposed workplace and exclude positive cases and exposures from work; repeat the testing one week later; and
- Continue testing employees at least weekly until the workplace no longer qualifies as an outbreak.

37. Q: What are an employer's requirements in a major outbreak (20 or more COVID-19 cases in an "exposed workplace" within a 30-day period)?

A: In addition to the requirements for non-outbreak settings, an employer must:

- Provide testing to all employees in the exposed workplace at least twice weekly and exclude positive cases and exposures until there are no new cases detected for a 14-day period;
- Implement ventilation changes to mechanical ventilation systems including increasing filtration efficiency to at least MERV-13, or the highest efficiency compatible with the ventilation system.
- Evaluate whether HEPA air filtration units are needed in poorly ventilated areas;
- Determine the need for a respiratory protection program or changes to an existing respiratory protection program under section 5144 to address COVID-19 hazards; and
- Consider halting all or part of operations to control the virus.

38. Q: What is an "exposed workplace" and how should an employer determine which work areas are included?

A: An exposed workplace is a work location, working area, or common area used or accessed by a COVID-19 case during the high-risk period, including bathrooms, walkways, hallways, aisles, break or eating areas, and waiting areas. If, within 14 days, three COVID-19 cases share the same "exposed workplace," then the Multiple COVID-19 Infections and COVID-19 Outbreaks standard (section [3205.1](#)) applies and additional testing will be required. When determining which areas constitute a single "exposed workplace" for purposes of enforcing testing requirements, Cal/OSHA does not expect employers to treat areas where masked workers momentarily pass through the same space without interacting or congregating as an "exposed workplace," so they may focus on locations where transmission is more likely.

39. Q: Does the "exposed workplace" mean the entire workplace? Does this change after January 1, 2021 when AB 685 goes into effect?

A: No, the "exposed workplace" includes only the areas of the building where the COVID-19 cases were present during the "high-risk exposure period." This will not change after January 1, 2021.

40. Q: Why does the standard use "exposed workplace" instead of a percentage of the entire workforce or some other method?

A: Focusing on three or more cases as an "exposed workplace" is preventative, to initiate testing at the beginning of an outbreak in the area where workers are at risk

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of exposure, and to contain the outbreak to the affected area. Typically, once an employer is aware of three or more COVID-19 cases in an exposed workplace, there is a likelihood that there are more unknown cases. Testing in the “exposed workplace” is intended to balance the need to tailor testing to the areas where workers have a risk of exposure to known COVID-19 cases and the need to do that on a comprehensive basis to contain transmission and account for the possibility that transmission is already occurring.

41. **Q:** Is the testing requirement for outbreaks triggered by three or more cases in an entire building?
A: No, the testing requirement is triggered by three or more cases in a 14-day period present in the same “exposed workplace” during the “high-risk exposure period.” For other areas of the workplace, follow the requirements for employees who are exposed to COVID-19 cases.
42. **Q:** How does an employer determine what part of a workplace is an “exposed workplace” for purposes of determining if an outbreak has occurred and who must be tested?
A: An “exposed workplace” is defined at section 3205(b)(7) and includes “any work location, working area or common area used or accessed by a COVID-19 case during the ‘high-risk period.’” For purposes of determining whether an outbreak has occurred, there must be three COVID-19 cases, all of whom worked in, used, or accessed the same “work location, working area or common area used or accessed” in a 14-day period. If one of the three cases is in a different work location within an establishment, an outbreak has not occurred.
Areas a COVID-19 case passed through (i.e., travelled through en route to a work area and did not stop or stopped momentarily while wearing a face covering) are not considered in determining the area of an “exposed workplace.” For example, if all three COVID-19 cases have been in a common area, but one of the cases only passed through while wearing a face covering, an outbreak has not occurred for purposes of the ETS.
43. **Q:** Can an employer separate employees into cohorts to reduce the likelihood of COVID-19 cases occurring in the same work locations/areas?
A: Yes, that is an acceptable strategy to reduce risk and reduce testing obligations. The ETS requirements must still be implemented in the exposed workplace.
44. **Q:** For employers who have several non-overlapping work shifts at a facility, can each shift be considered as a separate “exposed workplace”, as defined by the ETS?
A: If the facility is well ventilated and the cleaning and disinfection requirements of the ETS are met between or before shift changes, each shift may be considered as a separate “exposed workplace.”
45. **Q:** How can an employer measure the 14- or 30-day period in which to look for positive cases to determine if there has been an outbreak or major outbreak?
A: The employer should look to the testing date of the cases. Any cases for which the tests occurred within a 14-day period would be reviewed to see if the other criteria for an outbreak have been met.
46. **Q:** Is the “three or more cases” outbreak requirement limited to employee cases, or do cases involving anyone that has been in the workplace count towards the

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requirement?

A: Any confirmed COVID-19 case who has been in the exposed workplace during the high-risk exposure period counts towards the three-case threshold.

47. **Q:** When must an employer exclude employees from work?

A: Employers must exclude from work employees who (1) are COVID-19 cases, or (2) have had COVID-19 exposure from the workplace.

48. **Q:** What are the criteria for a COVID-19 case to return to work?

A: A COVID-19 case may return to work when any of the following occur:

- For employees with symptoms all of these conditions must be 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
- For employees without symptoms, at least 10 days have passed since the COVID-19 case's first positive test
- If a licensed health care professional determines the person is not/is no longer a COVID-19 case, in accordance with California Department of Public Health (CDPH) or local health department recommendations.

49. **Q:** What are the criteria for an employee exposed to a COVID-19 case in the workplace to return to work?

A: Applying 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. Additionally, CDPH has provided guidance permitting health care, emergency response and social services workers to return to work after 7 days with a negative PCR test result collected after day 5 when there is a critical staffing shortage."

50. **Q:** Is a negative test required for an employee to return to work?

A: No, the ETS does not require an employee to have a negative test to return to work. The criteria for returning to work are listed above.

Exclusion Pay and Benefits

Q: Must an employer pay an employee while the employee is excluded from work?

A: 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.

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51. **Q:** Does an employer have to “maintain an employee’s earnings, seniority, and all other employee rights and benefits, including the employee’s right to their former job status, as if the employee had not been removed from their job” if the employee is unable to work because of his or her COVID-19 symptoms?
A: No, if an employee is unable to work because of his or her COVID-19 symptoms, then he or she would not be eligible for exclusion pay and benefits under section 3205(c)(10)(C). The employee, however, may be eligible for Workers’ Compensation or State Disability Insurance benefits.
52. **Q:** How long does an employee with COVID-19 exposure, or who tests positive for COVID-19 from the workplace, receive pay while excluded from the workplace?
A: An employee would typically receive pay for the period the employee is quarantined, which could be up to 14 days (see above for potential impact of [EO N-84-20](#)). 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, however, may be eligible for temporary disability or other benefits.
53. **Q:** Must an employer exclude an employee who claims a COVID-19 workplace exposure?
A: An employer should take any reports seriously and should investigate any evidence of an exposure. It is ultimately the employer’s responsibility to determine if an exposure occurred.
54. **Q:** Does an employer have to maintain an employee’s earnings and benefits under section 3205(c)(10)(C) if the employee is unable to work because of reasons other than protecting persons at the workplace from possible COVID-19 transmission?
A: No, the employer need not maintain the exposed employee’s earnings and benefits under section 3205(c)(10)(C) if the employee with COVID-19 exposure from the workplace is unable to work because of reasons other than protecting persons at the workplace from possible COVID-19 transmission (e.g., a business closure, caring for a family member, disability, or vacation). Such employees may be eligible for other benefits, including Disability Insurance, Paid Family Leave, or Unemployment Insurance benefits
55. **Q:** The ETS states that an employer is not required to provide exclusion pay if the employer can establish that an employee’s COVID-19 exposure was not work related. What does that mean?
A: The ETS does not require employers to pay workers who are excluded from work under section 3205(c)(10) if the employer can show that the employee’s COVID-19 exposure was not work related. In such circumstances, employers may have other legal or contractual payment obligations, but pay and benefits are not mandated by section 3205.
56. **Q:** How are employers proving that a COVID-19 exposure is not work related and rebutting the presumption under SB 1159 related?
A: [SB 1159](#) provides a rebuttable presumption for certain workers and workplaces that an employee’s COVID-19-related illness is an occupational injury entitling the employee to workers’ compensation benefits. Rebutting that presumption and proving that COVID-19 exposure is not work related to avoid the ETS’ exclusion pay

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requirement involve an employer conducting comparable investigations and producing comparable evidence to show it is more likely than not that an employee's COVID-19 exposure did not occur in the workplace.

57. **Q:** How will the exclusion pay provision be enforced?

A: As with any violation, Cal/OSHA has the authority to issue a citation and require abatement. Whether employees or another agency can bring a claim in another forum is outside the scope of Cal/OSHA's authority.

58. **Q:** Can an employee receive both temporary disability benefits under workers' compensation and receive their regular wages (or a portion of them) because they are excluded for work under section 3205(c)(10)(C)?

A: No. Cal/OSHA does not consider an employee receiving workers' compensation temporary disability benefits for wages lost during the period in which they are excluded from the workplace to be "able and available to work" within the meaning of section 3205(c)(10)(C). Therefore, an employee cannot receive both types of benefits.

59. **Q:** If an employee is receiving temporary disability benefits through workers' compensation because they test positive for COVID-19 but do not have symptoms that would otherwise prevent them from working, should they receive workers' compensation benefits or exclusion pay under the ETS?

A: As noted above, Cal/OSHA does not consider an employee receiving temporary disability benefits through workers' compensation to be considered "able and available to work" within the meaning of section 3205(c)(10)(C). However, if an asymptomatic employee is able and available to work but is not eligible to receive payment through workers' compensation for lost wages during the period in which they are excluded from work, they should be paid for that time according to section 3205(c)(10).

Waivers of Exclusion Requirements Based on Community Health and Safety

61. **Q:** What should an employer consider before seeking a waiver from Cal/OSHA from the return-to-work requirements of section 3205(c)(11)?

A: The ETS provides that employers can request a waiver of the requirement to quarantine/isolate exposed or COVID-19 positive employees from the workplace if doing so would create an undue risk to public health and safety. Cal/OSHA will not grant a waiver in violation of any order issued by a local or state health official pertaining to isolation or quarantine. An operation must provide goods or services, the interruption of which would cause an undue risk to a community's health and safety in order to qualify. This exception is narrower than the definition of "critical infrastructure," though such operations may qualify if there is an adverse impact on a community's health and safety. A facility must be facing a potential staffing shortage based on actual COVID-19 cases or exposures in order to qualify for a waiver. Requests should not be made in anticipation of a future outbreak.

62. **Q:** What information should an employer provide to Cal/OSHA in seeking a waiver of the requirement to exclude COVID-19 exposed and COVID-19 positive employees from the workplace?

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A: In seeking a waiver, employers should submit the request to rs@dir.ca.gov. In the event of an emergency, an employer may request a provisional waiver by calling the local district office while it prepares its written request. While there is no set criteria for granting a waiver in the ETS, the following information would constitute a complete waiver request which Cal/OSHA could quickly review and provide a response:

1. Employer name and business or service;
2. Employer point-of-contact name, address, email and phone number;
3. Statement that there are no local or state health officer orders for isolation or quarantine of the excluded employees;
4. Statement describing the way(s) in which excluding the exposed or COVID-19 positive employees from the workplace impacts the employer's operation in a way that creates an undue risk to the community's health and safety;
 - a. Number of employees required to be quarantined under the ETS, and whether each was exposed to COVID-19 or tested positive for COVID-19;
5. The employer's control measures to prevent transmission of COVID-19 in the workplace if the employee(s) return or continue to work in the workplace, including the prevention of further exposures. These include measures such as isolating the returned employee(s) at the workplace, use of respiratory protection by other employees in the exposed workplace, or other equally effective measures.

Providing clear, specific responses to these information needs will help Cal/OSHA respond as efficiently as possible to waiver requests.

Recordkeeping and Reporting

Q: What reporting and recordkeeping requirements are in the ETS?

A: An employer's reporting and recordkeeping requirements include the following:

- Following state and local health department reporting requirements.
- Contacting the local health department when there are three or more COVID-19 cases in the workplace within a 14-day period.
- Provide the following information:
 - The total number of COVID-19 cases.
 - For each COVID-19 case, the name, contact information, occupation, workplace location, business address, the hospitalization and/or fatality status, and North American Industry Classification System code of the workplace of the COVID-19 case
 - Any other information requested by the local health department.

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- The employer shall continue to give notice to the local health department of any subsequent COVID-19 cases at the workplace.
- Reporting serious occupational illnesses to Cal/OSHA, consistent with existing regulations.
- Maintaining records required by [8 CCR section 3203\(b\)](#), which include inspection records, documentation of hazard corrections, and training records (requirements vary by employer size).
- Making the written COVID-19 Prevention Program available upon request to employees and employees' authorized representatives.
- Recording and tracking all COVID-19 cases with the employee's name, contact information, occupation, location where the employee worked, the date of the last day at the workplace, and the date of a positive COVID-19 test. Medical information shall be kept confidential. The information shall be made available to employees, authorized employee representatives, or as otherwise required by law, with personal identifying information removed. This does not prevent employees or their representatives from obtaining an employer's Log of Work-Related Injuries and Illnesses or other information as allowed by law.

Advisory Committees and Possible Changes to the ETS

64. **Q:** When is the advisory committee scheduled to meet?

A: Cal/OSHA intends to hold a stakeholder meeting in December to explain the rule, answer questions and give interested parties an opportunity to provide feedback on the rule. An advisory committee meeting will be scheduled soon after that. The Occupational Safety and Health Standards Board (OSHSB) has formally requested that Cal/OSHA report the results of this advisory process to the Board within four months.

Employer-Provided Housing

Q: Is the Housing for the Harvest program covered by section 3205.3, which addresses COVID-19 Prevention in Employer-Provided Housing?

A: Housing for the Harvest is a program that offers temporary hotel housing to agricultural workers who need to isolate or quarantine due to COVID-19. The purpose of the ETS is to prevent transmission to workers who are working while living together in employer-provided housing. Once an employee is isolated or quarantined, the prevention elements of the regulation designed to protect employees living together are no longer applicable and the only part of section 3205.3 that would apply is subsection 3205.3(h), which addresses isolation of COVID-19 cases and quarantining persons with COVID-19 exposure.

65. **Q:** Many growers have rented hotel rooms for COVID-19 positive employees to isolate them and reduce the spread of COVID-19 in housing, many of which do not include a kitchen. Does this violate section 3205.3?

A: Section 3205.3 does not require providing separate cooking and eating facilities

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to COVID-19 positive employees if they are not sharing cooking and eating facilities with others who are not positive.

66. **Q:** Does the ETS' housing requirements apply to housing of H-2A employees subject to a federal agreement, even if that agreement allows for a greater number of employees in a given space?

A: Yes, the ETS applies to housing subject to an H-2A contract. Cal/OSHA may set stricter requirements than those set by contract or federal requirements.

67. **Q:** How does an employee enforce physical distancing and face covering requirements in employer provided housing?

A: Section 3205.3 does not require employers to enforce physical distancing and face covering requirements. The employer obligations include:

- Ensuring that the premises are of sufficient size and layout to permit at least six feet of physical distancing.
- Providing face coverings to all residents and provide information to residents on when they should be used in accordance with state or local health officer orders or guidance.