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## California and New York Issue Updated Guidance for COVID-19 Workplace Standards

### *California COVID-19 Prevention Emergency Temporary Standards*

In late 2020, California's Occupational Safety and Health Standards Board ("Cal/OSHA") adopted COVID-19 Prevention Emergency Temporary Standards ("ETS"). The ETS created requirements for employers in relation to COVID-19 (i.e., face coverings and social distancing) as summarized in our earlier [client alert](#).

Following a June 17, 2021 vote by Cal/OSHA to adopt a revised ETS, California Governor Gavin Newsom signed an executive order to allow the revisions to take effect immediately on June 17. Below is a summary of some of the more noteworthy changes in the revised ETS:

- Employees who are fully vaccinated and do not have COVID-19 symptoms do not need to quarantine or be tested for COVID-19 after being in close contact with someone with COVID-19.
- Generally, an employer may allow employees who are fully vaccinated the option not to wear a face covering indoors. However, an employer must maintain confidential documentation on the employee's vaccination status, as discussed more fully below. Employees also may continue to wear face coverings at their discretion without fear of retaliation.
- Employers are not required to maintain physical distancing or barrier requirements; however, employers must continuously evaluate whether measures exist that could prevent diseases from being transmitted, such as the implementation of physical distancing and barriers. The non-requirement of barriers and physical distancing applies whether employees are vaccinated or not, but the revised ETS states that in the event of an outbreak an employer must evaluate whether barriers and physical distancing are needed and in the event of a major outbreak, an employer must maintain barriers and physical distancing.

- Employers are required to provide unvaccinated employees with approved respirators for their voluntary use when the employee is either working indoors or in a vehicle with others, upon request.
- An employer is also required to “evaluate how to maximize ventilation with outdoor air; the highest level of filtration efficiency compatible with the existing ventilation system; and whether the use of portable or mounted High Efficiency Particulate Air (HEPA) filtration units, or other air cleaning systems, would reduce the risk of COVID-19 transmission.”

Per the revised ETS, if an employer allows vaccinated employees the option not to wear a face covering indoors, employees’ vaccination statuses must be documented and maintained confidentially in the company’s records. To document an employee’s vaccination status, an employer may require employees to provide proof of their vaccination (i.e., the employee’s vaccine card) or sign a self-attestation affirming that they received the COVID-19 vaccine.

Regardless of vaccination status, face coverings are still required in certain locations and workplaces, including in healthcare settings.

Under the revised ETS, employers also must offer free testing to employees who are unvaccinated and symptomatic. This is required whether the employee has been exposed to someone with COVID-19 or not. The employer also must offer testing during paid time.

There are two scenarios in which an employer is obligated to provide its employees respirators. The first, as mentioned above, is where an unvaccinated employee requests a respirator and the employee is either working indoors or while in a vehicle with others. The second is in the event of a major outbreak. The employer must offer respirators to all employees in the exposed group regardless of their vaccination status. An employer also must be able to fulfill reasonably foreseeable requests for respirators. Cal/OSHA advises that disposable respirators should be replaced “if they get damaged, deformed, dirty, or difficult to breathe through,” that “a best practice is to replace filtering facepiece respirators at the beginning of each shift” and to “follow the manufacturer’s instructions.”

Many of the prior requirements from the original ETS remain in effect, including: (1) maintaining a written COVID-19 prevention program and training employees on the program; (2) providing notification to public health departments of an outbreak; (3) providing employees notice of exposure or close contacts; (4) providing notification to employees of their rights under the ETS; (5) offering employees COVID-19 testing; (6) responding to an outbreak; and (7) quarantine and exclusion pay requirements.

***New York Forward Updated Guidance and Amendments to the HERO Act***

On June 8, 2021, New York State revised its NY Forward COVID-19 Guidance, which includes updated guidance on office/work settings. The update to this guidance is similar to California's updated guidance in that it revises or creates new standards on social distancing, vaccination statuses, symptom screenings, and face coverings in the work environment.

With respect to social distancing, the New York guidance provides that fully vaccinated individuals do not need to socially distance while at work. The New York guidance further provides that employers may require employees to verify their vaccination status or, as in California, an employee may self-attest to having received a COVID-19 vaccine.

The requirements for screening questions have also been updated, as employers now only must ask three screening questions: (1) whether the employee is experiencing or has experienced in the last 48 hours any COVID-19 symptoms; (2) whether the employee has been in close contact within the last 10 days with a person diagnosed with or suspected to have COVID-19; and (3) whether the employee has tested positive for COVID-19 within the last 10 days. Also, New York generally allows employees who are fully vaccinated not to wear masks.

Also, on July 8, 2021, the New York Department of Labor issued its Airborne Infectious Disease Exposure Prevention Standard, a template Airborne Infectious Disease Exposure Prevention Plan that employers may adopt, and templates for the plan that are industry-specific. New York employers must adopt an Airborne Infectious Disease Exposure Prevention Plan within 30 days of July 8, 2021 (by August 5, 2021), and employers must distribute those plans to their employees within 30 days thereafter (by September 4, 2021). The templates for the required plans may be found on the [NYDOL website](#).

If you have questions about the updated guidance in California and New York, or need assistance drafting an employee self-attestation regarding vaccination status, please contact a member of the [OSHA Compliance & Workplace Safety Group](#) or a member of our National [Employment Law Group](#). You may also visit us at [www.KutakRock.com](http://www.KutakRock.com).

