

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS

OCCUPATIONAL SAFETY & HEALTH STANDARDS BOARD
PUBLIC MEETING, PUBLIC HEARING AND BUSINESS MEETING

In the Matter of:)
September 15, 2022 OSH)
Standards Board Meeting)
_____)

IN-PERSON & TELECONFERENCE

Attend the meeting in person:

Cal/EPA Building
Sierra Hearing Room
1001 I Street
Sacramento, CA 95814

Attend the meeting via Video-conference

THURSDAY, September 15, 2022

10:00 A.M.

Reported by:
M. Nelson

CALIFORNIA REPORTING, LLC
229 Napa Street, Rodeo, California 94572 (510) 224-4476

APPEARANCES

BOARD MEMBERS PRESENT AT CAL/EPA BUILDING:

Dave Thomas, Chairman

BOARD MEMBERS PRESENT VIA TELECONFERENCE:

Barbara Burgel, Occupational Health Representative
Kathleen Crawford, Management Representative
Chris Laszcz-Davis, Management Representative
Laura Stock, Occupational Safety Representative

BOARD STAFF PRESENT AT CAL/EPA BUILDING:

Christina Shupe, Executive Officer
Steve Smith, Principal Safety Engineer
Autumn Gonzalez, Chief Counsel
Lara Paskins, Staff Services Manager
David Kernazitskas, Senior Safety Engineer
Sarah Money, Executive Assistant
Amalia Neidhardt, Senior Safety Engineer

BOARD STAFF ATTENDING VIA TELECONFERENCE AND/OR WEBEX:

Jennifer White, Regulatory Analyst

ALSO PRESENT AT CAL/EPA BUILDING:

Jeff Killip, Cal/OSHA Chief
Eric Berg, Deputy Chief of Health, Cal/OSHA

TKO STAFF:

Edwin Ortega
Maya Morsi
John Roensch

SPANISH INTERPRETERS:

Patricia Hyatt
Anabella Tidona

PUBLIC MEETING COMMENTERS: (*Online testimony)

*Stephen Knight, Worksafe
*Jeff Hall, UFCW Local 770, CVS

APPEARANCES (Cont.)

PUBLIC MEETING COMMENTERS: (Cont.)

Tresten Keys, AGC of California
Robert Moutrie, California Chamber of Commerce
*Helen Cleary, Phylmar Regulatory Roundtable
*Daniel Rodriguez, Golden Gate Bridge, Highway and
Transportation District, GGBHTD
*Andrew Sommer, Conn Maciel Carey LLP on behalf of the
California Employers COVID-19 Prevention Coalition
Mitch Steiger, California Labor Federation
Anne Katten, California Rural Legal Assistance Foundation
Michael Miiller, California Association of Winegrape
Growers
*Jennifer M., Self
*Andrew Wylam, Pandemic Patients
*AnaStacia Nicol Wright, Worksafe
*Tina Self, Bayer Pharmaceuticals
Bryan Little, California Farm Bureau
*Amber Baur, UFCW Western States Council
*Pamela Murcell, California Industrial Hygiene Council
*Rebecca Ryan, Institutions of Higher Education,
Ohlone College, Foothill College
*Len Welsh, Western Steel Council, California Hotel and
Lodging Association; and Fresh Harvest
*Denise Kniter, L.A. County Business Federation (BizFed)
*Zachary O'Hanen, County of Humboldt Human Resources
*Mark Ramos, UFCW Local 1428
*Nathan Williams, Self
*Chris Myers, California School Employees Association
*Judith Neidorff, Self
*Cynthia Rice, California Rural Legal Assistance
*Cassie Hilaski, Nibbi Brothers General Contractors
* Kristie Sepulveda-Burchit, Voice for Choice Advocacy, Inc.
*Michael Pimentel, California Transit Association
*Beth Malinowski, SEIU California
*Dr. Robert Blink, Self
*Alex Torres, Bay Area Council
*Sabrina Lockhart, California Attractions and Parks
Association
*Eddie Sanchez, Southern California Coalition for
Occupational Safety and Health
*Jane Thomason, California Nurses Association
*Matt Sutton, California Restaurant Association
*Tino Garcia-Barragan, Self

APPEARANCES (Cont.)

PUBLIC MEETING COMMENTERS: (Cont.)

*Diane Tucker, AFA-CWA

*Kelly Kick, United Food and Commercial Workers, UFCW

*Samantha Webster, UFCW Local 5

Ken Smith, University of California

Kevin Bland, California Framing Contractors Association,
Residential Contractors Association, Western Steel
Council

Bruce Wick, Housing Contractors of California

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1 P R O C E E D I N G S

2 SEPTEMBER 15, 2022

10:01 A.M.

3 CHAIR THOMAS: Thank you. Good morning, this
4 meeting of the Occupational Safety and Health Standards
5 Board is now called to order from the lovely confines of
6 the Sierra Hearing Room in Sacramento, California. I'm
7 Dave Thomas, Chairman.

8 The Board Members attending via teleconference
9 are Ms. Barbara Burgel, Occupational Health Representative;
10 Ms. Kathleen Crawford, Management Representative; Ms. Chris
11 Laszcz-Davis, Management Representative; Ms. Laura Stock,
12 Occupational Safety Representative.

13 Present from our staff for today's meeting are
14 Ms. Christina Shupe, Executive Officer; Mr. Steve Smith,
15 Principal Safety Engineer; Ms. Autumn Gonzalez, Chief
16 Counsel; Ms. Lara Paskins, Staff Safety Manager; Mr. David
17 Kernazitskas, Senior Safety Engineer; Ms. Sarah Money,
18 Executive Assistant; and Ms. Amalia Neidhardt, Senior
19 Safety Engineer, who is providing translation services for
20 our commenters who are native Spanish speakers.

21 Also present are Mr. Jeff Killip, Cal/OSHA Chief
22 and Mr. Eric Berg, Deputy Chief of Health for Cal/OSHA.

23 Supporting the meeting remotely is Ms. Jennifer
24 White, Regulatory Analyst.

25 Copies of the agenda and other materials related

8

1 to today's proceedings are available on the table near the
2 entrance to the room and are posted on the OSHA OSHSB
3 website.

4 This meeting is also being live broadcast via
5 video and audio stream in both English and Spanish. Links
6 to these non-interactive live broadcasts can be accessed
7 via the "Standards Board Updates" section at the top of the
8 main page of the OSHSB website.

9 If you are participating in today's meeting via
10 teleconference or videoconference we are asking everyone to
11 place their phones or computers on mute and wait to unmute
12 until they are called to speak. Those who are unable to do
13 so will be removed from the meeting to avoid disruption.

14 Reflected on the agenda today's meeting consists
15 of three parts. First, we will hold a public meeting to
16 receive public comments or proposals on occupational safety
17 and health matters. Anyone who would like to address any
18 occupational safety and health issue, including any of the
19 items on our business meeting agenda, may do so when I
20 invite public comment.

21 If you are participating via teleconference or
22 videoconference, the instructions for joining the public
23 comment queue can be found on the agenda. You may join by
24 clicking the public comment queue link in the "Standards
25 Board Updates" section at the top of the main page of the

1 OSHSB website or by calling 510-868-2730 to access the
2 automated public comment queue voicemail.

3 When public comment begins we are going to
4 alternate between three in-person and three remote callers
5 or commenters. When I ask for public testimony, in-person
6 commenters should provide a completed request to speak slip
7 to the attendants near the podium and announce themselves
8 to the Board prior to delivering a comment.

9 For commenters attending via teleconference or
10 video conference, please listen for your name and then an
11 invitation to speak. When it is your turn to address the
12 Board, unmute yourself if you're using WebEx, or dial *6 on
13 your phone to unmute yourself if you're using the
14 teleconference line.

15 We ask all commenters to speak slowly and clearly
16 when addressing the Board. If you are commenting via
17 teleconference or videoconference, remember to mute your
18 phone or computer after commenting.

19 Today's public comment will be limited to two
20 minutes -- we're going to make it three minutes per
21 speaker. And the public comment portion of the meeting
22 will extend up to two hours, so that the Board may hear
23 from as many members of the public as is feasible.
24 Individual speakers and total public comment time limits
25 may be extended by the Board Chair if practicable.

1 After the public meeting we will conduct the
2 second part of the meeting, which is the public hearing.
3 At the public hearing we will consider proposed changes to
4 the specific occupational safety and health standards that
5 were noticed for today's meeting.

6 Finally, after the public meeting is completed we
7 will hold the business meeting to act on those items listed
8 on the business meeting agenda.

9 We will now proceed to the public meeting.
10 Anyone who wishes to address the Board regarding matters
11 pertaining to occupational safety and health is invited to
12 comment, except however the Board does not entertain
13 comments regarding variance matters. The Board's variance
14 hearings are administrative hearings where procedural due
15 process rights are carefully preserved, therefore we will
16 not grant requests to address the Board on variance
17 matters.

18 For our commenters who are native Spanish
19 speakers we are working with Ms. Amalia Neidhardt to
20 provide a translation of their statements into English for
21 the Board. At this time, Ms. Neidhardt will provide
22 instruction to the Spanish-speaking commenters so they are
23 aware of the public comment process for today's meeting.

24 Ms. Neidhardt.

25 MS. NEIDHARDT: [READS THE FOLLOWING IN SPANISH]

1 "Good morning, and thank you for participating in
2 today's Occupational Safety and Health Standards Board
3 public meeting. The Board Member present in Sacramento is
4 Mr. Dave Thomas, Labor Representative and Chairman. The
5 Board Members attending via teleconference are Ms. Barbara
6 Burgel, Occupational Health Representative; Ms. Kathleen
7 Crawford, Management Representative; Ms. Chris Laszcz-
8 Davis, Management Representative; Ms. Laura Stock,
9 Occupational Safety Representative.

10 "This meeting is also being live broadcast via
11 video and audio stream in both English and Spanish. Links
12 to these non-interactive live broadcasts can be accessed
13 via the "Standards Board Updates" section at the top of the
14 main page of the OSHSB website.

15 "If you are participating in today's meeting via
16 teleconference or videoconference, please note that we have
17 limited capabilities for managing participation during
18 public comment periods. We are asking everyone who is not
19 speaking to place their phones or computers on mute and
20 wait to unmute until they are called to speak. Those who
21 are unable to do so will be removed from the meeting to
22 avoid disruption.

23 "As reflected on the agenda, today's meeting
24 consists of three parts. First, we will hold a public
25 meeting to receive public comments or proposals on

1 occupational safety and health matters.

2 "If you are participating via teleconference or
3 videoconference, the instructions for joining the public
4 comment queue can be found on the agenda. You may join by
5 clicking the public comment queue link in the "Standards
6 Board Updates" section at the top of the main page of the
7 OSHSB website, or by calling 510-868-2730 to access the
8 automated public comment queue voicemail.

9 "When public comment begins, we are going to be
10 alternating between three in-person and three remote
11 commenters. When I ask for public testimony, in-person
12 commenters should provide a completed request to speak slip
13 to the attendee near the podium and announce themselves to
14 the Board prior to delivering a comment.

15 "For our commenters attending via teleconference
16 or videoconference, listen for your name and an invitation
17 to speak. When it is your turn to address the Board,
18 please be sure to unmute yourself if you're using WebEx or
19 dial *6 on your phone to unmute yourself if you're using
20 the teleconference line.

21 "Please be sure to speak slowly and clearly when
22 addressing the Board, and if you are commenting via
23 teleconference or videoconference, remember to mute your
24 phone or computer after commenting. Please allow natural
25 breaks after every two sentences so that an English

1 translation of your statement may be provided to the board.

2 "Today's public comment will be limited to four
3 minutes for speakers utilizing translation, and the public
4 comment portion of the meeting will extend for up to two
5 hours, so that the board may hear from as many members of
6 the public as is feasible. The individual speaker and
7 total public comment time limits may be extended by the
8 Board Chair, if practicable.

9 "After the public meeting, we will conduct the
10 second part of our meeting, which is the public hearing.
11 At the public hearing, we will consider the proposed
12 changes to the specific occupational safety and health
13 standards that were noticed for review at today's meeting.

14 "Finally, after the public hearing is concluded,
15 we will hold a business meeting to act on those items
16 listed on the business meeting agenda.

17 "Thank you."

18 CHAIR THOMAS: Thank you, Ms. Neidhardt.

19 And before we start the public comment period,
20 just let me remind the folks out there that the public
21 comment period is not for COVID-19 comments. Oh, can you
22 hear me all right? The public comment period is not for
23 COVID-19 comments. That will be a part of the public
24 hearing after, so any comments that are not COVID-19
25 related would be now.

1 So if we have any in-person participants, will
2 you please come up to the microphone and state your name
3 and affiliation? Everybody's here for COVID. That just
4 floors me. I can't believe it.

5 UNKNOWN SPEAKER: I can say it.

6 CHAIR THOMAS: Do we have any speakers on the
7 line John, or Ms. Morsi?

8 MS. MORSI: Yes, we do. We have Sarah Layton
9 with E&B Natural Resources.

10 CHAIR THOMAS: Is she going to be speaking on
11 something other than COVID-19?

12 MS. MORSI: She left that comment topic blank,
13 but it's under public comment.

14 CHAIR THOMAS: Give it a shot and see what
15 happens. Oh, what was her name again?

16 MS. MORSI: Sarah Layton.

17 CHAIR THOMAS: Are you with us? (No audible
18 response.)

19 Do you have the caller with us, it's always --

20 MS. MORSI: Sarah Layton with E&B Natural
21 Resources.

22 CHAIR THOMAS: Sorry, what?

23 MS. MORSI: Sarah Layton with E&B Natural
24 Resources.

25 CHAIR THOMAS: I don't -- do we have anybody -- I

15

1 don't --

2 MS. SHUPE: Sarah, if you're participating via
3 WebEx now would be the time to unmute yourself and address
4 the Board. (No audible response.)

5 Is there anyone else participating via WebEx who
6 would like to address the Board on a matter other than the
7 COVID-19 adoption?

8 UNIDENTIFIED SPEAKER: Can you hear this?

9 CHAIR THOMAS: We can hear you. I can hear
10 somebody.

11 UNIDENTIFIED SPEAKER: Okay. I heard Kara
12 (phonetic) talking, but she cannot -- I don't know, it
13 wasn't going through. But if you can hear me I'm talking
14 through WebEx.

15 CHAIR THOMAS: Yes. Do you have comments other
16 than COVID-19?

17 UNIDENTIFIED SPEAKER: No, I just wanted to make
18 sure that the WebEx was working. So, Kara, maybe try
19 again.

20 CHAIR THOMAS: Okay, have her call back during
21 the public hearing, which should be in about 10 or 15
22 minutes.

23 MS. SHUPE: Probably sooner.

24 CHAIR THOMAS: Yeah, maybe sooner. Okay, any
25 other callers?

1 MR. KNIGHT: Hi, good morning. This is Stephen
2 Knight with Worksafe with a non-COVID comment whenever
3 that's appropriate.

4 CHAIR THOMAS: Go ahead right now, non-COVID.

5 MR. KNIGHT: Non-COVID.

6 CHAIR THOMAS: Go ahead.

7 MR. KNIGHT: I just wanted to bring to the Board
8 Members attention a report issued on lessons for federal
9 and state workplace heat rules that the National Resources
10 Defense Council issued just yesterday. And this important
11 report -- which I'd be happy to email to the Standards
12 Board, just got it and haven't done that yet -- highlights
13 both California's leadership on heat regulation, but also
14 shortcomings in enforcement and just protecting workers
15 from heat.

16 The report studied over 500 incidents over 15
17 years and more than 16,000 heat citations. And basically
18 just paints a really important picture of the importance of
19 heat regulation, the impact on some of our most vulnerable
20 workers in agriculture. And the need for clear and strong
21 enforcement from Cal/OSHA, which was found to have
22 routinely given employers steep discounts on heat-related
23 citations, sometimes down to \$0.

24 Many of you may have seen the -- it's a
25 population scale Workers' Comp study that found all the

1 rise in workplace injuries that actually weren't heat, but
2 they studied where the temperature went up. And then there
3 were more falls and there were more other kinds of
4 injuries, because -- that are caused by heat, but not even
5 classified as heat incidents.

6 So bringing those two studies together, I really
7 look forward to Cal/OSHA finalizing its indoor heat
8 regulations. And thank you for the time this morning.

9 CHAIR THOMAS: Thank you.

10 MS. SHUPE: Stephen, we appreciate your offer.
11 And if you'd like to go ahead and email that to
12 oshsb@dir.ca.gov we'll make sure it's distributed to anyone
13 who doesn't already have it.

14 CHAIR THOMAS: Who do we have next, Ms. Morsi?

15 MS. MORSI: Up next is Jeff Hall with Local 770,
16 CVS.

17 CHAIR THOMAS: Jeff, are you with us?

18 MR. HALL: I am. Can you hear me?

19 CHAIR THOMAS: Yes. Is this a non-COVID-19
20 related comment?

21 MR. HALL: This is regarding exclusion pay.

22 CHAIR THOMAS: That would be for COVID-19. So we
23 will take that up just a few minutes, so please call back
24 then.

25 MR. HALL: Will do, thank you. Sorry for your

1 time, sorry to bother.

2 CHAIR THOMAS: Oh, no problem. No problem.
3 Who do we have next Ms. Morsi?

4 MS. MORSI: Up next is Terrence. (phonetic)
5 There is no name or affiliation.

6 CHAIR THOMAS: Terrence, are you with us?
7 (Silence on the line.) Terrence?

8 TINO: Hello?

9 CHAIR THOMAS: Terrence, are you with us?

10 TINO: Can you hear me?

11 CHAIR THOMAS: Yes. And do you have a comment
12 that is non COVID-19 related?

13 TINO: Actually, my name is not Terrence, it's
14 Tino (phonetic). And the reason why I'm calling in -- this
15 is non-COVID -- I'm on the WebEx meeting and I can't find
16 the option to raise my hand to speak there, which is why I
17 called in. Because I've clicked on every single button and
18 I can't find it. Do you have any instructions on how to
19 raise your hand in order to talk to do it from WebEx?

20 CHAIR THOMAS: Just raise your hand, we can see
21 it from here.

22 TINO: No, that's what I'm saying. I can't find
23 the option to raise your hand. (Overlapping colloquy.)

24 CHAIR THOMAS: That's terrible.

25 MS. SHUPE: Actually, Tino, we have instructions

1 on how to join the queue, the public speaking queue on our
2 agenda, which you can find on our website.

3 TINO: That's how I got the phone number to call
4 in. And I'm telling you right now I clicked on "More
5 Options," there's no option for me to raise my hand on
6 WebEx. I've clicked on all the -- I mean, I'm pretty
7 savvy. I can't find it. I'm just letting you know.

8 CHAIR THOMAS: Do you want to make a comment on
9 something other than COVID-19?

10 TINO: No, I was just giving you a heads-up, so
11 if that becomes a problem later on, maybe it's user error.
12 Anyway, thank you.

13 MS. SHUPE: So for anyone who is struggling to
14 join our comment queue and would like information on how to
15 do that it's on our agenda. And I am pulling it up right
16 now. You can call 510-868-2730 and add yourself to the
17 comment queue. We disabled the raised-hand feature on
18 WebEx to facilitate a smooth meeting.

19 CHAIR THOMAS: You know, I'm going to do
20 something a little different, because this is going to get
21 too complicated. We're going to take comments for both
22 COVID-19 and any other related subject on OSHA. And we're
23 just going to start with the people here and you can
24 comment on COVID-19. It'll be the public hearing, quasi-
25 public comment if you have something else, because I think

20

1 it'll be easier.

2 So at this time we'll have both meetings going at
3 the same time. We'll just put people in different
4 compartments so at this time I'm going to ask if there's
5 anybody in the room wants to speak in a public hearing
6 forum for COVID-19. If you would, let's have the first
7 three people come up to the microphone and make comments.
8 Yes?

9 UNKNOWN SPEAKER: Are -- hold it (indiscernible).

10 CHAIR THOMAS: Okay, is there anybody in the room
11 that wants to comment on COVID-19? Come right on up. Come
12 up, get in line, state your name and affiliation.

13 MR. KEYS: My name is Tresten Keys with AGC of
14 California. Good morning, Mr. Chairman, and everybody else
15 here. Thank you guys for having me. As we transition from
16 an emergency temporary standard to a non-emergency standard
17 it's important to note that we continue to struggle with
18 consistent and updated language through each draft proposal
19 of the ETS, and now the emergency standard.

20 Specifically, as the Chamber of California and
21 AGC of California noted in our written comments, section
22 3205(e), in those provisions, if passed here today would no
23 longer be accurate based on likely to pass legislation, AB
24 2693, which extends and changes the noticed revisions of
25 Labor Code 6409.6(a)(1) and (4).

1 Further concerns we have would be section
2 3205(b)(1), new "close contact" definition. Since the
3 beginning the definition of "close contact" has been one of
4 the most consistent definitions, now widely used among the
5 public. Within construction unique, ever-changing, multi-
6 employer environment the current definition presents
7 ambiguous criteria. CDPH within Q&A states "non-healthcare
8 entities responding to potential exposure should identify
9 close contact, who may be considered high-risk contacts
10 based on their proximity to the case in the setting." We
11 would urge the Division to return to utilize the six-foot
12 proximity within the definition once again.

13 Lastly, section 3205.1(e) immediate review of all
14 policies upon outbreak does not tie outbreaks to instances
15 where COVID-19 could actually spread in the workplace.
16 External factors such as gatherings or holidays would
17 potentially require the employer to reevaluate policies for
18 their workplace, even when there is no evidence of any
19 issues.

20 For these reasons, and due to the fact that we
21 are transitioning to an endemic we'd suggest language
22 change to periodically reviewing such policies consistent
23 with IIPP-based enforcement.

24 We appreciate your time today. And thank you for
25 allowing AGC of California to speak.

1 CHAIR THOMAS: Thank you. Next.

2 MR. MOUTRIE: Good morning, Chair Thomas. Robert
3 Moutrie, California Chamber of Commerce, let me
4 (indiscernible). So first, it's good to see you in person.

5 On behalf of the California business community, I
6 want to be clear on kind of our comments. First I want to
7 comment on whether we think the proposed extension to a
8 two-year non-emergency regulation is necessary, and then I
9 want to comment on a few specific provisions.

10 First, we do not see the extension as necessary,
11 given updated science and realities on the ground of
12 course. First of these, of course, is vaccines and drugs
13 like Remdesivir and Paxlovid that have really changed the
14 realities of COVID and the fear of it. So given that
15 change, I think that we can put that aside. And assuming
16 that the Board is interested in passing I want to fight a
17 couple of draft issues that are significant here.

18 First, I want to say I really appreciate the move
19 towards using IIPP and flexibility, not just as a measure
20 for employers still to keep up, but really for the
21 regulation itself to keep up as science changes in the next
22 two years. We've seen the massive changes in our standing
23 the last two years. Changes -- the easy example, of
24 course, is sterilization of surfaces, which we initially
25 believe was priority but no longer is. And so in order for

1 the regulation to keep up as science continues to evolve we
2 really see that IIPP usage as critical.

3 We also appreciate the limited duration and think
4 that an appropriate time period to check back in might be
5 one year, but appreciate the difficulties in staff in
6 moving that quickly, so we see the two years as
7 understandable.

8 I do want to reiterate the technical flag made by
9 my colleague from AGC regarding changes to, critical
10 changes to references under AB 2693, which changes the
11 statutory code references for noticed revisions. I believe
12 the Division is aware of these but we think that's
13 something that needs to be updated, hopefully it would be a
14 non-substantive change so you could do this without a 15-
15 day comment. I know that having the regulation go into
16 effect on January 1st has been expressed as an important
17 piece to the Board. So we think that piece could be done
18 without affecting that deadline, whereas more substantive
19 changes might create issues there.

20 Let me see if I've touched everything. I will
21 just briefly reiterate the changes to "close contact"
22 definition continue to generate questions to us from
23 members. I get calls regularly, "How do we deal with this
24 in a large space? How do we deal with this in our office?
25 How do we give notice to enough people? Who needs to be

1 here?" I know this has been going for some time, and I
2 know it was somewhat CDPH pulling the Division into that
3 position. But it is an area of ongoing questions we get
4 continually, so I wanted to flag it for all of you.

5 And that's all I wanted to comment on at this
6 time. Thank you.

7 CHAIR THOMAS: Thank you. So before we go to the
8 telephone, we have room for one more in-person, COVID-19.

9 MR. WICK: Thank you Chair Thomas, Executive
10 Officer Shupe, Board Members and everyone. Small group
11 here, big group there. Bruce Wick, Housing Contractors of
12 California. I submitted some written comments. I just
13 want to augment them a little bit.

14 I really -- again, it was some earlier comments.
15 What we do here is not in a vacuum. Any regulation that we
16 put out is something for employers to deal with. And we're
17 not in a vacuum. Every other regulatory agency is putting
18 out regulations. The Legislature's putting out new laws
19 that employers will have to deal with January 1. And
20 employers are in competition. We in construction are in
21 competition sadly, with some underground employers and we
22 battle them, but we have to compete with them. So any
23 unnecessary part of any regulation makes us less
24 competitive against those people.

25 Even if you're not in construction you're

1 competing with an employer from another state, another
2 country. So every regulation we add or keep on that
3 doesn't need to be there matters to the competitiveness and
4 health of our California business community, which relates
5 to opportunities. And for employees to work and have
6 raises and all those kinds of things.

7 So I really do think we ought to take a look at
8 the fact that the highest exposure for COVID has been, and
9 will be covered by the ATD, which has always been or has
10 been there for a long time and will continue to be there.

11 Can we look at the rest of industry then outside
12 the ATD? The numbers are dramatic, and you as Board
13 Members should make informed decisions. That it is sad how
14 many fatalities there have been from COVID across the
15 board, but 45 percent of Californians are in the workforce.
16 Of the fatalities we've had from COVID, 1.6 percent open a
17 Workers' Comp claim, 1.6; not 45, not 20, 1.6 percent.
18 That's an immense difference and sadly, most of those are
19 covered by the ATD under that, because that's the highest
20 exposure.

21 When they were looking at if they were going to
22 put a charge on Workers' Compensation for COVID for the
23 advisory rate that was ruled on for September 1st of this
24 year, the number was less than one half, less than 1
25 percent of Workers' Comp premiums would have been devoted

1 to COVID. And that was even disallowed by Commissioner
2 Lara.

3 So we have an issue where I think there's -- and
4 we also had this last month, a ruling from an
5 administrative law judge on 3203, the IIPP for a non-ATD
6 employer, and that ruling went through. And we've seen a
7 couple of 100 settlements under 3203. If you do not
8 continue, or if you do not approve the non-emergency reg,
9 we're going to have the ATD and we're going to have the
10 IIPP. And certainly in construction we know that when the
11 specific reg came in it was a year after we had already
12 done everything we were doing to protect employees. That
13 total cases in California, compared to our population is
14 over 25 percent of our population is the number of cases.
15 In construction one half of 1 percent of our workforce has
16 filed a Workers' Comp claim for COVID. That's a dramatic
17 reduction.

18 And the specific reg did not add to protections.
19 It just added to hiring people to keep up with the
20 paperwork that we were already protecting and would
21 continue under the IIPP. So I think there's a very strong
22 case for not continuing the permanent reg or the non-
23 emergency reg, right? We've got to get these terms right.
24 And continuing using the ATD, using the IIPP, Cal/OSHA
25 knows clearly now what workplaces are of serious exposure

1 under COVID and can enforce against them, and they should
2 do so strongly.

3 So we could consider not, I think strongly
4 consider not continuing the COVID reg as a one-one, and
5 we're exempting industries such as construction that have
6 shown such minimal exposure to COVID. And the IIPP would
7 be a very valid way of prevention and enforcement as we go
8 forward. Thank you.

9 CHAIR THOMAS: Thank you.

10 Maya, we're going to go to the caller segment.
11 Do we have any callers regarding COVID-19 or other comments
12 at this time?

13 MS. MORSI: Yes. We have Helen Cleary with the
14 Phylmar Regulatory Roundtable.

15 CHAIR THOMAS: Helen, can you hear us?

16 MS. CLEARY: Yes, good morning. Can you hear me?

17 CHAIR THOMAS: Go right ahead.

18 MS. CLEARY: Great. Thank you, Chair Thomas,
19 Board Members. My name is Helen Cleary, and I'm the
20 Director of PRR. PRR is a member-driven OSH forum of
21 various industries, 19 of which rank amongst the Fortune
22 500. Individual members are environmental, health and
23 safety professionals.

24 PRR has submitted extensive written comments on
25 Friday. We are hopeful the Board has had some time to

1 review them. While we support the added flexibility and
2 inclusion of IIPP with the rule we have remaining concerns.
3 I'll touch briefly on a few today.

4 At first, the two-year effective period is
5 arbitrary with no flexibility or transparent process for
6 the regulation to sunset sooner. If adopted, the need for
7 the rule should be reevaluated every six months using
8 specific milestones.

9 Also, the rule should align with the community
10 and not be in place if the state of emergency is repealed.
11 At a minimum the timeline should align with AB 2693. If
12 the Governor agrees that COVID legislation should not
13 extend, Cal/OSHA's regulation should not be an outlier and
14 in effect for an additional year or more.

15 Second, contact tracing continues to be the most
16 burdensome element for large employers. And that's
17 magnified by the expanded definition. Employees are
18 continuously receiving general notifications of potential
19 exposure with little detail. They could have been in a
20 conference room for 2 hours with the COVID case 2 feet away
21 or sitting in their cubicle on an open floor plan, with the
22 case 10 yards away for 15 minutes. The risk is not the
23 same, and constant notification either raises fear and
24 anxiety, or trivializes the risk of being a close contact.

25 This is compounded by the new requirement for

1 employers to keep a record of close contacts.
2 Documentation is a new administrative process that's
3 separate from the flexible requirement on how to manage
4 close contacts. We're very concerned that the added
5 requirement to document will require contact tracing, even
6 if the act of individual contact tracing is not necessary
7 or recommended.

8 Our comments offered specific changes that would
9 alleviate -- to help alleviate this burden while still
10 focusing on the goal of limiting transmission.

11 Next is the "outbreak" definition. It's no
12 longer reasonable to treat this disease as medically
13 significant to every person and manage it like we did two
14 years ago. We should be celebrating that fact. The
15 definition of "outbreak" does not consider the size of the
16 workforce, the size of the workplace, actual exposure,
17 other controls that mitigate transmission like state-of-
18 the-art ventilation. This is becoming untenable. PRR's
19 comments offer specific examples that illustrate this.

20 It's imperative that the Standards Board ensure
21 that CDPH definitions, enforceable by Cal/OSHA, can be
22 effectively applied to the workplace. "Close contact"
23 needs to include parameters based on proximity, and the
24 number of COVID cases that trigger an outbreak should be
25 relative to the size of the workforce.

1 Next we support that exclusion pay has not been
2 included. This type of requirement should be made by the
3 state and legislature.

4 Finally, I just want to touch on the
5 effectiveness of the ETS. Despite under-reporting,
6 multiple datasets and trends, including Workers'
7 Compensation, should be analyzed and presented in the final
8 rulemaking package. In industry employers are responsible
9 to demonstrate the effectiveness of their safety and health
10 programs. We feel the Division and Board should be
11 required to do the same before implementing and enforcing a
12 rule with such an expansive timeline and sweeping,
13 regulatory impact.

14 Thank you for your time today. My apologies for
15 not being there in person. I'm actually in Washington, DC.
16 And I have the pleasure of meeting with Assistant Secretary
17 Doug Parker tomorrow, so I'm looking forward to that.
18 Otherwise, I wouldn't have missed this hearing. So thank
19 you to all of you, and have a great day.

20 CHAIR THOMAS: So he's more important than we are
21 now. (Laughter.) No problem.

22 MS. CLEARY: It was planned months ago.

23 CHAIR THOMAS: No, thank you.

24 Who do we have next, Maya?

25 MS. MORSI: Up next is Daniel Rodriguez with

1 GGBHTD, Public Transportation.

2 CHAIR THOMAS: Daniel, can you hear us?

3 MR. RODRIGUEZ: Absolutely, (indiscernible) fine.

4 MS. SHUPE: Daniel, unfortunately --

5 CHAIR THOMAS: Turn your sound up a little bit.

6 Go ahead, Daniel, keep speaking.

7 MR. RODRIGUEZ: Hi, can you hear me here?

8 CHAIR THOMAS: Barely.

9 MR. RODRIGUEZ: Let me make some adjustments
10 here. How about now? Can you hear me better?

11 CHAIR THOMAS: That's good, that's good. Go
12 right ahead.

13 MR. RODRIGUEZ: Yeah, so good morning, Cal/OSHA
14 Board. My comment I think is pretty simple and most people
15 have already discussed it in the previous presentations.
16 But being the fact that we're a mass transit agency in the
17 Bay Area some of the difficulties that we see, obviously,
18 are the close contact tracing. Being the fact that I'm the
19 close contact tracing administrator of our program,
20 obviously we've done everything that we can possibly do to
21 keep our cases as low as possible by pushing out all the
22 protocols and guidelines and processes in general. But not
23 only is it a very lengthy and detailed process, but it
24 involves a lot of man hours and man time, especially after
25 a long weekend, a long holiday weekend, etcetera.

1 Second point that I'd like to also address is our
2 temperature checks. Obviously, we still have all these
3 protocols still in play. And there's nothing more than we
4 would like to basically get everybody back to work and
5 continue the mass transit agency efforts that we obviously
6 provide to four counties within the Bay Area. And, you
7 know, we've done a very good job with keeping everybody
8 safe and as safe as can be. But it's one change, it's one
9 regulation, it's one guideline after another.

10 And I almost wish I would have listened to my
11 parents and went into the medical field and been a doctor,
12 because some of these guideline changes come down the
13 pipeline and not only do I have senior management wanting a
14 breakdown, but we also have 23 unions within our
15 organization that we have to break it down to as well. So
16 just I would like to see a little bit more clear and more
17 specific guidelines. And hopefully after this meeting we
18 can get rid of the temperature checks and hopefully,
19 eventually get rid of the contact tracing process and
20 protocols.

21 So that's all I have to say. And you guys have a
22 big task ahead of you. Thank you very much for your time.

23 CHAIR THOMAS: Thank you, Daniel, appreciate your
24 comments.

25 Who do we have up next, Maya?

1 MS. MORSI: Up next is Andrew Sommer with Conn
2 Maciel Carey, LLP.

3 CHAIR THOMAS: Andrew Sommer, Andrew?

4 MR. SOMMER: Yes, can you hear me?

5 CHAIR THOMAS: Yeah, go right ahead.

6 MR. SOMMER: Good morning members of the Board,
7 Andrew Sommer with Conn Maciel Carey on behalf of the
8 California Employers COVID-19 Prevention Coalition. We
9 have submitted written comments. I'll be brief as to some
10 salient issues. We appreciate the opportunity to comment
11 today and we also appreciate the considerable efforts by
12 DOSH and the Board in developing this rulemaking.

13 Our members are concerned though about the
14 utility of a permanent rule, or a non-emergency rule at,
15 this juncture. As we've seen, the conditions with the
16 pandemic evolving into endemic conditions have been fast-
17 evolving, and there's been changes in medical science and
18 new methods to manage the transmission of COVID-19. We
19 have seen with the ETS considerable issues with a locked in
20 stone standard that hasn't quite fit with the evolving
21 conditions or just the practical realities that employers
22 that face in addressing COVID in the workplace in a very
23 caring way.

24 And we believe, as Mr. Moutrie and Mr. Wick have
25 stated that the IIPP has been an effective method, and I've

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1 seen that personally as a practitioner, in addressing
2 COVID-related hazards among others. And it will remain a
3 viable tool long after the ETS expires. And you've seen in
4 a recent decision by the Appeals Board in BSF Fitness II,
5 LLC, that the Board has affirmed citations under IIPP for
6 failure to identify and evaluate workplace hazards related
7 to COVID-19 and failure to instruct on hazards related to
8 COVID-19.

9 So there is a mechanism for this. We have seen
10 this for many years under the IIPP to address hazards in
11 the workplace, whether related to COVID-19 or other
12 conditions.

13 There's also public health orders that are
14 available on a moment's notice to address COVID-19. And
15 that has been particularly effective on masking and other
16 issues, and we think it will continue to be so. And
17 combined, the IIPP and the public health orders provide a
18 sufficient mechanism we believe.

19 Drilling down a little bit on some issues, to the
20 extent the non-emergency rule is adopted, our members have
21 been considerably concerned over the "close contact"
22 definition. And this definition, we recognize it came from
23 CDPH. But memorializing it into the standard is
24 problematic. It chucks a novel, ambiguous term with no
25 reference to proximity. Employers have faced great

1 consternation in determining what this means, particularly
2 in large spaces such as distribution centers, manufacturing
3 facilities, warehouses, hangers for employees, who may work
4 far apart, but then there's a question about what could
5 there a close contact given that we're departing from the
6 tried-and-true CDC standard for a close contact.

7 And then we have in our written comments
8 suggested changes to that "close contact" definition to
9 make it a little bit more certain, that would be much more
10 effective and workable for employers.

11 And then lastly, I wanted to address the outbreak
12 provisions. We believe, given the direction which CDC is
13 going in among other state plans, that this outbreak
14 provision, these outbreaks provisions are not necessary at
15 this point in the pandemic. It's creating onerous
16 requirements for employers. Employers, you know I would
17 say most employers want to do the right thing. And they're
18 really challenged by the contact tracing requirements and
19 really determining whether there's a close contact in the
20 workplace and measures that need to be taken.

21 We've seen now that the conditions that we're
22 encountering over COVID-19 are so different than they were
23 earlier in the pandemic. As an example, there were .1 for
24 every 100,000 cases -- for the fatality rate, excuse me --
25 as of September 6th, 2022; recently was .1 per 100,000

1 individuals. And by comparison of, back on January 10,
2 '21, that was 17 times that rate. And the ICU
3 hospitalizations presently are (Indiscernible.) 351 --

4 CHAIR THOMAS: We're running up on time, Caller.
5 Can you wrap up? Thank you.

6 MR. SOMMER: Okay, I'm basically done. And then
7 back in on January 10th, '21 the ICU hospitalization rate
8 was 14 times that rate, so the conditions have changed
9 significantly. And we believe that the rulemaking doesn't
10 recognize the burdens that employers are facing. That it's
11 not memorialized, accounted for in this process, the
12 expense and the time that is extended by employers over the
13 outbreak provisions and whether they're ultimately
14 necessary. We appreciate the time for comment.

15 CHAIR THOMAS: Thank you.

16 I think we've had three phone callers. So I'm
17 just going to -- is there anybody in the room who wants to
18 make any public comment or comment at the public hearing?

19 UNKNOWN SPEAKER: I would like to make a public
20 comment.

21 MR. STEIGER: Thank you Mr. Chair and members,
22 Mitch Steiger with the California Labor Federation. I
23 appreciate the opportunity to testify today. As always
24 we'd very much like to thank the staff of Cal/OSHA, and the
25 Standards Board and others for all the work that's gone

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1 into this standard. We know it's been a massive amount of
2 work over the last few years, and by and large has produced
3 a standard that has done a lot to better protect workers
4 from this hazard. And we very much appreciate all of their
5 work.

6 Overall, to summarize our comments, we would say
7 we strongly, strongly urge the two-year readoption of a
8 COVID standard. We do see some pretty serious weaknesses
9 with this one, but it has done a whole lot to save workers'
10 lives and make it so that fewer workers get hurt. And we
11 definitely appreciate that, so we definitely urge the
12 readoption of something.

13 As we stated in our letter and in a lot of these
14 hearings before the biggest weakness we see in this
15 obviously, is the deletion of exclusion pay. We think it's
16 really important to really pause and focus on exactly what
17 we would be doing were we to take exclusion pay out of this
18 standard. We would be setting up a system where,
19 regardless of the workers' needs, regardless of maybe how
20 negligent the employer may have been, we're going to punish
21 the worker for the fact that they got sick. That they were
22 exposed in the workplace, probably through no fault of
23 their own. We're going to send them home without any pay.

24 That not only sends a message that essentially
25 you are the one to blame here, you are the one who's going

1 to bear the burden of this, but also that this isn't
2 something that we are taking seriously enough to pay you
3 for. So workers are going to take that message. A lot of
4 them are going to make the impossible choice to either work
5 while sick, and just not tell their employer. A lot of
6 them will lose their jobs. The effects on workers and
7 their families will be massive. We strongly, strongly urge
8 the return of exclusion pay to this standard.

9 And we also wanted to quickly respond to a few
10 points raised by employers that can probably be summarized
11 in a few different categories. One would be that things
12 are better now, that because fewer workers are dying, that
13 because fewer workers are being hospitalized, that that
14 warrants us walking this back or maybe even eliminating the
15 standard altogether. We strongly, strongly disagree with
16 that characterization of where we are in the pandemic.

17 Long COVID, by some measures, now affects most
18 people who get COVID and the numbers are all over the
19 place. I've seen 3 percent, I've seen 60 percent, it seems
20 to kind of hover more in the like, third or so of people
21 who get COVID experience some sort of significant long
22 COVID. But we're talking about months, if not years, if
23 not a lifetime of dementia, of increased risk of heart
24 disease and stroke, of a variety of other conditions,
25 respiratory difficulties that never go away, that are just

1 too much to ask workers to bear. That obviously, we want
2 to get back to normal as much as we possibly can. We
3 really see a strong two-year readoption as the best middle
4 ground here. That we still allow the economy to keep
5 going. We still keep people at work. We still keep
6 workers safe.

7 So we really strongly believe that the effect of
8 long COVID on people needs to be factored in directly to
9 every decision we make on this standard. And make sure
10 that the standard stays in place and that workers are kept
11 safe.

12 We would also really strongly urge the Board to
13 consider that this virus can always change. That right now
14 fatality rates are pretty low, hospitalization is pretty
15 low. But you look at what's happened with this virus so
16 far. And it does this. It is not endemic. "Endemic"
17 means that things have stabilized. We are far from having
18 stabilized. Maybe the new boosters will work really well,
19 maybe they won't. But the reality is we don't know what's
20 coming. And we need to have a strong standard in place to
21 protect against whatever may be coming in the future.

22 So overall, we strongly urge the Board to readopt
23 something. But we also strongly urge the Board to return
24 exclusion pay to the standard so that we don't make things
25 worse. And we give workers what they need to keep

1 themselves safe and better recover from the virus when they
2 do get it. Thank you.

3 CHAIR THOMAS: Thank you.

4 Good morning.

5 MS. KATTEN: Hi. Good morning. I'm Anne Katten
6 with California Rural Legal Assistance Foundation,
7 obviously not used to in-person. I greatly appreciate all
8 the hard work of the Division and the Board in developing
9 and maintaining a COVID emergency regulation over these
10 recent years. We join Mr. Steiger and the Labor Federation
11 in strongly supporting the need for a non-emergency COVID
12 prevention standard.

13 Maintaining these key prevention protections
14 including notification of cases in shared workspaces,
15 shared air spaces, is critical for preventing spread of
16 COVID in the workplace and in employer-provided housing and
17 transportation. This is critical especially for essential,
18 low-wage workers in agriculture, food processing, and other
19 sectors, similar sectors, to reduce health risks to these
20 workers and their families.

21 As Mr. Steiger has mentioned, a growing number of
22 studies indicate that long COVID poses serious, long-term
23 health risks including diabetes, heart, cardiovascular
24 disease, neuro-degeneration disorders. And there are also
25 studies indicating that reinfection increases the risk of

1 long COVID.

2 While COVID infection rates are dropping in the
3 more affluent coastal counties infection rates are still
4 high in Kern, Kings, Merced and Madera counties at the
5 moment, and rising in Tulare and Fresno counties, and
6 moderate in many counties including this one.

7 We urge you also to reinstate exclusion pay and
8 rights to maintain earnings and seniority and other similar
9 related rights, including the right to retain job status.
10 Ending exclusion pay would undermine the entire regulation
11 as Mr. Steiger has explained. And the workers will ---
12 anyway, as he's explained (indiscernible).

13 Agriculture workers remain at high risk of
14 exposure and infection in crowded employer house-provided
15 housing, and during very long van and bus rides to work
16 sites at distance locations.

17 In addition, H2A workers are also transported
18 together for many hours or days, from their places of
19 recruitment to their California employers. And are
20 dependent on employer-provided transportation to get to
21 stores and healthcare and to get back home at the end of
22 their contracts. To protect these workers the regulation
23 should continue to apply broadly to all employer-provided
24 transportation.

25 Our written comments include several other

1 recommendations for minor revisions or clarifications
2 through the FAQs. And we again strongly support retaining
3 a regulation, but adding exclusion pay. Thank you.

4 CHAIR THOMAS: Thank you.

5 Good morning.

6 MR. MIILLER: Hi. Good morning Board and
7 members. My name is Michael Miiller with the California
8 Association of Winegrape Growers. I too want to thank the
9 Division staff and Board staff for hard work on this issue.
10 I know a lot of time and energy has gone into it. I'm very
11 respectful, appreciative of all the work. I'll be speaking
12 briefly today on the COVID-19 regulation. I will try to be
13 brief.

14 Our association along with the Wine Institute and
15 Family Winemakers of California have already submitted
16 written comments in opposition to the proposed regulation.
17 In short, we are very concerned with the following: the
18 regulation unfortunately continues an emergency response to
19 the pandemic. There's no data to support the need for or
20 efficacy of the proposed regulation. And the proposed
21 regulation is contrary to the advice and counsel from
22 President Biden, Governor Newsom, CDPH, CDC, and leading
23 health experts across the country.

24 In 2020 the Board felt that it had to do
25 something in response to a global lockdown, a public health

1 crisis. We appreciate that decisions then were not based
2 on data. But we're not there anymore. We now know much
3 more about the virus, risk factors, vaccines, how the virus
4 is spread, etcetera. Decisions today must be based on data.
5 There's no excuse anymore for ignoring a lack of data.

6 This Board has called, time and time again, for
7 data on workplace exposure to COVID and contraction of
8 COVID in the workplace, yet there still is no data. The
9 Board Statement of Reasons on page 4 states data for the
10 number of COVID cases, or that number of cases of COVID-19
11 infection and the number of hospitalizations and deaths
12 attributable to workplace exposure to COVID-19, is not
13 currently available. To be clear, that data has never been
14 available and the state has never made a serious attempt to
15 collect the data.

16 While the public and public health experts have
17 moved on from the 2020 kind of response to COVID-19. This
18 regulation is stuck in 2020. When you read the Statement
19 of Reasons you will find more than 50 references to
20 articles and information from 2020.

21 Much of the proposed regulation was first adopted
22 in 2020 as an emergency temporary standard. When the ETS
23 was adopted the Board made it clear to the public that the
24 emergency standard was to stay in effect only during the
25 dire health situation. Specifically, the Board stated it

1 wanted to explore a new infectious disease standard quote,
2 "after the pandemic has subsided." Well, President Biden
3 and Governor Newsom have both said the COVID-19 pandemic
4 has subsided. So we are not sure why we're looking at
5 keeping a COVID-19 standard in place for two more years
6 instead of working on an infectious disease standard.

7 In the big picture, we are very concerned that
8 the regulation would punish California employees for a job
9 well done. When we asked employees to take precautions and
10 wear masks and stay six feet apart, by and large they did.
11 When we asked them to get vaccines they mostly agreed.
12 When we asked them to get boosters most of them did. And
13 we hope that as we move to an annual flu-shot approach to
14 COVID-19 they will again do the responsible thing. This is
15 especially important relative to long-term infection COVID.
16 If you look at the CDC website CDC makes it clear that the
17 best way to reduce your risk of COVID is by getting
18 vaccinated. And that is what we need to be focusing on.

19 And we also know that long-term COVID is mostly
20 from a community spread exposure. It's not from the
21 workplace. Yet this regulation ignores -- or I should say
22 it lacks the reward to Californians who have gotten the
23 shot, done the responsible thing. And instead it punishes
24 them for a job well done.

25 If the regulation should tragically move forward

1 we as for a couple of considerations: One, the regulation
2 should sunset in one year, not two. Please provide some
3 light at the end of the COVID-19 tunnel. This can't go on
4 forever.

5 The Notice to Employee requirements should be
6 deleted as they are duplicative of existing law and
7 therefore in violation of the APA.

8 The third issue, will you please make a clear
9 distinction between indoor and outdoor workplaces
10 throughout the regulation. In several places both are
11 treated the same, even though the risks are much reduced
12 when working outdoors.

13 Relative to housing and transportation we're very
14 concerned that in the real world where our employers
15 provide housing and transportation it is an option for
16 employees. It is not required that they use it. In many
17 cases, our employers provide housing where there is none in
18 the community or is simply unaffordable for the workers, so
19 it's provided as an option. This punishes those employers
20 for providing that housing by subjecting that housing to
21 this regulation.

22 The other issue we want you to address is the
23 outbreak provisions in the regulation. We agree with the
24 previous comments that they are simply outdated and don't
25 reflect the real world today. When you look at this room,

1 I mean all of us I think, will know somebody or ourselves
2 have had COVID Or will get COVID. We know that. It's
3 highly likely though that when that happens it's going to
4 be in the community. To then take that community-
5 increasing cases and make it a workplace outbreak, for us
6 it makes no sense. And it seems to make the workplace more
7 dangerous than the community when, in many cases, it
8 actually is safer.

9 We appreciate that when the Board took up the
10 COVID-19 issue and felt they had to do something we
11 understand that. But we're not there anymore. We need to
12 look at data, we need to look at evidence, and we need to
13 make decisions going forward based on that information.
14 Again, thank you very much for your time and I can see you
15 wrapping me up. Thank you very much.

16 CHAIR THOMAS: Thank you.

17 I think, Maya, we're going to go back to the
18 phone calls. Who do we have up?

19 MS. MORSI: Up next is Jennifer M. We don't have
20 an affiliation to her name.

21 CHAIR THOMAS: Jennifer, can you hear us?

22 JENNIFER M: Good morning, I can. Good morning.
23 Can you hear me?

24 CHAIR THOMAS: You could turn it up just a little
25 bit.

1 JENNIFER M: Okay, is that a little bit better?

2 CHAIR THOMAS: I can see you, go ahead. Go
3 ahead.

4 JENNIFER M: Okay, good morning, everyone. Good
5 morning to the Cal/OSHA Board. Thank you so much for the
6 opportunity to provide these comments. My name is
7 Jennifer. I'm here today to provide feedback on two
8 specific parts of the COVID non-emergency regulation on
9 behalf of a San Francisco-based business. I know that the
10 regulation that you're all reviewing today is very broad
11 and covers a lot of areas. So like many others today what
12 I'd like to do is focus my comments on two specific things:
13 the definition of "outbreaks" in the workplace and the
14 "close contact" definition as well.

15 Regarding outbreaks, while I am of course
16 supportive of sound policies to address the health and
17 safety of everyone in the workplace the definition of
18 "outbreak," which is currently three or more cases in a 14-
19 day period feels too narrow, and imposes a pretty big
20 challenge to running our business. We have approximately
21 350 employees in an office building with four
22 interconnected floors with open stairwells. So when we
23 have one COVID case in the office, because of the
24 definition of "exposed group," that single case counts
25 toward our entire company even if that person was only in

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1 contact, in close contact, with a few.

2 In a scenario where we hit three cases, which has
3 happened several times, the entire company has to either
4 mask or we choose to send everyone home, which are both not
5 great solutions for us. So this narrow definition of
6 "outbreak" feels kind of out of step as others have
7 mentioned with the overall direction of the CDC and other
8 public health departments as they continue to loosen COVID
9 protocols and are telling kind of society at large that we
10 need to learn to live with COVID.

11 The second comment I wanted to provide was about
12 the definition of "close contact." So as someone who
13 manages this process for our company, this definition, the
14 new definition of "airspace" makes it just incredibly
15 difficult to determine who is or who is not a close
16 contact. In fact, we've even thought about whether we
17 should come up with our own internal definition of
18 something like 6 feet, 10 feet, 20 feet because just the
19 reading of the definition is so ambiguous.

20 So what I'm advocating today is that you consider
21 amending the definition of "outbreak," perhaps by making
22 the case count much larger or proportional to company size,
23 or possibly narrowing the definition of "exposed groups" so
24 that it more closely ties to close contacts versus the
25 entire office space.

1 And then finally, that you provide greater
2 clarity on how we perform contact tracing under the new
3 definition. And thank you so much for your time.

4 CHAIR THOMAS: Who do we have next, Maya?

5 MS. MORSI: I'm going to go back to Sarah Layton
6 with E&B Natural Resources.

7 CHAIR THOMAS: Sarah, can you hear us? (No
8 audible response.) Sarah?

9 MS. MORSI: Next is Matt Sutton with California
10 Restaurant Association.

11 CHAIR THOMAS: Matt, can you hear us? Matt? (No
12 audible response.) Up next?

13 MS. MORSI: Up next is Andrew Wylam with Pandemic
14 Patients.

15 CHAIR THOMAS: Andrew, can you hear us?

16 MR. WYLAM: Yes, can you hear me?

17 CHAIR THOMAS: Yeah, go right ahead. You might
18 want to turn your volume up just a hair.

19 MR. WYLAM: Okay.

20 CHAIR THOMAS: Go right ahead.

21 MR. WYLAM: Hello, my name is Andrew Wylam and
22 I'm the President of Pandemic Patients, which is a
23 501(c)(3) nonprofit patient advocacy organization that
24 works to relieve the harm caused by COVID-19 and post-COVID
25 conditions. We believe that the most effective strategy

1 for reducing the harm caused by COVID-19 is to prevent new
2 infections from occurring.

3 Pandemic Patients supports the implementation of
4 workplace safety standards that are responsive to the
5 danger presented by COVID-19. We believe that state and
6 federal regulatory agencies with jurisdiction over
7 occupational health and safety must act with urgency to
8 implement effective workplace safety standards to mitigate
9 occupational exposure and community spread of COVID-19.

10 We support the enactment of the general industry
11 safety orders. We applaud Cal/OSHA for developing and
12 issuing these proposed orders. We believe that safety
13 orders represent important progress in the U.S.'s response
14 to the Coronavirus pandemic. If implemented we're
15 confident that the safety orders will limit workers
16 occupational exposure to COVID-19 in California, and will
17 prompt other states to follow California's example by
18 implementing similar workplace safety measures.

19 We strongly support these orders, but we have a
20 few amendments that we'd like you to consider. For section
21 3205(c)(3) this requires employers to provide training to
22 employees regarding COVID-19 in accordance with subsection
23 3203 (a)(7). Pandemic Patients supports this provision
24 because it promotes greater awareness about COVID-19 at the
25 workplace. However, we recommend that the final regulation

1 include greater specificity regarding the information that
2 employees must receive training on.

3 We recommend that employers be required to
4 provide training on COVID-19 symptoms: common, vital
5 transmission pathways; COVID-19 testing methods; how
6 workers can protect themselves and others following a
7 potential or confirmed exposure to COVID-19; the potential,
8 long-term health consequences of COVID-19 infection,
9 including long COVID; and when to seek emergency medical
10 care. We recommend that Cal/OSHA periodically issue
11 standardized training materials to employers to ensure that
12 the information they're providing to employees is up to
13 date.

14 Next on section 3205(c)(4), this requires
15 employers to establish procedures for investigating COVID-
16 19 illness in the workplace, which includes encouraging
17 employees to report symptoms and stay home when ill. We
18 support this provision, because it encourages employees to
19 respond properly by staying home as they begin experiencing
20 COVID-19 symptoms. However, we're concerned that employees
21 will not comply with this requirement due to the fear of
22 wage loss or reprisal, even if additional measures already
23 exist to protect them from retaliation by their employer.
24 We urge the Board to implement additional measures to
25 protect employees who report symptoms and stay home.

1 Specifically, employers should be required to provide
2 training to employees regarding any workplace benefits
3 available to them that would support their ability to stay
4 home from work if they're experiencing COVID-19 symptoms;
5 for example, paid sick leave.

6 Additionally, employers should be required to
7 instruct employees on the protections available to them
8 under Section 6311 of the Labor Code as they relate to
9 unsafe working conditions caused by COVID-19. The
10 Occupational Safety and Health Standards Board should
11 incorporate these recommendations into section 3205(c) (3).

12 Next is section 3205(c) (5) (b) which requires
13 employers to implement effective procedures for responding
14 to a case of COVID-19 in the workplace, which requires them
15 to exclude employees from the workplace following a
16 potential or confirmed exposure. Upon exclusion this
17 requires employers to provide the affected employee with
18 information about any benefits related to COVID-19 they may
19 be entitled to.

20 We support this provision. However, we believe
21 that additional employee benefits should be specifically
22 noted in the safety orders. Accordingly, this should
23 require employers to provide information to employees
24 regarding any available workplace disability benefits.

25 Additionally, employers should be required to

1 furnish a copy of any relevant coverage documents to
2 employees at this time. From our experience assisting
3 long-COVID patients with disability claims, they're
4 commonly unaware of the disability coverage that is
5 available to them. Also, they're often unsure of where to
6 find their policy documents. Including this information at
7 the time they are excluded from work -- (Overlapping
8 colloquy.)

9 CHAIR THOMAS: Excuse me a second, excuse me,
10 excuse me. Excuse me. Can you speak just a little bit
11 slower? You're kind of getting -- we've got people
12 transcribing, so please, a little slower and wrap it up.
13 Thank you.

14 MR. WYLAM: Sure. From our experience of helping
15 employees with long COVID apply for disability benefits,
16 they're often unaware of where to find their policy
17 documents. So including this information at the time
18 they're excluded from work will help them apply those
19 benefits if the need arises.

20 And that's all, so thank you for considering our
21 position on these orders and our recommended amendments.
22 Thank you.

23 CHAIR THOMAS: Thank you very much.

24 Who do we have up next, Maya?

25 MS. MORSI: Up next is Samantha Webster, with

1 Safeway Employee and UFCW 5 member.

2 CHAIR THOMAS: Samantha, can you hear us?

3 Samantha? (No audible response.) Oh, we'll try the next.

4 MS. MORSI: Up next is AnaStacia Nicol Wright
5 with WorkSafe.

6 CHAIR THOMAS: AnaStacia, can you hear us?

7 MS. NICOL WRIGHT: Yes. Can you hear me?

8 CHAIR THOMAS: Yes, go right ahead.

9 MS. NICOL WRIGHT: Perfect. So good morning,
10 everybody. Good morning to the Board Members. We want to
11 thank you for hearing us out as we bring up again the issue
12 that we find so vital it bears repeating over and over
13 until the people of California are given what they need and
14 what they deserve from their public officials.

15 No individual or family should have to bear the
16 brunt of this pandemic directly on their shoulders. But
17 that's exactly what we're doing to exactly the people who
18 have the least time, the least money, and the least energy
19 to spare to help them carry that weight if we don't include
20 exclusion pay in the two-year standard.

21 We appreciate all the work Cal/OSHA and this
22 Board has done to protect California workers during this
23 pandemic via the COVID-19 ETS in this proposed non-
24 emergency standard. And we also understand the need for
25 you all to consider business and labor when deciding a way

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1 to move forward. However, exclusion is a benefit to all of
2 us: workers, employers, and the public at large. Exclusion
3 pay provides the means by which workers can afford to stay
4 home and protect the public instead of exposing everyone
5 around them to illness. It will greatly reduce the
6 effectiveness of the standard if this vital component is
7 left out. By ensuring that workers who are required to
8 quarantine from work will still receive their pay and job
9 protections, we remove the incentive for those who live
10 paycheck to paycheck and can't afford to miss one day of
11 work, let alone five days of work to hide their illness
12 from their employers and come to work sick and infect other
13 employees.

14 For the last two years and counting exclusion pay
15 has been a status quo reality for workers. One upon which
16 California's workers rely, especially in a cruel landscape
17 where many workplaces do not allocate workers with any more
18 sick-leave than the three days that California law
19 requires.

20 Additionally, workers will eventually lose
21 supplemental paid sick leave protections. And there is no
22 guarantee that it will come back nor is there a guarantee
23 regarding how long it will be granted if it does get
24 extended. And in any event, exclusion pay offers different
25 beneficial and needed protections for workers that

1 supplemental sick pay does not.

2 The public health data is clear. It's been clear
3 the burden of this pandemic has fallen and will continue to
4 fall most heavily on California's essential workers. And
5 the removal of exclusion pay will only worsen this harsh
6 reality. No matter how many protections we lift, whether
7 we call it endemic and say that the worst is over, the
8 COVID-19 virus pandemic that killed 95,549 Californians and
9 counting is not over. Vaccines have not proven to be the
10 panacea we once thought they would be. We have these new
11 variants that keep arising against, which we have little
12 protection, and COVID has not become like the common flu.

13 Public health officials are continuously warning
14 against people becoming complacent and treating COVID as a
15 thing of the past. And despite this warning, respectfully
16 the Board and Cal/OSHA are considering just that, becoming
17 complacent and allowing California's most critical worker
18 protections to expire, exclusion pay.

19 Instead of looking for an endpoint to the
20 pandemic, though I know we all wish we could, instead of
21 looking for an endpoint to this pandemic California
22 workplaces have to come to grips with the fact that there
23 is no post-COVID world. As such, we have to strengthen our
24 defenses in the long term.

25 And with that, on behalf of California workers,

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1 WorkSafe respectfully urges the Board to include exclusion
2 pay that California workers have come to know and expect
3 and deserve during the last two years of this COVID
4 pandemic.

5 We've already drawn the attention of the Board to
6 the fact that populations who have already been
7 disproportionately devastated have once again the most to
8 lose as a result of the decisions made in this -- well not
9 this, but this room and other places of power.

10 Reflect on this responsibility. We urge you with
11 the appropriate seriousness, don't make this decision based
12 off the trends in the general population, which will prefer
13 to pretend that the pandemic is over and no longer a
14 threat. But based on the understanding that the removal of
15 exclusion pay will without a shadow of a doubt directly and
16 severely impact the lives of the people who are already
17 struggling day to day. People who cannot afford to stay
18 home otherwise will come to work and try to hide their
19 symptoms, putting still more people at risk.

20 However, while Worksafe and its colleagues are
21 clearly strong proponents of a non-emergency standard
22 maintaining the status quo rules around exclusion pay, we
23 do understand that unfortunately we may lose this argument.
24 And in that event we'd like to stress maintaining the
25 emergency standard, even without exclusion pay should it

1 come to that, because it's the standard in and of itself
2 that would still be a benefit to California workers. And
3 it's something that we support if need be.

4 So we've already lost so many to this pandemic.
5 Thank you for doing your part to ensure that further loss
6 and suffering is minimized to the best of our capabilities.
7 Thank you.

8 CHAIR THOMAS: Thank you.

9 We have another caller, Maya?

10 MS. MORSI: Yes, we do. It's Tina Self with
11 Bayer.

12 CHAIR THOMAS: Tina, can you hear us?

13 MS. SELF: Yes, I can. Can you hear me?

14 CHAIR THOMAS: Yeah, go right ahead.

15 MS. SELF: Thank you. Thank you, Chair Thomas
16 and Board Members. My name is Tina Self and I am the Head
17 of Manufacturing Operations for Bayer's pharmaceutical
18 campus in Berkeley.

19 The WHO has now stated that the pandemic finish
20 line is in sight and perhaps is this will allow the ETs to
21 sunset and return to standard rules that protect against
22 aerosol transmissions and workplace injuries, which aligns
23 also to the state's shift to pre-pandemic life for
24 Californians in general.

25 If the Board decides to continue forward with a

1 regular rule, we would like to bring some concerns to your
2 attention. As the largest biotech employer in the East Bay
3 we continue to manufacture critical medicines throughout
4 the pandemic. The pandemic has evolved and the situation
5 is much different than when the ETS was first rolled out.
6 We have a high rate of vaccination in our communities and
7 at our site our employee vaccination rate is well over 90
8 percent.

9 Our communities have reopened to regular
10 activities, but businesses like ours have been unable to do
11 so because of the challenges presented by the ETS standard
12 today and potentially for the next two years.

13 The Cal/OSHA standards now and proposed are far
14 stricter than those recommendations recommended nationally
15 by the CDC both in explicit terms, for example quarantine
16 and isolation requirements for COVID cases. And in effect
17 this is particularly driven by COVID 19 outbreak
18 definitions, which both in the ETs and the proposed regular
19 rule, create extraordinary case management obligations that
20 are not necessarily reflective of actual workplace health
21 risk. These include extensive testing requirements and the
22 potential to exclude production workers engaged in the
23 manufacture of critical life-enhancing and sustaining
24 medicines.

25 We ask that the Standards Board revise the

1 language to align the outbreak concept in the proposed rule
2 with the work-relatedness standard codified in the existing
3 aerosol transmission disease standard, ATDR 5199, and
4 employer records of occupational injury or illness, ACCR
5 14300 through 14400 standards.

6 This work-relatedness standard is the key to
7 managing workplace health and safety risk as Cal/OSHA has
8 long recognized in its existing regulatory scheme.
9 Specifically, we are requesting that the Standards Board
10 revise the description of outbreaks in 3205.1 to ensure
11 that the cases counted towards a minor or major outbreak
12 are only those that arise out of, or are related to work.

13 These proposed revisions have been submitted in
14 writing. And we thank you in advance for your
15 consideration.

16 CHAIR THOMAS: Thank you.

17 Oh, Christina?

18 MS. SHUPE: Yeah, I would just like to thank Ms.
19 Self for her comments, but also remind our presenters and
20 our speakers that the transcriptions that are being
21 prepared require that we ask that you speak a little bit
22 slowly. And these transcripts are not only provided to our
23 Board Members and provided as a public record, but are also
24 provided to the Division and to the engineers who are
25 working on the regulatory text. So thank you.

1 CHAIR THOMAS: Do we have anybody else in the
2 room that wants to speak? Yes, go ahead.

3 Before you start though I just want to advise Mr.
4 Killip and Mr. Berg that we'll ask you to brief us in due
5 time. I'm just -- we're trying to combine those a little
6 (indiscernible).

7 Go ahead.

8 MR. LITTLE: Thank you. Well good morning. It
9 is still morning. Yes, it is still morning. Good morning,
10 Board Members, Board staff and agency staff. I'm Bryan
11 Little and I represent 30,000 members of the California
12 Farm Bureau. I want to thank you for the opportunity to
13 offer comments this morning on the proposed permanent
14 COVID-19 standard. I also would like to note quickly,
15 Christina and I were talking before this meeting started, I
16 spent two-and-a-half years serving at federal OSHA, in
17 between 2004 and middle of 2008 or so. And I think that
18 maybe more than the average person you're going to run into
19 in the street, or your neighbors, or your family members, I
20 think I have an understanding of what you guys have been
21 doing over the last two-and-a-half, three years trying to
22 cope with this, because I worked at an agency very similar
23 to yours. I understand the level of effort, and angst and
24 frustration that you all have probably tolerated over the
25 last several years. And I want to thank you for everything

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1 that you've been doing, because I know that it's hard.
2 Because I've been, at least somewhat in your shoes and I
3 understand how that all works, I think.

4 Let me start by urging the Board to refrain from
5 imposing a permanent non-emergency version of the COVID-19
6 standard. Governor Newsom recognized the situation has
7 changed radically in the last year when he transitioned --
8 I'm sorry, I'm going too fast -- when he transitioned to
9 California to dealing with COVID-19 as an endemic disease
10 with his Safer Plan.

11 When the agency and the Standards Board first
12 enacted emergency COVID-19 standards we did not have
13 vaccines, boosters, and effective medical treatment for
14 COVID-19, all of which we have today. Is that a good pace?
15 Great. As a result, in spite of the fact that the
16 currently circulating COVID variant is very contagious, it
17 appears to be much less virulent than its predecessors.
18 Because of this COVID-19 is now a predominantly socially
19 spread disease, which explains why we see infection spikes
20 around holidays.

21 Employers should not be expected to continue to
22 undertake extraordinary measures to protect employees
23 against a highly contagious disease that they are as likely
24 or more likely to be exposed to outside the workplace as at
25 the workplace. This is particularly true now that most if

1 not nearly all precautions against COVID have been dropped
2 in most public non-workplace settings. The only place I've
3 visited in months where the use of a facemask was mandatory
4 was a medical office. And the contrast between that
5 experience and normal, everyday life was truly striking.

6 I urge you to move away from the model we've
7 worked with under for the last two-and-a-half years. The
8 simple reason for this is that times have changed and we've
9 all learned from experience that even emergency regulations
10 with fairly short expiration periods cannot evolve fast
11 enough to keep up with rapidly changing science. There is
12 simply no way that a non-emergency regulation with a two-
13 year sunset could adapt and change, because the regulatory
14 process is simply too rigid in its required timeframes to
15 permit the agency and the Board to act with expediency.

16 This draft represents and reflects some positive
17 changes like limiting the rules duration to two years, but
18 a one-year duration would be better still; removing the
19 requirement for exclusion pay in light of the legislators
20 repeated actions requiring employers to provide COVID-19
21 supplemental paid sick leave; and adopting a more
22 performance-oriented injury and illness prevention plan-
23 like approach.

24 If however you move ahead with the proposed non-
25 emergency COVID-19 rule, it has several problems that you

1 should attend to before you approve it. The definition of
2 "close contacts," abandoning the long-standing and readily
3 understandable six-foot component of 61524 will continue to
4 be problematic if employers have no room to allow
5 reasonable definition of workspaces in which employers must
6 identify the presence of employees and potentially
7 infectious contacts.

8 It appears from some recent comments by agency
9 staff that the lack of floor-to-ceiling walls would make a
10 large packing shed that early in the pandemic adopted
11 shields between their workstations, into a single
12 workplace. That means a single visit by a single affected
13 person makes potentially dozens of employees in that
14 packing shed close contacts. In the absence of any
15 reasonable limiting principle the "close contact"
16 definition is unimplementable.

17 Because the current COVID variant is so prone to
18 community spread, unlucky employers will likely find
19 themselves constantly in outbreak status, particularly
20 after periods in which employees spend long periods in the
21 community and away from the workplace, like seasonal breaks
22 in agricultural production. And they will bring COVID
23 infection to work with them from the community. Since the
24 regulation fails to distinguish between workplace-acquired
25 and community-acquired infection the appearance of a single

1 case in any given two-week period will actuate outbreak
2 status with its intended testing, record keeping and notice
3 requirements.

4 The proposed regulation also requires ongoing
5 contact tracing --

6 UNKNOWN SPEAKER: Pam, (indiscernible) I made a
7 boo-boo, I may not have written down the password correctly
8 because now I can't get into my computer.

9 CHAIR THOMAS: Excuse me, can you mute yourself
10 because we can hear you.

11 UNKNOWN SPEAKER: Okay.

12 CHAIR THOMAS: Whoever you are.

13 UNKNOWN SPEAKER: It's 527.

14 CHAIR THOMAS: Thank you.

15 MR. LITTLE: And if I knew the password, I'd be
16 happy to share it with you. (Laughter.)

17 The California Department of Public Health no
18 longer recommends contact tracing because of the highly
19 contagious but less virulent nature of the currently
20 circulating variants. CDPH recognizes that contact tracing
21 is an ineffective use of resources. Unfortunately the
22 draft regulation does not recognize this.

23 I'd also like to note that there's been a lot of
24 concern expressed about long COVID and about other
25 transmissibility issues related to COVID. The CDPH, CDC,

1 and all the authorities and scientists tell us the most
2 effective way to protect ourselves against this is being
3 vaccinated and being boosted. The way this regulation sets
4 up and the way it works in the real world it doesn't offer
5 any encouragement for people to be vaccinated and to be
6 boosted, because it treats everybody exactly the same way.
7 We should be offering people incentives to be vaccinated in
8 order to be proactive and protect themselves against COVID-
9 19, against long COVID, and against all the other problems
10 that seem to stem from it.

11 So I just wanted to offer that last comment. And
12 I thank you for your opportunity to comment on this matter.
13 Thank you very much.

14 CHAIR THOMAS: Thank you.

15 So I think what we're going to do is we're going
16 to hold the calls at this time (audio cuts out) one second,
17 we're having a --

18 UNKNOWN SPEAKER: Hello?

19 CHAIR THOMAS: We're going to finish up on the
20 comments. And I don't know who's on the line, but you need
21 to mute yourself.

22 So, Maya, who do we have next?

23 MS. MORSI: Up next we have Amber Bauer with UFCW
24 Western States Council.

25 CHAIR THOMAS: Amber, can you hear us?

1 MS. BAUER: I can. Good morning Chair and
2 Standards Board Members. My name is Amber Bauer. I'm the
3 Executive Director of UFCW Western States Council. On
4 behalf of our 180,000 members I would strongly urge this
5 Board to adopt a non-emergency COVID-19 standard before the
6 current standards expire at the end of the year. And
7 making the following changes: Include exclusion pay back
8 into the standard; codifying the worker and employee
9 representative COVID-19 notifications, as required by AB
10 685, AB 654, and potentially AB 2693, which is currently on
11 the Governor's desk. Require employers to take action
12 related to ventilation, and aligning the definition of
13 outbreak with the CDPH to capture three or more people, not
14 employees.

15 As much as we all want COVID-19 to be over it is
16 just simply not the case. Workers are still experiencing
17 significant workplace exposures, especially workers who
18 work in crowded workplaces like meatpacking and food
19 processing, and workers who interact with the public like
20 grocery store workers and cannabis retail workers.

21 The summer surge of the COVID-19 variant was one
22 of the worst workplace surges since the start of the
23 pandemic. And UFCW workplaces and our members are worried
24 about the winter surge, especially as schools reopen with
25 the holiday surge of customers. Further weakening of the

1 COVID-19 standard or not readopting the standard will have
2 detrimental impacts across all workplaces, and will lead to
3 higher infection rates and potential deaths of frontline
4 essential workers.

5 UFCW has significant concerns with the proposed
6 standard eliminating exclusion pay, but requiring employers
7 to exclude workers. An economic roundtable report of
8 Kroger's grocery store workers highlighted how more than
9 two thirds of workers say they do not earn enough money to
10 pay for basic expenses every month. Among those workers 44
11 percent say they are unable to pay for rent, 39 percent say
12 they are unable to pay for groceries, and 14 percent say
13 they are homeless now or have been homeless in the past
14 year. Grocery store workers cannot afford to take unpaid
15 leave to recover from COVID 19. It will mean the difference
16 between workers being housed and homeless, further
17 worsening food insecurity by forgoing meals for themselves
18 and their families. And keeping the electricity on which
19 can be a death sentence in a heatwave or cold wave in the
20 winter.

21 Because of these economic situations workers are
22 returning to work while symptomatic, trying to hide their
23 COVID-19 symptoms or receiving last and final warnings from
24 their employers for coming to work sick. It is for these
25 reasons and more we strongly urge the board to include any

1 exclusion pay into the non-emergency standard. Thank you.

2 CHAIR THOMAS: Thank you.

3 Who do we have next, Maya?

4 MS. MORSI: Up next is Pamela Murcell with
5 California Industrial Hygiene Council.

6 CHAIR THOMAS: Pamela, can you hear us?

7 MS. MURCELL: Yes, I can. Likewise on your end?

8 CHAIR THOMAS: Yes, go right ahead.

9 MS. MURCELL: Thank you. Thank you, Chair Thomas
10 and Standards Board Members, all staff of the Division and
11 the Standards Board, very much appreciate your time to
12 address your group today. I'm Pamela Murcell. I'm the
13 current President of the California Industrial Hygiene
14 Council. And we definitely appreciate the opportunity to
15 comment on the proposed language for non-emergency COVID 19
16 prevention regulations.

17 We appreciate the challenges as everyone who has
18 participated in this process does appreciate the challenges
19 that this is presented for all of you.

20 We have -- I have actually just a couple of
21 general comments and then two specific issues. One is the
22 first, the general comments, the CIHC does appreciate the
23 proposed approach to address COVID-19 as a work-environment
24 hazard through the employers' injury and illness prevention
25 program. This is actually something that the CIHC had

1 proposed quite some time ago, so we are appreciative of
2 that consideration.

3 We also support the sunset clause, specifically
4 now stated at two years from the effective date of the
5 regulation. And that would be assuming that the non-
6 emergency prevention regulation is adopted to go into
7 effect January 1st.

8 Two specific issues: One is you've heard about
9 quite a bit already, that's the "close contact" definition.
10 That's in Section 3205 (b) (1). And some folks have said
11 that it talks about airspace. It actually doesn't, it
12 talks about indoor space. And the definition currently is
13 what we consider to be qualitative and not quantitative.
14 And without being quantifiable and not having quantifiable
15 criteria to define the quote unquote "shared indoor space,"
16 close contact is not enforceable. As written, sharing
17 indoor space is overly broad. It could have unintended
18 consequences by capturing close contacts, who in fact were
19 not exposed to a COVID-19 infection case.

20 Because Covid-19 is not (indiscernible) so shared
21 indoor space is not the issue. The issue is sharing
22 airspace in close enough proximity, and for a long enough
23 period of time to a person with an active infection, that
24 someone has been exposed to the virus. So with that
25 comment we highly recommend reevaluating the definition of

1 "close contact."

2 In regard to Section 3205(c)(1) this is kind of
3 the introductory paragraph, if you would, to the C as in
4 CAT (phonetic) section. And it states, "An employee is
5 potentially exposed to COVID-19 hazards, when other persons
6 whether or not the employee is performing an assigned work
7 task." And I'm going to emphasize, "The employer shall
8 treat all persons as potentially infected, regardless of
9 symptoms, vaccination status or negative COVID-19 test
10 results." Moving on to, "Covid-19 shall be considered a
11 hazard specific to an employee's job assignments and job
12 duties if those assignments and/or duties bring the
13 employee near other persons."

14 Our concern is that these statements imply all
15 persons are potentially infectious at all times, meaning
16 that even if someone does not have symptoms, has been fully
17 vaccinated, and/or has negative COVID-19 test results they
18 are still infectious. Applying the potential infectious
19 statement to what the employer is required to do, relevant
20 to close contact with a COVID-19 case, the employer would
21 essentially have to have all or almost all employees
22 quarantined. These statements imply that there's no end to
23 an infectious period despite the definition of "infectious
24 period" that's included in subsection 3203(b).

25 If an employer has to treat all persons as

1 infectious, potentially infectious regardless of symptoms,
2 vaccination status, or negative COVID-19 test results, and
3 comply with the COVID-19 regulation requirements, they
4 would shut their doors and everyone would go home. So we
5 have concern that this is potentially going to have
6 unintended consequences because the employer requirement,
7 if an employee has been close contact with a COVID-19 case,
8 is that they have to be quarantined and of course the
9 COVID-19 case as to be isolated. So this assumption of
10 potentially infectious, again, it's implying --

11 (Audio cuts out.)

12 CHAIR THOMAS: Oh, I think we lost you, Pam. Can
13 you hear us?

14 MS. MURCELL: -- or it is something that needs to
15 be reevaluated.

16 CHAIR THOMAS: Pam, you might want to wrap up
17 because you're starting to fade out. (No audible
18 response.) Okay, well then she faded.

19 So we'll go to -- we're going to do one more
20 caller. And then we're going to have a break for about 10
21 or 15 minutes. So who do we have, Maya?

22 MS. MORSI: Up next is Rebecca Ryan with Ohlone
23 College and Foothill College.

24 CHAIR THOMAS: So, Rebecca. Rebecca, are you
25 with us?

1 DR. RYAN: I am. Can you hear me?

2 CHAIR THOMAS: Yeah, you might want to turn up
3 your volume just a hair.

4 DR. RYAN: Okay, is this better?

5 CHAIR THOMAS: There you go.

6 DR. RYAN: Hi, my name is Dr. Rebecca Ryan. I'm
7 a public health professor and a COVID consultant for
8 Institutions of Higher Education, including Ohlone College
9 and Foothill College.

10 This comment relates specifically to Section I:
11 Reporting and Record Keeping, particularly related to
12 record-keeping of close contacts. I began working with the
13 Institutions of Higher Education (indiscernible) --

14 CHAIR THOMAS: Can you slow down just a little
15 bit please?

16 DR. RYAN: Sure, sure.

17 CHAIR THOMAS: Thank you.

18 DR. RYAN: I began working with institutions of
19 higher education in 2020, related to contact tracing work
20 in partnership with Santa Clara County, and also Alameda
21 County. Back then contact tracers were required to conduct
22 time-consuming, individual interviews with COVID-positive
23 people to identify close contacts similar to the proposed
24 language in the section. The requirement to notify each
25 individual close contact, in addition to acquiring their

1 names, contact information, etcetera, is a step backwards
2 in case investigation in contact tracing.

3 One of the most important lessons we learned that
4 was identifying close contacts individually was, like I
5 said, extraordinarily time-consuming, costly for the
6 employer because individual interviews take an enormous
7 amount of time, and overall ineffective in mitigating the
8 spread of COVID-19. Let me say that that again, it was
9 rarely effective in mitigating the spread of COVID-19.

10 So, because individual contact tracing has been
11 proven to be ineffective we know this because much of the
12 transmission is actually taking place outside of the
13 workplace as fellow commenters have said. This is
14 especially true in surges where investigations that
15 required close contact interviews, such as Omicron in
16 January, meant that there was significant lag in
17 investigating and even contacting anyone at all.

18 Further, we know that people's memories are
19 faulty, and that many COVID-positive people do not know the
20 names of people within their work environments, especially
21 in large organizations. Or even when they were
22 (indiscernible) many days prior, especially because there
23 were many days prior that they had to think about.

24 Again, expecting COVID-positive people,
25 especially those that are in the midst of a current

1 infection and may be experiencing symptoms that make
2 concentrating and recollecting difficult, to recollect the
3 names of each person they shared an airspace with is again,
4 time-consuming, costly and inadequate.

5 We supported and continue to support CDPH's
6 change from individual contact tracing to more of a group
7 tracing effect, which we were able to send email
8 notifications and notify people broadly of infections that
9 occurred in the workplace.

10 So we again recommend that maybe Cal/OSHA adopts
11 this language instead of individual contact tracing. We
12 recommend Cal/OSHA provide group language within the
13 adoption of group-tracing notifications, which again allows
14 for that large blanket notification so all that are in the
15 shared airspace to be notified and provided testing
16 opportunities. This allows the opportunity of
17 notifications without missing anyone that individual
18 contact tracing would definitely do.

19 We know that it's very expensive to employ
20 contact tracers, contact traces, conducting individual
21 interviews. And therefore subsequent notifications of
22 individual people, which is what is in the notice or in the
23 current language is very costly, and COVID funds have
24 significantly dried up, especially, higher institutions of
25 higher education.

1 CHAIR THOMAS: Could you wrap up please, Rebecca.

2 DR. RYAN: Sure.

3 CHAIR THOMAS: Thank you.

4 DR. RYAN: Sure. We know that we highly
5 encourage a group notification of a percentage of the
6 population rather than an individual. Thank you so much.

7 CHAIR THOMAS: Thank you.

8 So at this time, we're going to take a 15-minute
9 break. We'll reconvene -- make it 20 -- we'll reconvene at
10 noon. And so we're in recess right now. Thank you.

11 (Off the Record at 11:39 a.m.)

12 (On the Record at 12:00 p.m.)

13 CHAIR THOMAS: Thank you. We are back in session
14 and we are going to continue with phone calls. And I just
15 want to let our callers know that we're going to make sure
16 that we cut these comments to two minutes. And Maya will
17 tell you when you get on, also to remind you. It's getting
18 redundant, people are repeating, so just hit the main
19 points and do it in two minutes and then we'll get through
20 this. We still have a few more commenters.

21 So Maya who do we have up next?

22 MS. MORSI: Up next is Len Welsh, association is
23 Western Steel Council. Len, we've allotted two minutes for
24 your comment.

25 CHAIR THOMAS: Len, are you there?

1 MR. WELSH: I'm here. Can you hear me okay?

2 CHAIR THOMAS: Yeah, go ahead.

3 MR. WELSH: Well let me echo what a lot of other
4 people have said, your very hard work on this historic
5 issue has been much appreciated. I have to say I haven't
6 agreed with much of what you've done, but I certainly
7 appreciate your effort and your good intentions. And my
8 perspective comes from one who was with Cal/OSHA for
9 decades and so I have a little bit of a different
10 perspective than you do.

11 By the way, Len Welsh, representing the Western
12 Steel Council, the California Hotel and Lodging
13 Association, Fresh Harvest, and most of all myself.

14 I also wanted to say that I think Bruce Wick had
15 some very important things to say, I hope you listened
16 carefully to him. So also did Michael Miiller and Bryan
17 Little. We really did not need a COVID standard, we don't
18 need one anymore. We never did. As Bruce pointed out 3203
19 was working just fine. And in the beginning when Cal/OSHA
20 was in compliance-assistance mode, that's when we got the
21 most effective work done.

22 The problem with this entire paradigm is the
23 assumption that all employers are the same. They're all
24 potential law breakers, they all need to be swept in the
25 trolling net of regulation. And it simply is not the case.

1 This approach has made enemies out of a lot of businesses
2 who should be your allies. We have sort of lost the way in
3 trying to target the underground economy and the real bad
4 actors by wasting our time going after mostly compliant
5 employers who are good corporate citizens. All they want
6 to do is find the most effective way to deal with workplace
7 hazards, because when they don't they lose business and
8 their profits fail. They have probably more incentive than
9 any of the regulatory agencies do to deal with this problem
10 effectively because it's their livelihood.

11 And you know --

12 CHAIR THOMAS: You're right up on two minutes,
13 Len, if you could wrap up please? Thank you.

14 MR. WELSH: Well, I think I said it. We don't
15 need a standard. You folks really should be thinking about
16 how the standard meshes with enforcement and how very
17 scarce enforcement and rulemaking resources can be directed
18 to where they're most needed. COVID is not what's needed
19 right now, 3203 and Department of Health advisories are all
20 we need. They are all we have ever needed. Thank you.

21 CHAIR THOMAS: Thank you.

22 Who do we have up next, Maya?

23 MS. MORSI: Up next is Denise Kniter with L.A.
24 County Business Federation.

25 CHAIR THOMAS: Denise, can you hear us? (No

1 audible response.) Denise, can you hear us?

2 MS. KNITER: Yes, can you hear me?

3 CHAIR THOMAS: Yeah, go right ahead, please.

4 MS. KNITER: Okay. Well, first of all, I really
5 appreciate the Board's work on this very difficult issue.
6 I know that this has been -- not to use an overused phrase,
7 but unprecedented. And as L.A. County BizFed represents
8 over 220 organizations that represent over 400,000
9 employers, that's over 5 million employees in the greater
10 L.A. County area. We've been engaged on this topic with
11 you. Prior to this hearing obviously, we've been giving
12 ongoing comments. So I'd just like to echo some of the
13 statements that were previously made that reflect our
14 memberships' concerns.

15 So we are grateful for many of the adjustments
16 that are being made. Primarily one of our ongoing key
17 issues is that there are different regulations and
18 standards between CDC, CDPH, Cal/OSHA and other regulating
19 bodies. So we really appreciate the alignment. However,
20 and we have concerns as other members have already stated,
21 with the two-year sunset period that is seemingly
22 arbitrary. We hope that some of the adjustments being
23 considered are data-driven and fact-driven. And we hope
24 that there's a period for reconsideration during that two-
25 year sunset period.

1 In addition, we appreciate the removal of
2 exclusionary pay.

3 And we'd like to echo previous statements on
4 there being new tools, new medication, and treatment
5 available for COVID. While there are still different waves
6 of COVID and obviously people are concerned about the
7 winter we have a lower infection rate, better
8 hospitalization rate, different tools, and people are aware
9 of how COVID is spreading. As was previously stated, the
10 workplace is no longer the most major contributor of
11 infection rates. It is socializing. And so we don't feel
12 that the burden of managing --

13 CHAIR THOMAS: Two minutes.

14 MS. KNITER: -- the pandemic should fall primarily
15 on employers. So we appreciate your consideration. I hope
16 that the comments being made today are reflected in any
17 further edits. And thank you for your time.

18 CHAIR THOMAS: Thank you.

19 Who do we have next, Maya?

20 MS. MORSI: Up next is Zachary O'Hanen with
21 County of Humboldt Human Resources.

22 CHAIR THOMAS: Zachary, can you hear us?

23 MR. O'HANEN: Yes. Can you hear me?

24 CHAIR THOMAS: Yes, go right ahead. Two minutes,
25 please. Thank you.

1 MR. OHANEN: Yes, I'll make it brief. I'm kind
2 of echoing what everyone else is saying, supportive 100
3 percent of protecting workers and their health. However,
4 contact tracing in general does not seem to be effective in
5 any way. It's an extremely high burden on employers. In
6 the data that we've looked at our agency, which isn't a
7 massive agency, but we're a rural agency with not a lot of
8 resources, what seemed to be the biggest determining factor
9 in stopping COVID cases was masks. When we saw masks come
10 off cases skyrocketed. And with all the health orders that
11 are ever-changing, masking doesn't seem to be the thing
12 that's going to change. And they're gone, and people are
13 not going to wear masks anymore. And us doing this COVID
14 contact tracing is a massive burden and it's not actually
15 doing anything. It's not stopping the amount of cases that
16 we're seeing, and we're seeing that in our data.

17 Outside of that, just hitting on the fact that
18 exclusion pay has been extremely hard to manage from the
19 perspective of whether it is workplace-related or not and
20 the burden on the employer to determine if it was or not,
21 because it is seen now more as an environmental or non-
22 workplace issue.

23 So those are all the comments I have. We would
24 really like to see contact tracing not be a thing.

25 CHAIR THOMAS: Thank you very much, appreciate

1 your comments.

2 Who do we have next, Maya?

3 MS. MORSI: Up next is Mark Ramos with UFCW 1428.

4 CHAIR THOMAS: Mark, can you hear us?

5 MR. RAMOS: I can. Can you hear me?

6 CHAIR THOMAS: Yes, go right ahead.

7 MR. RAMOS: Perfect, thank you. Thank you today,
8 all of you, for taking up this very serious matter. I just
9 want to urge you to please keep exclusion pay in the non-
10 emergency standards. My name is Mark Ramos, President of
11 UFCW Local 1428 in the San Gabriel Valley. We represent
12 about 4000 workers who work in the service sector in
13 grocery stores, healthcare, and cannabis dispensaries.

14 Seventy percent of our members are part-time. If
15 any of our members was to miss a week or two weeks of work
16 their healthcare is based on their hours of work, they
17 would lose their healthcare. Many of our members have
18 preexisting conditions or they have a sick child. And we
19 actually have some workers who work in our industry,
20 because it provides healthcare for their family. If they
21 were to lose their healthcare they would then become
22 vulnerable to either skipping taking their medication,
23 trying to figure out different ways, taking out payday
24 loans, trying to access cash.

25 This is about people. I understand some folks

1 have a burden on business, but this is about people. And
2 I've heard so many people on here who have the ability to
3 work remotely. Our members don't. We are entering the
4 busiest season for retail workers, especially grocery
5 retail workers. Our members see people, the customers, who
6 come in to buy NyQuil and DayQuil before they go to the
7 emergency room. When they're probably at their most
8 infectious time our members are engaging with these folks.

9 We happen to be between L.A. County and San
10 Marino County, two counties who have a very different
11 outlook on how to protect workers and how to enforce COVID
12 standards. Our members are vulnerable. Our members just
13 want to go to work to provide for their family, not get
14 sick. Nobody wants to get sick at work and stay home and
15 take advantage of something. Our members went from heroes
16 to punching bags and now they get yelled at over masks.
17 All these different things are happening in real time in
18 the stores on the ground.

19 All of you who have been in the grocery store --

20 CHAIR THOMAS: Two minutes, sorry.

21 MR. RAMOS: -- you see how crazy it is. Please,
22 please support this and please keep exclusion pay in the
23 non-emergency standards.

24 CHAIR THOMAS: Thank you very much.

25 Who do we have next, Maya?

1 MS. MORSI: Up next is Nathan Williams with
2 Cannabis Worker.

3 CHAIR THOMAS: Megan, can you hear us?

4 MR. WILLIAMS: Good morning, excuse me, Nathan.
5 Can you guys hear me?

6 CHAIR THOMAS: Oh, sorry. Sorry, Nathan.

7 MR. WILLIAMS: Yeah, all good, all good, all
8 good. But I am being heard, so perfect. I just want to
9 make sure. I was having some difficulties chiming in
10 earlier.

11 First of all, thank you so much for allowing me
12 to speak. I wish all of you the best health and welfare.
13 Thank you very, very much for putting these regulations in
14 place to help protect us over the years. It has been a
15 crazy, crazy time. I'm actually here mostly just to speak
16 upon -- (Audio cuts out.) Hello?

17 CHAIR THOMAS: Oh, you still there?

18 MR. WILLIAMS: Okay, there we go. Okay, yeah, I
19 cut out for a little bit. I was hearing some fuzz. All
20 right, there we go. Cool.

21 I'm actually here to speak about exclusion pay.
22 From my personal standpoint, like being in the cannabis
23 industry and working there I truly believe employers should
24 continue to pay for it, exclusion pay. I believe that it
25 is just actually detrimental to watch some of my coworkers

1 get sick and have to lose that pay, lose that money.

2 And the reason I personally believe that it's
3 such a huge thing for employers is where I work -- there's
4 a reason why I didn't mention where I worked -- the
5 regulations and guidelines have gotten very relaxed. And
6 I'm fully vaccinated. I got the vaccine from the start. I
7 actually had a fever, stayed home, got all that cleared,
8 came back to work, was totally okay, had a mask on. And
9 the people who weren't wearing masks literally got COVID,
10 even though I had tested negative for COVID like the past
11 two times. And I am starting to see a lot of relaxed
12 guidelines, a lot of forgotten guidelines. And I truly
13 believe to protect our workers safety, to protect their
14 health, and protect their paychecks that we need to keep
15 this exclusion pay there. Thank you so much for your time,
16 council.

17 CHAIR THOMAS: Thank you.

18 Who do we have up next, Maya?

19 MS. MORSI: Up next is Jeff Hall with Local 770,
20 CVS.

21 CHAIR THOMAS: Jeff, are you with us? (No
22 audible response.) Jeff Hall? Jeff, are you there?

23 MR. HALL: Yes I am, sorry. I had to unmute
24 someone.

25 CHAIR THOMAS: Star 6 and you've got it, go

1 ahead.

2 MR. HALL: I apologize. I would just like to
3 thank the members of the Board for taking the time to
4 listen to us today. I want to encourage, please keeping
5 the exclusion pay. I am an essential worker. I work at a
6 pharmacy. And I can tell you that the disease we're
7 dealing with COVID is not going away. In the last 2 months
8 of the 12 people at my pharmacy, 5 of them have come down
9 for with COVID. They've all had to -- without the
10 exclusion pay they would have to make the difficult choice
11 of, "Do I potentially go and infect the public," that they
12 are there to protect and to serve? Or do they pay their
13 rent. By keeping the exclusion pay, you're allowing them
14 to continue to put food on their table while protecting the
15 public, which is why we've been doing what we've been doing
16 for the last several years.

17 Please consider that in your -- please consider
18 that when you make your decisions today that this will
19 affect people, it will affect lives. Not only the lives of
20 the workers, but the lives of the people the workers are
21 there to protect. Thank you for your time. I appreciate
22 it.

23 CHAIR THOMAS: Thank you, Jeff.

24 Who do we have up next, Maya?

25 MS. MORSI: Next is Chris Myers with California

1 School Employees Assoc -- (Audio cuts out.)

2 CHAIR THOMAS: Chris Myers, can you hear us?

3 MR. MYERS: Great, thanks. Can you hear me?

4 CHAIR THOMAS: Yeah, go right ahead.

5 MR. MYERS: Perfect. Good afternoon. My name is
6 Chris Myers and on behalf of the California School
7 Employees Association, representing over 250,000 classified
8 school members across our state.

9 First, I just wanted to thank you for all the
10 hard work over these last couple of years. But I want to
11 also share our concerns with our brothers and sisters in
12 labor on a few points.

13 So first of all, with all the uncertainty still
14 around COVID-19 and the possibility of new variants we were
15 shocked to learn that the update to the Emergency Temporary
16 Standard deleted exclusion pay. As we saw last winter with
17 the Omicron variant, the proposal to cut workers off from
18 exclusion pay on January 1st seems too fast and too soon.
19 Without exclusion pay, half of our members who make less
20 than \$30,000 a year will be forced to hide their symptoms
21 or a positive test, and come to work in order to make ends
22 meet.

23 Additionally, the readoption should retain the
24 requirement to notify employees and their representatives
25 of COVID-19 cases and close contacts, while also requiring

1 employers to continue to report worksite outbreaks to local
2 health departments. We feel that providing more
3 information, not less, should be the standard that we
4 adhere to.

5 And finally, the definition of "outbreak" should
6 align with the CDPH's definition.

7 Our members are on the front lines and as much as
8 we may want COVID-19 to be a distant memory we can learn
9 from the past and know that the winter's coming and we
10 should do everything to protect our workers, but also our
11 community. Thank you.

12 CHAIR THOMAS: Thank you.

13 Who do we have next, Maya?

14 MS. MORSI: Up next is Matt Bell with Secretary-
15 Treasurer, UFCW 324.

16 CHAIR THOMAS: Matt, can you hear us? Matt, can
17 you hear us? If you're on a phone do *6. Matt? (No
18 audible response.)

19 Okay, we'll move on to the next. And Matt, hang
20 on, we're going to get you later. Go ahead, Maya.

21 MS. MORSI: Up next is Judith Neidorff, a member
22 of the public.

23 CHAIR THOMAS: Judith, can you hear us?

24 MS. NEIDORFF: Yes, I can. Can you hear me?

25 CHAIR THOMAS: We can. Go right ahead.

1 MS. NEIDORFF: Fantastic. So first, I want to
2 say this is going to be a little bit weird, because I'm not
3 going to be giving a COVID comment. So my name is Judith
4 Neidorff and I want to emphasize that I'm commenting as a
5 private citizen today. These views are entirely my own and
6 do not represent any views that may be held by my company
7 or a union. I'd also like to state that this is a
8 relatively informal comment due to the fact that I was
9 originally planning to wait until next month's meeting to
10 submit this comment.

11 And recently a judge in Texas ruled that two
12 medical provider companies could avoid providing medical
13 insurance to their staff that includes HIV pre-exposure
14 prophylactics due to their religious beliefs. And that
15 made me realize that the bloodborne pathogens standard has
16 developed a gap that it may be time to address.

17 So currently, the bloodborne pathogen standard
18 requires an exposure control plan to be developed by each
19 employer that covers methods of compliance for employees
20 with blood or OPIM exposures. And it also contains
21 requirements for employees to be offered hepatitis B
22 vaccination. That makes sense because when the standard
23 was developed this was the only vaccination or pre-exposure
24 prophylactic that was available for the bloodborne
25 pathogens identified in the standard.

1 However, one thing that the standard doesn't
2 address that's applicable now, is offering employees
3 additional applicable bloodborne pathogen vaccinations and
4 pre-exposure prophylactic after they're developed and
5 approved by the FDA. Since I came to this realization so
6 recently since this all just happened at the end of last
7 week, I haven't had the opportunity to develop their
8 proposal further than these initial thoughts. So I plan to
9 continue investigation on my end. And once I have
10 something a little more coherent, and with some proposed
11 findings and language I will be submitting a written
12 comment to the Board. Thank you.

13 MS. SHUPE: Judith, this is Christina Shupe with
14 the Standards Board. I'd like to encourage you to reach
15 out to our staff at oshsb@dir.ca.gov. As you move forward
16 with your process we may be able to provide some
17 assistance.

18 MS. NEIDORFF: Thank you so much.

19 CHAIR THOMAS: Thank you, Judith.

20 Who do we have next, Maya?

21 MS. MORSI: Up next is Cynthia Rice with
22 California Rural Legal Assistance.

23 CHAIR THOMAS: Cynthia, can you hear us?

24 MS. RICE: Yes. Good afternoon. Can you hear
25 me?

1 CHAIR THOMAS: Yes, good afternoon.

2 MS. RICE: I won't repeat anything, but I do want
3 to join in the excellent comments of the other worker
4 advocates who have already presented today. I do want to
5 take just my two minutes to point out some misleading or
6 misunderstood perhaps today.

7 First of all, 3203 was not working just fine.
8 Prior to the implementation of the emergency regulation
9 enforcement was a challenge. And even more importantly,
10 worker understanding was nonexistent. The IIPP is not
11 going to replace a clear standard that workers can rely on
12 when requesting protective equipment and employers will
13 understand when complying with the rules.

14 Second, 2693, the signing of 2693 will not impact
15 the regulation as it is currently drafted or with respect
16 to any changes that are urged by worker advocates. That
17 2693, like the emergency regulation, addressed the
18 emergency or the immediate need to take emergency action.
19 Staff and this Board have to be commended for doing exactly
20 the same thing and then appropriately pivoting as we got
21 more science. That is where you are now in developing a
22 non-permanent, non-emergency regulation. So 2693 and the
23 sunset provisions and elimination of some specifics is not
24 inconsistent with that and doesn't create an APA problem.

25 Additionally, the Workers' Compensation numbers

1 that have been repeatedly raised during the course of these
2 hearings just are not relevant, particularly with respect
3 to low-wage workers. The charge of this Board is not to
4 reduce Workers' Compensation claims. Of course, that's
5 what we want. The charge is to protect workers from issues
6 of safety that are issues that create a hazard to their
7 health. And that's what this non-emergency standard does.

8 CHAIR THOMAS: Two minutes, please wrap up.

9 MS. RICE: Workers (indiscernible) in particular
10 do not report Workers' Compensation.

11 Also, housing is not an optional benefit that's
12 provided, nor is transportation for most of the workers
13 that are provided employer housing these days, particularly
14 in agriculture. That is a particular requirement of a
15 federal program. It is not the largess of the employer,
16 but it does create larger risks due to confined spaces and
17 extended exposure. So we would encourage you to keep those
18 standards with respect to housing and transportation.

19 And I join, of course, in the comments about the
20 exclusion pay. And thank you very much.

21 CHAIR THOMAS: Maya, who do we have next?

22 MS. MORSI: Up next is Cassie Hilaski with Nibbi
23 Brothers.

24 CHAIR THOMAS: Cassie, how are you doing?

25 MS. HILASKI: Good. How are you all doing? Can

1 you hear me?

2 CHAIR THOMAS: Good, good.

3 MS. HILASKI: Excellent. So today I primarily
4 wanted to thank the Board and the Division for all your
5 hard work on the COVID regulations. I know it hasn't been,
6 and will continue not to be, an easy job. Personally I
7 think at this point the biggest challenge is going to be
8 figuring out how to make the transition from pandemic to
9 endemic. At some point the fatality and hospitalization
10 rates are going to normalize to levels similar to the flu
11 and pneumonia. When that happens we will really need to
12 have a quick exit strategy in place as everyone, employees
13 included, are extremely tired of COVID protocols. At least
14 I can speak for my employees who share that feedback with
15 us that they really are tired.

16 Of course, I'm under no illusion that we're close
17 to endemic status currently. But it's possible that we
18 could get to there some time in 2024, perhaps, and the
19 current non-emergency regulations are scheduled to be in
20 place through the end of 2024. So I think that's just
21 something to consider regarding timing. And I think Helen
22 Cleary had some very good suggestions on that point.

23 So thank you again for your time and all of your
24 hard work, it is much appreciated.

25 CHAIR THOMAS: Thank you, Cassie.

1 Who do we have next, Maya?

2 MS. MORSI: Up next is Christina Hildebrand with
3 a Voice for Choice Advocacy.

4 MS. SEPULVEDA-BURCHIT: Hi, this is Kristie
5 Sepulveda-Burchit. I'm speaking on behalf of Christina
6 Hildebrand, who couldn't be on the phone any longer.

7 CHAIR THOMAS: Go right ahead.

8 MS. SEPULVEDA-BURCHIT: Okay, so our comment is
9 not to have a permanent standard specific to COVID. If you
10 move forward with the standard, to have a reassessment
11 every six months because the virus, along with vaccination
12 treatments as well as CDC and CDPH guidance is ever-
13 changing. If we look back six months we are in a very
14 different position to the previous six months. CDC and
15 CDPH guidance, guidelines have already made the standard
16 outdated. The standard needs to be updated to stay in line
17 with CDPH and CDC guidance that is, again ever frequently
18 changing. Thank you very much.

19 CHAIR THOMAS: Thank you.

20 Maya, who do we have up next?

21 MS. MORSI: Up next is Michael Pimentel with
22 California Transit Association.

23 CHAIR THOMAS: Michael, can you hear us?

24 MR. PIMENTEL: I can. I hope you can hear me.

25 CHAIR THOMAS: We can, go right ahead. Two

1 minutes, please.

2 MR. PIMENTEL: All right, thank you Mr. Chair and
3 Members. Mike Pimentel, Executive Director of the
4 California Transit Association representing 220 public and
5 private sector organizations including 85 transit and rail
6 agencies.

7 Now first I do want to align myself to the
8 comments that were registered earlier in today's discussion
9 by Mr. Moutrie of CalChamber, and others who have raised
10 concerns with the proposed regulation. Here in the
11 shortest form I'll just note that we find it troubling that
12 there was dissonance between the general relaxation of
13 federal and state and public health organizations,
14 protocols as they applied to the general public, and what
15 is being presented here relative to employers. And in
16 effect, this descendant approach is one that is going to
17 shift the financial responsibility, the public health
18 responsibility of addressing COVID-19 outbreaks on
19 employers, including public transit agencies.

20 And so we have submitted a letter that goes into
21 a lot of detail on our specific concerns. But at the
22 highest level, just note that we are calling for the Board
23 to one, provide a definition of "same indoor airspace," to
24 establish some clear spatial parameters that are sensitive
25 to the practical implementation needs of employers.

1 Two, we're asking for an expansion of the
2 exception to close contacts to also include fully
3 vaccinated and boosted employees, with the boosted
4 employees being ones that have received the most recent
5 bivalent booster shot.

6 Three, we're asking for a revision to the
7 definition of "outbreak" and "major outbreak" to account
8 for workplace size as many others have raised.

9 And then finally, are requesting a modification
10 of the testing requirements to allow for employers to only
11 make tests available upon request. What we're finding is
12 that many agencies are establishing large operations to
13 make testing available to their employees, and it isn't
14 being utilized. And so that is one that comes with extreme
15 cost to the agencies and very little uptake from the
16 workforce. Again, there may be an opportunity there for
17 making that something that is not permissive, but rather
18 something that is upon request.

19 And so with that, again our letter goes into more
20 detail and I want to thank you for your time this
21 afternoon.

22 CHAIR THOMAS: Thank you, Michael.

23 Who do we have on the line now, Maya?

24 MS. MORSI: Up next is Beth with SEIU California.

25 MS. MALINOWSKI: Hi. Good afternoon, everyone,

1 Beth Malinowski with SEIU California. Thank you for having
2 this forum today, including this space to talk about
3 something that's so important to our workers. SEIU is so
4 proud to represent workers across many settings throughout
5 the state of California. And really just want to start off
6 by seconding the remarks made by my colleagues, the Labor
7 Fed, UFCW, CSEA (phonetic) and our other labor colleagues.
8 As you can see, there's a lot of unity across our diverse
9 industries today on the importance of the standard. And we
10 all stand in alignment and the readoption of the COVID-19
11 prevention standard.

12 As my colleagues have shared, we're particularly
13 concerned about the potential of the exclusion pay
14 deletion. SEIU stands that exclusion pay must be returned
15 into the final prevention standard.

16 Additionally, I want to comment on the importance
17 of also potential language regarding notifications, as well
18 as the importance of having synergy with the CDPH
19 definitions.

20 All of these matters have incredible public
21 health implications. We have the reality that, depending
22 on what moves forward this situation will be actually
23 encouraging under-reporting, and potentially be encouraging
24 the creation of job-based outbreaks where we don't want to
25 see that happen of course. Really, at the end of the day

1 the majority of working Californians are spending the
2 majority of their working hours at work sites where today
3 COVID-19 is still a reality.

4 I think when we think about our decision today,
5 we also need to think about it in the context of not just
6 COVID-19, but the potential precedent setting here as we
7 both look at what's happening in environments regarding
8 monkey pox. And just the reality that we're having a
9 global environmental shift that is leading to greater
10 transmission of infectious disease. And decisions and
11 discussions we're having today have implications on future
12 policies we might be needing to make moving forward to not
13 only address COVID-19, but to make sure we have a more
14 permanent and broader infectious disease standard. A
15 conversation that, of course, labor would invite.

16 So again I want to thank you all for the time
17 today. Again, we stand with our labor colleagues, and
18 really looking to see a strengthened readopted COVID-19
19 standard. And look forward and hope for future
20 conversations around a permanent, more broad strategy
21 around infectious disease. Thank you.

22 CHAIR THOMAS: Thank you.

23 How many callers do we have left, Maya, at this
24 time?

25 MS. MORSI: We have about maybe like five to

1 eight.

2 CHAIR THOMAS: Go ahead. Let's see who we have
3 next.

4 MS. MORSI: Up next is Robert Blink, MD, with
5 Worksite Partners Medical Group.

6 CHAIR THOMAS: (Overlapping colloquy.) Robert,
7 can you hear us? I can hear you. Go ahead.

8 DR. BLINK: Excellent. So good afternoon,
9 everyone. And greetings to my fellow colleagues and the
10 Standards Board and thank you Mr. Chairman and Members and
11 staff for all your hard work. I'll be brief. I'm an
12 occupational medicine physician in private practice, and I
13 advise clients around the country on COVID issues as well
14 as many other things. I'm speaking only for myself today,
15 not for any other group I'm with.

16 The first comment I have is regarding monkeypox.
17 So a little bit of an off topic, just to ask the Board to
18 please keep it on your agenda. Monkeypox in general is not
19 aerosol-transmissible, and keeping it as part of the ATD
20 standards is a tremendous burden on healthcare
21 institutions. And I would encourage the Board to revisit
22 the inclusion of monkeypox in the ATD standards. It's just
23 not appropriate.

24 And regarding COVID, I just want to make some
25 general comments. Number one, we are now off the map. Up

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1 until about six months ago, we had pretty good standards
2 for what risk factors were, how to do tracing, etcetera.
3 With the advent of home testing and the new variants we no
4 longer really have good standards. Two years from now we
5 will be in a very different place than we are now. And we
6 are now navigating this middle ground where, frankly nobody
7 knows just what to do. So if you feel confused, join the
8 club.

9 Some comments on the specific standards being
10 proposed. Number one, the making this a two-year standard I
11 think is unwise. I think that things will be different a
12 year from now than they are to date, and another revision
13 will probably be appropriate. It might be the same, we
14 don't know. But I think that one year would probably be
15 more appropriate.

16 Next is the utility of tracing contacts at the
17 employer level. Look, employers are not equipped to do
18 this well. It's a tremendous burden, and as many others
19 have said the value of this is actually quite low. So I
20 have a --

21 CHAIR THOMAS: Two minutes, Bob, if you could
22 wrap up in the next few seconds.

23 MR. BLINK: And then finally, a special
24 consideration for employers who have occupational medicine
25 consultation or medical staff onsite, I think should be

1 given.

2 Then finally, just for all the 170 people on this
3 call, please get your Omicron vaccine, the so-called
4 bivalent. Because that makes a big difference. If you
5 haven't gotten your Omicron vaccine, please do so along
6 with your flu. Thanks for your time.

7 CHAIR THOMAS: Thanks, Bob, appreciate it.

8 Who do we have next, Maya?

9 MS. MORSI: Next is Alex Torres with Bay Area
10 Council.

11 CHAIR THOMAS: Is that Alec?

12 MS. MORSI: Alex Torres --

13 CHAIR THOMAS: Alex, sorry. (Overlapping
14 colloquy.)

15 MS. MORSI: -- with Bay Area Council.

16 MR. TORRES: Hi, Members, can you hear me?

17 CHAIR THOMAS: Yeah, go ahead.

18 MR. TORRES: Excellent. Well, thank you so much.

19 I'll be brief. Alex Torres, Director of State Government
20 Relations with the Bay Area Council. We represent 300 of
21 the largest employers in the Bay Area. I think I can't add
22 much to what's already been said. I would align our
23 comments with CalChamber, L.A. BizFed, the Restaurant
24 Association on some of the concerns around here.

25 Looking at the Bay Area there are a lot of

1 businesses that have yet to bring employees back. And
2 that's really hurting downtowns. A lot of businesses are
3 very challenged. And Mr. Pimentel from the Transit
4 Association made some comments on some challenges with
5 their employees, but there's also concerns around
6 ridership. We really are seeing declines in our downtowns
7 in the Bay Area generally. There's a lot of remote work
8 that can be performed. And so that's creating challenges in
9 terms of the businesses that are situated around where
10 those once-thriving commercial corridors existed. So we
11 would caution this body to consider those ramifications.
12 And we really are hopeful to see some of these numbers pick
13 up around returned office numbers. And also just the
14 ancillary effects: increased ridership on transit,
15 increased patronage of businesses around those commercial
16 corridors.

17 So we would just make, again, align our
18 substantive comments with these other groups and urge you
19 to consider that when making these decisions. Thank you so
20 much, appreciate it.

21 CHAIR THOMAS: Thank you.

22 Who do we have next?

23 MS. MORSI: Up next is Sabrina Lockhart with
24 California Attractions and Parks Association.

25 CHAIR THOMAS: Sabrina, can you hear us?

1 MS. LOCKHART: I can, thank you. Good afternoon.
2 I'm Sabrina Lockhart, the Executive Director of the
3 California Attractions and Parks Association. Like many
4 others, thank you so much Board and staff for your hard
5 work on this issue. We appreciate the positive changes
6 made to the draft non-emergency regulation, streamlining
7 rules, and providing flexibility. Our members were among
8 the first to close and the last to reopen during the
9 pandemic. Safety is at the core of everything that we do,
10 so we have a unique appreciation for protecting our
11 workforce and guests.

12 Luckily, as the World Health Organization
13 Director stated yesterday the end of the pandemic is in
14 sight. Recognizing the advances in science and how much
15 has changed over the past two years about our understanding
16 of COVID-19, I align our comments to those already
17 presented by my colleagues in the business community,
18 specifically the California Chamber of Commerce. We joined
19 written comments submitted to the Board, so in the interest
20 of time I just want to underscore our primary concerns.

21 First, the confusing change in definition
22 regarding close contact. This has created a lot of
23 confusion for our members, for our employees, for our
24 guests, for employers. So we ask that work is done with
25 CDPH to restore the previous definition.

1 We would also appreciate aligning to pending
2 legislation, AB 2693 as it relates to notification. Our
3 members, like many other employers are dedicating
4 significant time and resources to documentation and contact
5 tracing. This conflicts with CDPH and CDC guidance. And
6 as others have already stated it's ineffective in stopping
7 the spread of the disease.

8 So if the Board chooses to extend COVID workplace
9 regulations we hope that the changes outlined in our
10 written comments are made. Thank you for the opportunity
11 to comment.

12 CHAIR THOMAS: Thank you.

13 Maya, who do we have next?

14 MS. MORSI: Up next is Eddie Sanchez with the
15 Southern California Coalition for Occupational Safety and
16 Health.

17 CHAIR THOMAS: Eddie, can you hear us?

18 MR. SANCHEZ: Yes. Thank you.

19 CHAIR THOMAS: Go right ahead.

20 MR. SANCHEZ: Hello, everyone. I want to thank
21 the Board staff for your hard work on this and considering
22 our comments today. My name is Eddie Sanchez, with the
23 Southern California Coalition for Occupational Safety and
24 Health, or SoCalCOSH for short. Our organization is
25 founded on the principle that workplace deaths, injuries

1 are preventable. And we work to undo those workplace
2 deaths and injuries or the root causes of those deaths and
3 injuries in the workplace.

4 CHAIR THOMAS: Can you slow down just a little
5 bit?

6 MR. SANCHEZ: Sure. Yeah.

7 CHAIR THOMAS: Just slow down. Yeah, thank you.

8 MR. SANCHEZ: Absolutely. And also reflected on
9 your suggestion today to avoid repeat comments I'll try to
10 keep it brief and not repeat too much. But I am here to
11 advocate for the inclusion of, excuse me, the inclusion of
12 exclusion pay -- that was like a weird way to say it
13 (Laughter.) -- for the non-emergency standard. We know
14 that's very important to everyone here today, and I just
15 wanted to echo that.

16 So not to repeat too much, I did want to address
17 comments that were made earlier regarding the reduction in
18 fatality and hospitalization and the lack of data. I
19 wanted to point out that there's research on a similar
20 respiratory disease, the 2003 SARS, which showed long-
21 lasting physiological impacts on the respiratory disease of
22 survivors. The research used a six-minute walk test that
23 showed that there are physical impairments years after
24 infection.

25 What was shocking in this research was findings

1 that showed that folks who were infected also suffered from
2 depression, post-traumatic stress disorders, and anxiety
3 requiring psychiatric support. And here now folks are
4 experiencing physiological challenges from COVID that
5 originated back in 2020 two years ago. And I feel like
6 everyone here knows someone with an experience, story, or
7 an example of what's being called long COVID regardless of
8 vaccination, or boosting.

9 All of that is to say that the real impacts of
10 COVID are still being understood and the data shows that.
11 And we need to address the root cause. We need vital
12 controls to protect workers from COVID, like ventilation,
13 exclusion play, and then some. We should all try -- we
14 should try all reasonable and possible measures to protect
15 our loved ones, families, and communities.

16 Separately, I also wanted to thank and echo Mr.
17 Stephen Knight's comments earlier on the need for an indoor
18 heat standard.

19 And lastly, I just want to thank you again,
20 Board, staff, and Division for your time and consideration
21 on this effort. We know you'll make the best decision to
22 protect the workers and working-class families. I'm happy
23 to send over the reference research over to you at any
24 time. Thank you.

25 CHAIR THOMAS: Thank you.

1 Maya, who do we have up next?

2 MS. MORSI: Next is Jane Thomason with California
3 Nurses Association.

4 CHAIR THOMAS: Jane, can you hear us?

5 MS. THOMASON: Yeah, can you hear me?

6 CHAIR THOMAS: Hello, Jane?

7 MS. THOMASON: Can you hear me?

8 CHAIR THOMAS: Yeah, you might want to turn your
9 volume up a little.

10 MS. THOMASON: Is that better?

11 CHAIR THOMAS: A little bit. Yeah, go ahead.

12 MS. THOMASON: Okay. Thank you so much. Jane
13 Thomason with the California Nurses Association. I would
14 like to express CAN's support for the need for an ongoing
15 or permanent COVID regulation in order to protect
16 California's workers from the Coronavirus. However, as
17 noted in the coalition letter submitted to the Board the
18 deletion of exclusion pay is extremely problematic and
19 harmful, and we strongly encourage the Board to include
20 exclusion pay in the non-emergency COVID regulation.

21 I think it's important to point out that the
22 COVID pandemic is not over. The virus is still spreading
23 at high levels, reinfections are occurring more and more
24 often, and people continue to die each day from COVID.

25 In August, the CDC rolled back its isolation and

1 quarantine guidance allowing people who could be infected
2 not to quarantine and people who are still infectious to
3 leave isolation early. These, amongst others, weakened
4 public health measures meaning that California's workers
5 are still at risk of COVID exposure in the workplace.

6 And while the COVID vaccines reduce the risk of
7 severe infection and death and of course, CNA encourages
8 anyone who can to be vaccinated, the data indicates that
9 vaccines do not effectively prevent infection or prevent
10 long COVID. And I think this threat of long COVID is one
11 that the Board should take seriously when you're
12 considering and crafting occupational safety and health
13 regulations.

14 There are dozens and dozens of studies that have
15 confirmed that long COVID posts a serious threat to public
16 and worker health, from higher rates of cardiovascular
17 disease to new onset diabetes, lung disease, cognitive
18 decline, and damage to almost every organ system.
19 Currently long COVID is estimated to be keeping 2 to 4
20 million workers in the U.S. out of work and many, many,
21 many more than that have reduced their work hours and
22 experienced disruptions in their home and other activities.

23 The risk of long COVID increases with each
24 reinfection. And ultimately, the only way to prevent long
25 COVID is to prevent infection.

1 And so it's for these reasons that we urge the
2 Board to recognize the importance of a permanent standard
3 to protect California workers from COVID. And that we join
4 our colleagues who have argued for the importance of
5 exclusion pay protections to ensure that workers are not
6 forced to make the impossible choice of going to work while
7 sick or staying home without pay.

8 And I think it's also important to point out that
9 we've learned time and time and time again throughout this
10 pandemic that this virus spreads rapidly whenever people
11 are --

12 CHAIR THOMAS: Two minutes. Please, can you wrap
13 up? Thank you.

14 MS. THOMASON: Yes. And that staying home when
15 sick is an essential part of keeping workers and the public
16 safe during this pandemic in combination with other
17 measures that would be required by this standard: wearing
18 masks or respirators, getting vaccinated, improving
19 ventilation, conducting contact tracing, etcetera. So as a
20 result, that's why we strongly encourage the Board to
21 retain exclusion pay as part of this regulation. Thank you
22 so much.

23 CHAIR THOMAS: Thank you.

24 Maya, who do we have next?

25 MS. MORSI: Up next is Matt Sutton with

1 California Restaurant Association.

2 CHAIR THOMAS: Matt can you hear us?

3 MR. SUTTON: Yes, thank you Chair Thomas and
4 Board members. Matt Sutton with the California Restaurant
5 Association. I will just keep it brief. I do appreciate
6 all your work on this.

7 The restaurant community, of course, has been at
8 the frontline of protecting our employees from day one of
9 the pandemic. We were probably the first to be shut and
10 that remained the case in a number of counties for up to 8
11 months in some cases. We fought tooth and nail to make
12 sure that our workforce was in the front of the line after
13 other first responders for vaccine protections and other
14 PPE efforts as well.

15 On this regulation or proposed standard, we do
16 share we really struggled with the definition of "close
17 contact" and would ask for some clarification there. I
18 know you're hearing that theme quite a bit today. If it's
19 possible, at a minimum, to do that in the FAQs further that
20 would be fantastic. It's just incredibly hard to comply
21 with and understand.

22 The other issue with regard to record-keeping for
23 close contacts, requiring that for two years to us is
24 beyond questionable and we wonder what protected public
25 health value there is in maintaining those records for two

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1 years. Hopefully, that's part of the discussion you have,
2 but we do think that's excessive.

3 The other issue about employers reporting COVID
4 cases for two years; again as you've heard, there's pending
5 legislation on the Governor's desk that would require that
6 for one year and we think you ought to align with that, and
7 not be an outlier.

8 And then finally on the exclusionary pay would
9 definitely appreciate the movement there, we think it's
10 appropriate. We would also point out that also sitting on
11 the Governor's desk is an extension of the emergency COVID
12 paid sick leave which applies for the employee as well as
13 the employees, people that they care for. So we are
14 appreciative of that, we think it's appropriate, and we
15 think if that bill is signed protections will continue to
16 allow the workforce the ability to leave when necessary
17 under COVID conditions.

18 So thank you for that and all of your work on
19 this today.

20 CHAIR THOMAS: Thank you.

21 CHAIR THOMAS: Who do we have next, Maya?

22 MS. MORSI: Up next is Priya (phonetic), and they
23 don't want us to list their association.

24 CHAIR THOMAS: Priya, can you hear us? Hello?
25 Star 6, Priya.

1 MS. MORSI: Next is Tino with Voice for Choice
2 Advocacy.

3 MR. GARCIA-BARRAGAN: Yes, hello, can you hear
4 me?

5 CHAIR THOMAS: Yes, go right ahead.

6 TINO: Perfect. First of all, I'm speaking on my
7 own behalf. I am with a Voice for Choice Advocacy as a
8 Health Rights Director, but I have not cleared this with
9 them.

10 The CDC reversal that took place had a heavy
11 emphasis on personal accountability and natural immunity.
12 And the personal accountability is the part that I think we
13 really need to focus on. The emergency temporary standard
14 is all the way through the end of the year, everything is
15 fluid and the fact that you're trying to establish a
16 standard, non-emergency standard. I understand the logic
17 behind it. But in regards to the reversal of 180 from the
18 CDC and many loosening of guidelines, along with the fact
19 that you have the ability to put together an emergency
20 meeting at any point, businesses are already very used to
21 the type of guidelines. So implementing them will be a
22 very easy transition. I just don't see the need for it
23 beyond that.

24 And in regards to masks, June 2021 you had a
25 meeting. Eric Berg specifically talked about masks being

1 ineffective against aerosols. And I've listened to several
2 court-approved PPE experts, including Stephen Petty, who
3 has sat in on Monsanto cases. And he talked about the fact
4 that aerosols are the main source of transmission. The
5 masks only stop big droplets. Those big droplets,
6 according to him, do not carry the same risk as the small
7 aerosols and it's not even close. And that OSHA is, in
8 fact going against OSHA guidelines when it comes to masks
9 and PPE, given the fact that masks are not PPE.

10 And so I don't want -- I'm not doing this to
11 embarrass you Chair Thomas, but in the meeting you were
12 actually wearing the mask improperly. And that's just
13 because you're human, and you're doing what everybody else
14 in the workforce is doing. You're talking, you're moving,
15 you're doing different things, and you are adjusting the
16 front of your mask.

17 And I want you to imagine a worker in a hot
18 kitchen, or a server handling food, dirt, all these
19 different things consistently tugging on that mask. Those
20 masks have the ability to accumulate different types of
21 pathogens, bacteria, fungi, and it can lead to different
22 health risks that are very similar with symptoms as COVID-
23 19. And we have not been leaning on studies that have a
24 focus with improper mask usage, which the entire public has
25 been wearing them improperly. That's --

1 CHAIR THOMAS: Two minutes, caller, please wrap
2 up your comments. Thanks.

3 TINO: Thank you very much. Yes.

4 Lastly, I want to say with the N95 masks, those
5 have much more effectiveness, okay. However, they require
6 fit testing and medical clearance. And that's why I'm
7 guessing that businesses have not been mandating those
8 masks and that workers have been voluntarily using them,
9 because of those guidelines.

10 So I just really want you to think about that as
11 we move to the winter with these mask recommendations that
12 are going to resurface about improper mask usage and the
13 risks associated to that. Thank you for your time and your
14 efforts.

15 CHAIR THOMAS: Thank you, and I (indiscernible)
16 embarrassed.

17 All right, who's up next?

18 MS. MORSI: Up next is Tiane (phonetic) Tucker
19 with AFA-CWA.

20 CHAIR THOMAS: Tiane, can you hear us? Go ahead.

21 MS. TUCKER: Hi. Yes, I'd just like to echo
22 Jane's comments regarding the inclusion of exclusion pay,
23 because we're flight attendants and our environments are
24 very -- well, you all fly, what it's like -- there is no
25 six foot. There's no plastic shields, there's none of

1 that. The only thing that kept us between COVID was a
2 mask. And we had an extraordinary number of people
3 affected with COVID and are still suffering the long-haul
4 side effects. So I would just encourage as you are
5 deliberating that you reconsider this and possibly leave it
6 in place for at least a year and then reevaluate it at that
7 time.

8 And again, thank you for all of your efforts.
9 And we hope we'll see you in the friendly skies sometime.

10 CHAIR THOMAS: Thank you.

11 Next caller, Maya?

12 MS. MORSI: Kelly Kick, a grocery worker.

13 CHAIR THOMAS: Kelly, can you hear us?

14 MS. KICK: Yes, can you hear me?

15 CHAIR THOMAS: Hey, Kelly, go ahead.

16 MS. KICK: Hi, thank you for taking the time to
17 hear us out today. My name is Kelly Kick, I am a grocery
18 worker, a proud member of the United Food and Commercial
19 Workers. I am here to piggyback everybody's comments to
20 please keep exclusion pay in place. As a grocery worker,
21 one in five of us contracted the virus during the last two-
22 and-a-half years. We've been through a lot. And having to
23 make the choice between paying our bills or staying home or
24 possibly going to work and infecting our coworkers is just
25 not really a feasible option. So I'm here to implore you

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1 to please keep exclusion pay. Thank you for your time.

2 CHAIR THOMAS: Thank you.

3 Next, Maya?

4 MS. MORSI: Up next is Janine Perro, (phonetic)
5 representing herself as a health practitioner.

6 CHAIR THOMAS: Janine can you hear us? (No
7 audible response.) I hear something. Are you on the line,
8 Janine? I guess not, I think we lost them.

9 Do we have any more callers, Maya?

10 MS. MORSI: If you'd like I can go back to those
11 that missed their name earlier.

12 CHAIR THOMAS: Yes, see if there's any -- I know
13 we have a couple out here in the audience, so we'll get you
14 guys.

15 MS. MORSI: Sarah Layton with E&B Natural
16 Resources.

17 CHAIR THOMAS: What was the name?

18 MS. MORSI: Sarah Layton.

19 CHAIR THOMAS: Sarah, are you there? (No audible
20 response.) Not there. Who else you got?

21 MS. MORSI: Samantha Webster with Safeway
22 employee and UFCW 5 member Sarah Webster. I'm sorry,
23 Samantha Webster.

24 CHAIR THOMAS: Samantha, can you hear us?

25 MS. WEBSTER: Yes. Can you hear me?

1 CHAIR THOMAS: Yes, go right ahead.

2 MS. WEBSTER: Hello. Oh, perfect. Thank you. I
3 will keep it extremely brief. I'm Samantha Webster. I am
4 a grocery worker for Safeway. I just want to say that it
5 is important that we keep the non-emergency pay, exclusion
6 pay, because I am someone who caught COVID. My whole
7 household caught COVID. I am vaccinated along with
8 everyone in my house, except for my four-year-old son. And
9 we were quarantined for almost 14 days, because my son was
10 not allowed to return to preschool, because he was still
11 testing negative.

12 And so that means that was more time for me away
13 from work. And if I don't have this pay that time that I
14 was away counts against the time and hours that I put in
15 for work, which affects my medical benefits. And if that
16 happens, and we go to the doctor, that is more bills that
17 we've accumulated that we're not covered for. So I'm just
18 asking that we please keep it in place, because we need it.

19 COVID has not gone away regardless if we're
20 vaccinated or not. COVID is here, it's here to stay, we
21 cannot get rid of it. So we can't punish our essential
22 workers by taking it away. We're expected to do the same
23 job pre-pandemic, during pandemic, post-pandemic. We just
24 need to be safe for us and our families. Thank you for
25 your time.

1 CHAIR THOMAS: Thank you.

2 Any other callers, Maya?

3 MS. MORSI: Matt Bell with Secretary-Treasurer
4 UFCW 324.

5 CHAIR THOMAS: Matt Bell, are you there? I think
6 we already heard from Matt, but I'm not sure. Matt, are
7 you there? (No audible response.) Anyone else?

8 MS. MORSI: Terrence, I don't see any
9 affiliation.

10 CHAIR THOMAS: Terrence are you there? I guess
11 not. Anybody else?

12 MS. MORSI: Janine Perro representing herself as
13 a health practitioner. Janine Perro?

14 CHAIR THOMAS: Okay, I think we're done with the
15 calls.

16 So at this time if there's anybody here that
17 would like to speak to COVID-19, please state your name.

18 MR. SMITH: Yeah. Good evening, Chair Thomas. My
19 name is Ken Smith. I'm the Executive Director for
20 Environmental Health and Safety with the University of
21 California. And let me just cover two points. We've given
22 our written comments yesterday to the Board --

23 UNKNOWN SPEAKER: I am looking at that. I'm sorry
24 about that.

25 MR. SMITH: -- and to the Board staff, but let me just

1 cover two points that haven't been mentioned previously.

2 The first point is the point about the
3 requirement for employers to case notifications and contact
4 tracing. You've heard a number of arguments against that
5 and the onerous requirements that it still imposes upon
6 employers. But what you haven't heard is two things.

7 One, that currently the state legislature, as you
8 do know, has a bill that is on the Governor's desk that
9 removes that requirement to make the notification within 24
10 hours, and simplifies the requirements as simple posting.

11 Secondly, though even the California Department
12 of Public Health in a correspondence earlier in this year
13 to the local public health agencies, indicated that they
14 should be de-prioritizing the need for case -- for contact
15 tracing, even among those agencies. And so if it's not a
16 priority to our government agency that is supposed to be
17 performing contact tracing why does Cal/OSHA continue to
18 make it a priority for employers to perform? So encourage
19 looking at our comments in there to get a reference to that
20 letter.

21 Last but not least in here, the requirement for
22 ventilation. One thing that hasn't been mentioned is that
23 there is a very specific reading in the proposed regulation
24 that requires that outside air be set to the maximum
25 feasible, but it only provides two exceptions. Those two

1 exceptions are inclement weather, and air quality index.
2 But as you do know, California over the past couple of
3 weeks has had a number of power outages and brown outages
4 during flex alerts. And there's not an inclusion in there
5 for an employer to reduce the outside ventilation that is
6 more conservative in power in the standard. And so we are
7 asking that they include in their requirement, or an
8 exclusion exception during flex alerts. That we're able to
9 reduce the amount of outside air.

10 And that concludes my comments. Thank you.

11 CHAIR THOMAS: Thank you.

12 Kevin, last but not least, certainly not.

13 (Laughter.)

14 MR. BLAND: Good afternoon, Chair Thomas, Board
15 Members, Division staff, Board staff. Kevin Bland
16 representing the Residential Contractors Association and
17 the California Framing Contractors Association and the
18 Western Steel Council. I'll be brief. I'll incorporate by
19 reference Mr. Moutrie's, Mr. Wick's, Ms. Cleary's, Mr.
20 Sommers, the guy that spoke for AGC, and Mr. Miiller, and
21 Mr. Little, so I won't repeat those I'm just want to
22 emphasize a couple.

23 One is from our association standpoint we oppose
24 this moving forward as a permanent regulation. We believe
25 that the IIPP is a great tool for effective workplace

1 hazard. It's been proven, I kind of said this, I think at
2 the very beginning of the pandemic, where we should have
3 been so proud that we were the only state that had an IIPP
4 that could nimbly go and assess the individual workplace
5 hazards as it relates to COVID. I still believe that.

6 We do know that it's enforceable. There was a
7 case that just came down Judge Turnin (phonetic) ruled on,
8 on the IIPP being enforceable for COVID. It's the BSF
9 Fitness case and inspection number 1487741. So I encourage
10 you guys to look at that and see that it is enforceable
11 they -- every single citation in that, and there was a list
12 of them on the IIPP that were enforced. And so I still
13 believe that's a great vehicle, and especially now.

14 And we've seen how things have changed over time,
15 every time we pass one, something changes the next day.
16 And we kind of are still there. It's kind of a little deja
17 vu today.

18 Also, we've heard that -- basically, I'm
19 paraphrasing -- but if we don't do this, California is
20 going to break off into the ocean. And obviously that's a
21 paraphrase, but that's not the case. We have regulations
22 that are enforceable in that arena.

23 Another thing that if you do move forward with
24 this I do think it could be a non-substantive change that
25 doesn't require a 15-day notice to pair up the notice

1 requirements under AB 2683. I think I got that right.
2 That's the one that was codified in 6409.1 or something
3 like that in the Labor Code, but the notice requirement
4 that is there.

5 And then last but not least, exclusion pay. We
6 know that the legislature looks at that, has the ability to
7 do that, should be on the legislature to make those
8 decisions regarding pay as it relates to this. And we
9 agree with the proposal in that if it does stay that
10 exclusion pay should be excluded, to kind of use the same
11 weird words that the other guys said earlier.

12 So, anyway, thank you for your time. Appreciate
13 it. I'm ready for lunch.

14 CHAIR THOMAS: All right. Thank you, Kevin.

15 So any other commenters in the room? (No audible
16 response.) So we thank you for your all your comments.

17 At this time we're going to have Mr. Killip and
18 Mr. Berg brief the Board, so if you would, thank you.

19 MR. KILLIP: Good afternoon Chair Thomas, Board
20 Members, stakeholders, members of the public, Cal/OSHA
21 Chief Jeff Killip here. We want to thank everybody over
22 the past two years for protecting workers from COVID-19
23 over this devastating pandemic.

24 COVID-19 has been one of the greatest threats to
25 worker health and safety since the beginning of the OSHA

1 and Cal/OSHA programs. In California, the disease has
2 taken nearly 100,000 lives and more than a million across
3 the United States. Californians in manual labor and in-
4 person service occupations experienced disproportionately
5 high COVID-19 rates with the highest death rates in male,
6 Latino, and African American workers. The United States
7 low socioeconomic position Latino male workers were almost
8 30 times more likely to die from COVID than a high
9 socioeconomic position female worker.

10 The COVID-19 emergency regulations need a vast
11 improvement in Cal/OSHA's ability to protect workers,
12 especially in high-risk occupations. These emergency
13 regulations empowered Cal/OSHA to make significant
14 improvements in working conditions that were not possible
15 before using the Injury and Illness Prevention Program and
16 other general requirements. Simply put, the general
17 requirements were substantially less protective than the
18 emergency regulations.

19 As the temporary emergency COVID-19 regulations
20 come to an end it's imperative to keep key worker
21 protections in place as COVID-19 and its emerging variants
22 continue to be a serious occupational and community hazard.
23 Community and occupational transmission cannot be
24 separated. An infection in the community can be brought
25 into the workplace as a result, and result in a workplace

1 outbreak. And as we know the opposite is true, a workplace
2 outbreak can result in the spread of disease widely
3 throughout the community.

4 Making vaccination available to all is key to
5 protect many workers lives. But vaccination by itself does
6 not currently provide sufficient, high protection against
7 transmission or against long COVID illness. We're hopeful
8 that the new vaccines improve protections, but we will
9 still need additional prevention measures to protect
10 workers, especially the most vulnerable and marginalized
11 workers.

12 The proposed non-emergency COVID-19 regulations
13 are not permanent. Most provisions will expire two years
14 after adoption.

15 So at this time, I'd like to pass this off to
16 Cal/OSHA Deputy Chief of Health, Eric Berg, who will
17 provide us with a brief overview of the protective measures
18 and the COVID-19 non-emergency proposal.

19 CHAIR THOMAS: Thank you, Eric Berg?

20 MR. BERG: Great. Thank you, Board Chair Thomas
21 and Board Members. Is it okay if I speak from here? Yeah.
22 Okay, doesn't matter, I guess.

23 The non-emergency COVID-19 regulations are a
24 greatly simplified revision of the emergency regulations.
25 Revisions are consistent with CDPH recommendations. And

1 many of the provisions would not be enforceable without
2 this regulation. And some of the provisions consist of the
3 following.

4 In 3205(b) the definitions in this proposal are
5 very similar to what's in the current emergency regulation,
6 with substantive changes such as "close contact" to ensure
7 consistency with the California Department of Public Health
8 and their infectious disease experts.

9 The flexibility of the regulation remains the
10 same as it is in the emergency regulation where certain
11 definitions and other provisions will change if the CDPH
12 definitions or other provisions change in their orders or
13 their regulations.

14 In subsections 3205(c) and (c)(1) the proposal
15 requires employers to address COVID-19 specifically as a
16 workplace hazard in their injury and illness prevention
17 program. One of the provisions is treating all persons as
18 potentially infectious. This is the same concept that has
19 been in the first emergency regulation since 2020, two
20 years ago. And it's also consistent with the concept of
21 universal precautions used in the bloodborne pathogens
22 standard. And that addresses one comment.

23 Another commenter mentioned temperature checks.
24 There are no temperature check requirements in this
25 proposal, so that does not exist anymore.

1 In subsection 3205(c)(2) employers must identify
2 COVID-19 workplace hazards and implement preventive
3 measures. When taking these actions employers must review
4 and take into account applicable COVID-19 orders and
5 guidance from the California Department of Public Health.

6 In subsection 3205(c)(3), employers must provide
7 employees health and safety training on COVID-19 in
8 accordance with the injury and illness prevention program.
9 This is greatly simplified from the emergency regulation.

10 In Subsections 3205(c)(4) and (c)(5) employers
11 must investigate and respond to COVID-19 illness and cases
12 in the workplace as required by the injury and illness
13 prevention program.

14 Subsection 3205(c)(5), consistent with CDPH
15 recommendations, also requires employers to exclude COVID-
16 19 cases from the workplace for a period ranging from 5 to
17 10 days, require face coverings by returning COVID-19 cases
18 for 10 days. It requires employers to review current CDPH
19 guidance for persons who had COVID-19 close contact, and
20 then take effective measures to prevent transmission in the
21 workplace.

22 It also requires employers to give employees
23 information on COVID-19 benefits available to them, such as
24 paid time off, Workers' Compensation, and other local or
25 state requirements.

1 In subsection 3205(d), employers must make COVID-
2 19 tests available to employees who had close contact in
3 the workplace.

4 In subsection 3205(e)(1), employers are required
5 to notify employees who had close contact in the workplace.
6 This is because employees have a right to know if they may
7 have been exposed at work.

8 Subsection 3205(e)(2), employers are required to
9 notify employees of a COVID-19 case in the workplace in
10 accordance with existing law, such as Labor Code 6409.6. A
11 commenter mentioned on a revision to this is on the
12 Governor's desk. We'll make any changes needed.

13 In subsection 3205(f) employers must require
14 employees to use face coverings when their use is required
15 by the California Department of Public Health. Employees
16 also have the right to use face coverings if they want to
17 when their use is not required.

18 And a commenter provided some misinformation on
19 masks. Proper masks are very effective as source control
20 and very effective at preventing the spread of COVID-19 and
21 other airborne infectious diseases. However, they are
22 source control and not respirators. So I think the
23 commenter got those mixed up. We're not saying they are
24 respirators. They are source control. I mean, the wearing
25 the mask protects the persons around the person using the

1 mask.

2 In subsection 3205(g) employers must provide
3 NIOSH-approved respirators for voluntary use to employees
4 to request respirators and work indoors. Employers must
5 also provide training templates on the respirators that
6 they provide.

7 In subsection 3205(h) employers must optimize
8 ventilation and filtration to reduce transmission risks in
9 indoor or workplaces.

10 In subsection 3205(i) employers must provide and
11 ensure the use of fit-tested respirators in accordance with
12 section 5144 respiratory protection, or catch the air-size
13 infectious materials, such as saliva and respiratory
14 fluids.

15 Subsection 3205(j) requires employers to report
16 cases or outbreaks when required by law, such as Labor Code
17 Section 6409.6.

18 The next is section 3205.1, which covers
19 outbreaks with 3 or more employee COVID-19 cases with an
20 exposed group during any 14-day period. And this any of
21 outbreak of 3 cases in a 14-day period is consistent with
22 CDPH.

23 Subsection 3205.1 (b) (1) and (b) (2) require
24 employers to make testing available to employees at no cost
25 once an outbreak occurs, and then weekly until the outbreak

1 ends.

2 Subsection 3205.1(b) (3) requires employers to
3 exclude employees during an outbreak if an employee had a
4 close contact, and they do not have a negative test taken
5 three to five days after the COVID-19 exposure.

6 Subsection 3205.1(c) employers must require
7 employees to wear face coverings during outbreaks when
8 indoors or when outdoors and within six feet of other
9 persons.

10 In subsection 3205.1(e) employers must review
11 relevant COVID-19 policies, procedures, and controls and
12 implement changes as needed to prevent the further spread
13 of COVID-19 during outbreaks.

14 3205.1(f) requires employers to filter
15 recirculated air with MERV-13 or higher efficiency filters
16 for the highest compatible with the ventilation system.
17 Boilers must also use HEPA air cleaners when ventilation is
18 inadequate to reduce the risk of COVID-19 transmission.

19 And then subsection (g) in the 3205.1 is for
20 major outbreaks, which is 20 or more employee COVID-19
21 cases in exposed group and a 30-day period.

22 And then (g) (1) requires during a major outbreak
23 that all employees in the exposed group be tested twice a
24 week or excluded until the return-to-work criteria for
25 COVID-19 cases is met.

1 Then (g) (2) requires employers to report major
2 outbreaks to Cal/OSHA.

3 And then (g) (3) requires employers provide
4 respirators to employees for voluntary use, and to train
5 employees on respirators.

6 And (b) (4) for major outbreaks requires six-foot
7 distancing for employees only when feasible if respirators
8 are not used.

9 And we have two sections for covering employer-
10 provided housing and transportation, which have been
11 updated to be consistent with the two main Sections 3205
12 and 3205.1.

13 That's the end of my briefing. Thank you.

14 CHAIR THOMAS: Thank you, Eric.

15 Do we have any questions the Board Members might
16 have? Chris or Barbara, I can't --

17 BOARD MEMBER STOCK: Well, I'll put myself on the
18 queue.

19 CHAIR THOMAS: Laura?

20 BOARD MEMBER STOCK: I don't know who is first.

21 CHAIR THOMAS: I can't see it. (Overlapping
22 colloquy.) Go ahead, Laura.

23 BOARD MEMBER STOCK: Okay, so I don't know, Dave,
24 is this the time to -- I know we had put on our business
25 meeting agenda to discuss some of the issues, but I do have

1 questions that might overlap with the discussion that we
2 put on our agenda later.

3 But a couple of comments. Well, one is I want to
4 thank Chief Killip for his remarks. And it's very helpful
5 to hear the Chief of Cal/OSHA, unequivocally state that
6 this regulation was necessary and that relying on the IIPP
7 was not. And I consider that those are the experts. So
8 thank you for sharing that information.

9 Eric and Chief Killip, I guess what I want to ask
10 is how you think the impact of exclusion pay is going to
11 impact the effectiveness of the standard. I think as we've
12 heard from many, many people today, we know if there's not
13 exclusion pay in the regulation then workers are being
14 forced to choose between providing for their families or
15 staying home or going into work and bringing that infection
16 back into the workplace. If the goal of the regulation is
17 to prevent the spread of infection I'd like to hear your
18 perspective on what impact you think the removal of
19 exclusion pay will have. And if you could explain the
20 reasoning behind eliminating it.

21 CHAIR THOMAS: All right, either/or.

22 MR. BERG: Thank you, Laura, for that. Yeah,
23 I'll go a little bit into our explanation of removal of
24 exclusion pay. The COVID-19 pandemic has changed
25 substantially from when the exclusion pay was first

1 established in the Cal/OSHA emergency regulation two years
2 ago.

3 Vaccinations are widely available. In California
4 80 million doses have already been provided, and over 80
5 percent of the population has received at least one dose.
6 Vaccinations continue to be effective in reducing serious
7 acute illness, which would necessitate long periods of
8 leave from work and death. Two booster shots that became
9 available this month should hopefully be more effective
10 against the spread of the new variants, the Omicron
11 variants and its sub-variants.

12 Another change since the early days of the
13 pandemic is that COVID-19 is now widespread in the
14 population. And while outbreaks in workplaces are still
15 occurring and still represent a serious risk to workers, in
16 many industries the widespread transmission of disease
17 makes it very difficult to identify the source of
18 transmission. Emergency regulation and readoptions provide
19 exclusion pay to employees with COVID-19, except where the
20 employer demonstrated that the exposure did not happen at
21 work. Being that exclusion pay would not apply in a case
22 where a worker contracted COVID through community
23 transmission, such as a family member.

24 Workers who contract COVID-19 at their workplace
25 and are unable to work because of their symptoms, were

1 always and are still eligible to apply for Workers'
2 Compensation benefits to cover the exclusion period.

3 The proposed non-emergency regulation, which we
4 are briefing you on today requires employers to give the
5 employees who are excluded with information regarding
6 COVID-19-related benefits to which the employee may be
7 entitled under federal law, state law, or local laws. This
8 includes any benefits available under legally mandated sick
9 leave, Workers' Compensation law, local government
10 requirements, the employers-only policies and leave
11 guaranteed by contract.

12 Changes in quarantine rules in the proposed
13 regulation we're briefing you on have also made exclusion
14 far less common than it was when the emergency regulation
15 first went into effect. Today most workers are no longer
16 required to be excluded after a close contact as long as
17 they are asymptomatic and test within three to five days
18 after exposure. These workers can remain in the workplace
19 and then not risk of losing wages.

20 In terms of the impact of the removal of
21 exclusion pay research suggests that paid leave policy most
22 benefits low-income and marginalized workers as these
23 workers are less likely to have access to paid time off
24 than better-off workers. A recent study estimated that in
25 the U.S. workers and their families lose \$22.5 billion in

1 wages each year taking unpaid family leave and medical
2 leave. The proposed non-emergency regulation has several
3 preventive provisions, which you've heard about in detail
4 today, to reduce the transmission to replace and prevent
5 COVID-19 illness in the first place amongst workers in the
6 State of California so that fewer workers will need to take
7 sick leave.

8 So that's a prepared response. Thanks.

9 BOARD MEMBER STOCK: Thank you. I have one quick
10 response to that and then I want to turn it over to my
11 colleagues. So I mean, I'm concerned about that because
12 even your own comments, of course, are acknowledging that
13 this policy is going to have a disproportionate impact on
14 low-wage workers who -- they may not be out for weeks and
15 weeks, but even one or two days being out without pay it
16 may jeopardize, as we've heard, their health benefits as
17 well as their ability to be housed and many others, feed
18 their families. So I think what you have said actually
19 confirms the tremendous impact of this.

20 And of course, I understand that this was always
21 just designed for people who are and most recently who are
22 actually made sick through workplace exposure. That
23 concern about how to demonstrate that has been there from
24 the beginning. And there's been advice in the FAQs around
25 how to do that, so that has not changed.

1 So I remain very concerned about how this
2 regulation will be able to work without that, though I
3 think that the provisions that you've provided are
4 essential. But I think our responsibility is to try to
5 protect all workers, including the most vulnerable and low-
6 wage workers. And this is going to have, once again be
7 asking them to bear the disproportionate impact of this
8 pandemic. So I hope there'll be room for this to be
9 reconsidered as the final regulation is prepared for our
10 vote in December. Thank you.

11 CHAIR THOMAS: Thank you.

12 Any other comment, Barbara?

13 BOARD MEMBER BURGEL: I echo Laura's comment
14 about exclusion pay. I think it's covered under the
15 aerosolized transmissible disease standard. It's included
16 in obviously other Cal/OSHA standards. I am unclear as to
17 why those covered under the ATD standard would get
18 exclusion pay, but individuals who are essential workers
19 would not qualify for exclusion pay.

20 And I think going through the Workers' Comp
21 system is a little bit contrary and difficult, especially
22 for individuals where English may not be their first
23 language, and individuals who are fearful of retaliation,
24 and various other reasons that are well-known for our most
25 vulnerable California workers.

1 So I wholly support a permanent standard, number
2 one.

3 Number two, I think there are many strong points
4 in this current draft, specifically the emphasis on
5 ventilation and the emphasis on respirators going forward.
6 Certainly the housing and transportation protections that
7 are currently in the draft, that could be enhanced,
8 especially the transportation to not just work but to other
9 employer-provided transportation settings.

10 I think if we looked at high-risk occupations --
11 we've heard from teachers, teachers who spend more time in
12 the classroom, than when you think of healthcare workers
13 interacting with patients. Certainly, teachers, grocery
14 workers, transit workers, flight attendants, I can see all
15 those and more. We've heard from a pharmacist. We've
16 heard from -- and talking about meat packing, food
17 processing workers, all those individuals without a
18 permanent standard would be at risk. And certainly without
19 exclusion pay, many of those individuals will not report
20 their symptoms and do the right thing.

21 I also want to make a comment around the fact
22 that I have not been in support of the CDC and our local
23 and state health departments who have lessened the
24 protections, especially in transportation, which is
25 shocking to me. And they have essentially taken a public

1 health problem and shifted it to the shoulders of
2 individuals. And that is not a public health solution. It
3 doesn't work in the workplace. Employers are still
4 required by law to provide a safe and healthy workplace.
5 And I think that shifting it to the individuals, especially
6 when employers are not providing sick pay to many of these
7 low-wage workers, many of them are part-time workers, I
8 think without exclusion pay we are not going to get a
9 handle on this pandemic.

10 So the other solution, of course, without a
11 permanent standard would be to enlarge the employers
12 covered under the aerosol transmissible disease standard.

13 Now I think that certainly hospitals are
14 currently still testing, at least the UCSF and the large
15 academic medical center in San Francisco, still testing all
16 inpatients, all patients who are coming in for surgeries or
17 procedures. They're testing them on Day 3 of inpatient
18 hospitalization. There's N95 availability now. Those
19 individuals are identified and the risk is mitigated.

20 Now, obviously, healthcare providers and
21 outpatient settings don't have that. They still have to
22 use the precautionary principle to identify that everybody
23 is potentially infectious. But there's masking. They are
24 still masking. It's not n95s for our patients, but it's
25 surgical masks. So I think in healthcare and under those

1 covered under the ATD standard that risk is being mitigated
2 somewhat, especially in the inpatient setting.

3 But for our transportation workers, our grocery
4 workers, our agricultural workers who have to use those
5 shared housing and transportation, we do not have -- I mean
6 our teachers. I mean, we're talking there is no testing
7 happening, there is no required masking happening. And
8 that is something that worries me, especially in the event
9 of an outbreak. I still would support also the raw
10 numbers: 3 for an outbreak or a major outbreak as 20, not
11 percentages.

12 So, again, I think that there's a lot of strength
13 in this permanent standard. I want to see exclusion pay
14 included. Thank you.

15 CHAIR THOMAS: Chris?

16 BOARD MEMBER LASZCZ-DAVIS: Can you hear me?

17 CHAIR THOMAS: Yeah. Go ahead.

18 BOARD MEMBER LASZCZ-DAVIS: Good. The new
19 standard, the proposed standard, certainly evidences
20 tremendous work and a desire to align issues, simplify
21 terminology, and what have you. But I would submit that
22 I'd have to agree with the comments made, that both contact
23 tracing and close contact leaves me ambiguous in terms of
24 how to make that actionable. That, I think, is a tough
25 one. So I would encourage Eric and staff to revisit that.

139

1 I have two questions. Why two years? I mean, I
2 listened to some of the comments about sunseting within
3 two years. Why? Why did -- why was two years chosen
4 versus one year or even the option to evaluate at six-month
5 intervals? That's one question.

6 And the second question is in terms of
7 calibrating what other states are doing we're not on this
8 journey alone. What are states other than California doing
9 in terms of transitioning us to what I would consider an
10 endemic state?

11 MR. BERG: Okay, thank you. I guess first the
12 two-year question. I mean, we were consulted with CDPH and
13 infectious disease experts when deciding on when they
14 should sunset and the best time for that. So that's how we
15 came up with two years, consulting with them and other
16 experts in infectious diseases.

17 And the second question was about the states. So
18 we did research on other states as requested at the last
19 meeting. We identified two states that still have COVID-19
20 regulations. Those are Oregon and Washington. I can give
21 you an overview if you'd like of those two.

22 So first Oregon, their requirements, they have
23 different requirements for what they call "exceptional risk
24 settings," and then "general settings." So I'll just go to
25 what's their general risk settings for all lower-risk

1 employers. First is providing to allow for employee
2 voluntary facemask use.

3 Next is to cover all COVID testing requirements
4 with costs if the employer requires or directs the
5 employees to be tested.

6 Next is they have to optimize ventilation systems
7 to reduce COVID-19 transmission risks and also follow
8 Oregon Health Authority, public health or medical care
9 provider recommendations for isolation and quarantine of
10 employees regarding COVID-19.

11 And then also next is provide notice within 24
12 hours to workers about a potential work-related COVID-19
13 exposure.

14 And then lastly, Oregon does have exclusion pay.
15 It varies dependent upon employers, but with over 500
16 employees they have pay up to \$1,400 a week and then less
17 than 500 employees I believe it's \$1,000 a week maximum.
18 So they do have exclusion pay.

19 Next is Washington -- oh and there's no real
20 specific end date for Oregon. Like we have the two years
21 as we talked about. Oregon doesn't have a specific end
22 date set, but they're supposed to revisit the issue, but no
23 specific date is provided.

24 And then there's Washington. Washington has
25 requirements. They have separate and additional

1 requirements for healthcare, correction, schools. So I
2 won't go with those, I'll go over their general
3 requirements.

4 Firstly is to assess COVID-19 hazards in the
5 workplace and adjust to prevention measures as needed. And
6 isolate workers known or suspected to have COVID-19.
7 Provide the handwashing facilities and supplies, and
8 regularly clean and sanitize surfaces. Educate workers
9 about COVID-19 prevention in a language they understand
10 best. Provide written notice of potential COVID-19
11 exposure within one business day to all workers, and the
12 employers of subcontracted workers who are at the same
13 worksite as a person who tested positive. Report COVID-19
14 outbreaks. Address COVID-19 notification, reporting, and
15 prevention measures in the employers' workplace-specific
16 written accident prevention program or equivalent safety
17 program. Allow workers to voluntarily wear masks or
18 respirators and PPE.

19 And they also do not have a specific sunset date
20 that I could find.

21 That's kind of an overview the two states that we
22 found that still have COVID-19 regulations. They're pretty
23 similar to ours.

24 BOARD MEMBER LASZCZ-DAVIS: Yeah, thank you very
25 much for that, Eric. Just a question that remains, so what

1 are the other states doing, if anything?

2 MR. BERG: What's that? What the states do --

3 BOARD MEMBER LASZCZ-DAVIS: What are the other
4 states doing? If there are two states that have
5 regulations akin to ours, what are the other states doing?

6 MR. BERG: As far as I know, I don't know what
7 the other states are doing. But that's the two I know with
8 COVID regulations. I don't know, the other states, I
9 didn't find their regulations.

10 BOARD MEMBER LASZCZ-DAVIS: All right. Well,
11 thank you, Eric.

12 MR. BERG: Sure.

13 CHAIR THOMAS: Kathleen, any comments, questions?

14 BOARD MEMBER CRAWFORD: Oh, I have many, I have
15 many.

16 CHAIR THOMAS: Go ahead.

17 BOARD MEMBER CRAWFORD: I just - has there, this
18 one is -- first of all I apologize for missing the August
19 meeting, so I may have missed some informative discussion
20 there.

21 I am not yet convinced of the necessity for a
22 permanent regulation. And I listened diligently to
23 everyone from all of the calls and read all of the backup
24 here. And I'm simply not convinced of the necessity of
25 this. So I feel like we're still out of step. We're still

1 chasing, and that's a big concern to me. We've been
2 chasing for multiple years now and we haven't gotten ahead
3 of that. And more than anything I would implore the
4 Division in this group to get ahead of things.

5 Right now I think that, for example, this comment
6 that we don't have an exit strategy is right on. I think
7 that's absolutely right on.

8 I probably should just stop myself from going too
9 much further. But I think it's important to note there are
10 so many great comments from all sides here that I don't
11 believe have been incorporated or completely considered.
12 That I'd like the Division to go back and completely
13 consider the true impacts of their decisions and what
14 they're proposing. So we'll leave it there. But I do want
15 the Division to go back and seriously consider the comments
16 from the business community as well as the comments from
17 the labor community, because I don't think it's all
18 accounted for.

19 MR. BERG: Yeah, we will do that. We will go
20 through all the written comments carefully, the team and
21 Cal/OSHA. And all the oral comments we'll get the
22 transcript here and go through those carefully, as we
23 always do. And we will look at if changes are needed and
24 do them if necessary.

25 BOARD MEMBER CRAWFORD: You know, actually I

1 forgot to say this. I do sincerely appreciate the work
2 that you're putting into this Eric and team. I really do.
3 It's a sticky wicket. It has been for several years, but I
4 do not feel like we're leading our way out of it. So
5 listen carefully to all of the comments. Thank you.

6 BOARD MEMBER STOCK: This is Laura. Can I just
7 make one more quick comment? I also want to thank --

8 CHAIR THOMAS: Just one, just one, Laura.

9 BOARD MEMBER STOCK: Yeah.

10 CHAIR THOMAS: No, go ahead. (Laughs.)

11 BOARD MEMBER STOCK: Oh okay, sorry.

12 CHAIR THOMAS: Go ahead, sorry. So sorry. Yeah,
13 go ahead.

14 BOARD MEMBER STOCK: Yeah, I wanted to thank Eric
15 and his team. Also, I want to just emphasize that we're
16 not talking about a permanent standard. We're talking
17 about an -- a non -- I don't know what the term is, but
18 it's two years, just to remind ourselves that it is. I do
19 appreciate that you are trying to be cognizant of the fact
20 that things are changing, so we're not going to have to
21 vote on something that's going to be lasting longer than
22 that. There's going to be an opportunity to be able to
23 continue to be responsive to what science says.

24 I think what's just very, very clear that we're
25 going to -- I pray that we will need an exit strategy at

1 some point, but it's not now. It's still happening now, so
2 now is not the time to be exiting from the provisions that
3 we've put in.

4 But just the last quick thing I want to say is I
5 do want to continue to remind us that we had encouraged
6 staff to begin work on a general infectious disease
7 regulation. So I just want to put that back on the table.
8 That I think there are other infectious diseases, monkeypox
9 and others, that are coming our way. And it seems like one
10 of the exit strategies is going to be working on that
11 regulation where we develop an ongoing regulation that will
12 affect, that will apply to all industries. And maybe that
13 is really where we can be continuing this while we are
14 still grappling with COVID. But be sure that before this
15 one expires we are ready to put an ongoing general
16 infectious disease regulation in place. Thank you.

17 CHAIR THOMAS: Thank you, Laura.

18 I just wanted to make a couple of comments, so
19 just a couple of comments.

20 First of all, I don't know how you get ahead of
21 this. There is no way to get ahead of it unless you go
22 into the future and you look back and you already know what
23 happened. There's no way to know what this is going to do
24 in a year or two. If it's going to fade away. If there's
25 going to be some other variant that's worse, we don't know.

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1 All we can do is try and protect the 20 million or so
2 employees that work in in California.

3 And I think the exclusion pay is necessary. I
4 don't know exactly how we do this. I don't know if it is
5 going to come from the Senate or the Assembly. But there
6 has to be some way to do this, that the state funds
7 partially or all. Because otherwise, I mean, everybody in
8 this room can probably get COVID and go home and you're not
9 worried about getting paid. You know you're going to get
10 paid. And that's just part of the deal.

11 But that's not for the vast majority of workers
12 out there. They miss a day -- the guys I represent they
13 miss a day of work they miss pay, except for this exclusion
14 pay. And I'll tell you it's never been easy. It's harder
15 now. People are getting paid more, but inflation has taken
16 off and people are just trying to keep up with what's going
17 on. So I think you have to have exclusion pay in here.

18 And so we're just about ready to go into the --
19 well we are in the third year. We're going to end the
20 third year in March of next year of when this started. I
21 don't disagree with two years, because we've already been
22 in it for three. I don't think it's going away. It'll
23 just be something different. And it may be something that
24 we can contain, we haven't figured that out yet either.

25 But I just had it a month ago, a little over a

1 month ago. And if I was an hourly worker I wouldn't have
2 been able to go to work, at least for a couple days. But
3 then after that I might have thought about it and that's
4 not good. And that's how people get exposed to it. And
5 you know, you can say what you want about people bringing
6 it from home to work, but once you bring it from home to
7 work everybody at work is vulnerable to getting it. And
8 they're getting it at work, so I think that's a wash. It
9 happens both ways.

10 I think the way I got it was, and I still don't
11 understand this, is transportation. I was on a plane. I
12 haven't been on a plane until I went to San Diego about a
13 month ago, just before I got this. And you're not required
14 to wear a mask. I think I did when I was going down there,
15 but not coming back. And it's still hard. Especially if
16 you're doing any kind of traveling more than a couple
17 hours, because you have to eat, you have to drink, and the
18 mask comes on and off. But it would be a lot easier if
19 everybody had to wear a mask on a plane. Oh, but that's --
20 it's asking too much, right? We just can't do that.

21 But that's okay. So I got it, I survived, and
22 that's fine. But I'm not the vast majority. The vast
23 majority are not going to be able to get paid regardless
24 and stay home and be comfortable and not worry about
25 anything. That's the only thing I was worried about was

1 just getting back to work in a week or so. And that was
2 it, I didn't have to worry about anything else. I think
3 that is not realistic for most of the people that are
4 employees in California by probably 90 percent that don't
5 have that luxury. And I think we have to take care of that
6 exclusion pay.

7 And I think we're not going to get on the other
8 side of this until we're on the other side of it. And we
9 don't know when that's going to be. We just don't know.
10 And I think the protections are there, because they need to
11 be there.

12 And we've said this, I don't know how many times
13 before, "It's over, we're done." That's not true, it will
14 be done with it when it's done, right? I mean, that's the
15 only way you can look at it. Because every time we think
16 it's about -- winter's coming up, here we go again -- you
17 know, it'll be the same thing. And it may be this variant
18 will not be that bad. Or maybe it'll just go away at some
19 point.

20 But, and I understand where business is coming
21 from, this is not fun for you guys. I'm a business person
22 too. And not just, I don't just represent employees,
23 there's part of it. There's a business attached to it
24 where I have to worry about employees and how they're going
25 to get paid and how they're going to be protected where I'm

1 on the management side. So I understand where you're
2 coming from, this is not easy.

3 And I think everybody wants to do the best thing,
4 right? Everybody wants to do the best thing. And I think
5 if we look at it in that vein we can come to an
6 understanding that we have to -- business has to protect
7 the employees. Employees have to do what's right to not
8 get infected, and get other people infected. I mean, it
9 works both ways. And unless we're all in it together it's
10 not going to work. We can't be fighting against each
11 other. But I would suggest that we get some exclusion pay
12 in there.

13 And other than that I think most of what you have
14 said is reasonable. It's not always easy, but it's
15 reasonable. But those are my comments. Anybody else have
16 any comments? Oh, Barbara?

17 BOARD MEMBER BURGEL: Yeah, I just wanted to
18 mention that I support tightening up that "close contact"
19 definition as well. I think that Pamela Murcell's comments
20 about trying to get it as quantifiable as possible, I'm not
21 quite sure whether we should add "proximity" back into that
22 definition, but I do think there needs to be some
23 tightening up of that definition.

24 And likewise, I want to echo the comment made by
25 Rebecca Ryan, who works with Ohlone and Foothill College

1 (indiscernible) contact tracing and also the HR individual
2 who talked about the amount of work that contact tracing
3 takes. I don't think it's important to maintain a list of
4 contact traces. Having done a lot of contact tracing I
5 don't think -- I think group contact tracing with email
6 notification has been the mode, especially ever since
7 January, December, January 3rd with Omicron. You just
8 can't, it's so resource intensive. So I would hope that
9 that contact tracing is modified in the next track. Thank
10 you.

11 CHAIR THOMAS: And just one other thing. A lot
12 of it's been mentioned about what other states are doing.
13 Frankly, I don't care what Texas is doing. I don't care
14 what Florida is doing or Wyoming or North Dakota or South
15 Dakota, I don't care, because they're not California.
16 We're way ahead of them. I mean, you talk about looking at
17 in the future, we're way ahead of them. And we're not
18 going to be them, so that's my feeling about other states.

19 We've always been in the forefront ahead of
20 everybody as far as protecting employees. I remember when
21 we lost it. I remember when there was no Cal/OSHA for
22 about a year and Fed OSHA was going to take over
23 everything. I remember that. That was a long time ago and
24 the people of California decided it was worth it to have
25 our own, so that's where we've been ever since. Anyway,

1 that's all I got.

2 Go ahead, Chris.

3 BOARD MEMBER LASZCZ-DAVIS: Yeah, just real
4 quickly. I mean, the comment about calibrating with other
5 states. I just want to clarify it's not competition. It's
6 really an opportunity to learn about new approaches and new
7 ways of doing things to address the same issue that we
8 have. So just for clarification, Dave.

9 CHAIR THOMAS: No, I didn't mean that. Any other
10 way other than I think we're the best state, that's all.

11 Anything, anything else?

12 MR. BERG: I just had a response to the close
13 contact that Barbara talked about. In the regulation
14 itself it says, "The employer shall notify employees and
15 independent contractors who had close contact, as well as
16 any employee or with an employee who had close contact."
17 Someone -- or this comment was this prohibits group
18 notification. That's not correct. You can do group
19 notification. This isn't very specific. It just says you
20 have to notify the employees. It doesn't say how to notify
21 them.

22 CHAIR THOMAS: Can you say that again?

23 MR. BERG: It doesn't say how to notify
24 employees. There's like been comments saying that it
25 requires this real onerous work and it just says make sure

1 all employees get notified. That's all it says.

2 BOARD MEMBER BURGEL: No. I think Eric the key
3 comment was, or correct me if I'm wrong, but I read about
4 that you have to keep records of individual contacts for
5 two years.

6 MR. BERG: Yeah, the records requirement is
7 different. I'm just talking about notifying employees.
8 But that can be done in group --

9 BOARD MEMBER BURGEL: Right. (Overlapping
10 colloquy.) But how are you going to get that list of
11 contacts if you're not going to interview them?

12 MR. BERG: What's that? Sorry, I was looking --
13 I was reading.

14 BOARD MEMBER BURGEL: I just was, again what is
15 the value of keeping these lists of contacts for two years?

16 MR. BERG: Oh, the record keeping requirement?

17 BOARD MEMBER BURGEL: Yeah.

18 MR. BERG: Okay, we'll take a look at that.
19 Thanks.

20 BOARD MEMBER BURGEL: Okay. Thank you.

21 BOARD MEMBER STOCK: And I'm sorry, but just to
22 understand myself. The record-keeping, how -- are you
23 saying that that's the way that it's phrased requires
24 individual interviews of everybody? Or is it more just
25 keeping a record of who was defined and who received that

1 notice that was a group notice for everybody who was
2 determined to be in close contact?

3 BOARD MEMBER BURGEL: Well, I don't know how it's
4 going to be interpreted as an enforceable issue. But how
5 it reads to me is that you would have the individuals send
6 a list of who they've been in contact with. Right now that
7 notifications tend to go by department, and if indeed the
8 individual employee was on the worksite during their
9 infectious period. And so then you post it on a public
10 website, but you also send email notifications that tend to
11 be, as people have commented, quite frequent saying you may
12 have been exposed to. But keeping lists of all those
13 people doesn't -- that you've sent this list to, it's not a
14 specific list.

15 How we used to do contact tracing is that you
16 would have a specific list and you would make contact with
17 each of those individuals to ascertain if indeed, they had
18 -- 15 minutes and within 6 feet -- if they had actually an
19 exposure. And at that point if it was a high-risk exposure
20 you would take them out of the workplace. I mean, it was
21 very, very intensive and took a lot of resources.

22 So but what is the value of keeping a contact
23 tracing list for every positive employee? That's how I
24 interpreted that. And maybe I'm overinterpreting the
25 language for two years.

1 BOARD MEMBER STOCK: Yeah. So, Eric that sounds
2 like something that would benefit from -- and I may be a
3 little bit confused -- is that something new? Or is that
4 continuing a requirement that exists or it's a new one?
5 Because I know, for example, where I work we get almost
6 daily notices, email notices that there's been an exposure
7 at the University of California, Berkeley.

8 So maybe, I mean clearly I don't know whether
9 there's answers you have now. But this is clearly
10 something that further -- just if it's existing now,
11 further clarification in the FAQ if it's needed. Or if
12 it's a new provision, further explanation of how that would
13 work, so that people might -- so that everybody's
14 interpreting it appropriately.

15 MR. BERG: Okay. Yeah, we'll take a close look
16 at that.

17 CHAIR THOMAS: You know what? We're going to
18 have to move on because I know Chris has got to go, a
19 little business to take care of.

20 So there being no other persons coming forward to
21 testify in this matter, the public hearing is closed.
22 Written comments will be received until 5:00 p.m. today.
23 Thank you.

24 We will now proceed with the business meeting.
25 The purpose of the business meeting is to allow the Board

1 to vote on matters before it and to receive briefings from
2 staff regarding the issues listed on the business meeting
3 agenda. Public comment is not accepted during the business
4 meeting unless a member of the Board specifically requires
5 public input.

6 The proposed variance decisions for adoption are
7 listed on the Consent Calendar. Ms. Gonzalez, will you
8 please brief the Board?

9 MS. GONZALEZ: Thank you, Chair Thomas. We have
10 proposed variance decisions 1 through 20. And I'll note
11 that 20 is a recommended grant for the Board's
12 consideration and possible adoption.

13 CHAIR THOMAS: All right. Are there any
14 questions for Ms. Gonzalez? And I will entertain a motion
15 to adopt the consent calendar 1 through 20. And 20 was a
16 grant, correct? May I have a motion?

17 BOARD MEMBER LASZCZ-DAVIS: I so move.

18 BOARD MEMBER CRAWFORD: Second.

19 BOARD MEMBER BURGEL: Second

20 CHAIR THOMAS: I have a second. I have a motion
21 and a second.

22 MS. SHUPE: Ms. Money, can you confirm the first
23 and the second?

24 MS. MONEY: I have Ms. Crawford as the motion and
25 Ms. Stock as the second; is that correct?

1 (Overlapping colloquy: multiple speakers at
2 once.)

3 BOARD MEMBER CRAWFORD: No, Chris made the
4 motion.

5 CHAIR THOMAS: No, I think it was --

6 BOARD MEMBER: I think it was Chris and then
7 Kate.

8 CHAIR THOMAS: Yeah, Chris and Kate.

9 MS. MONEY: So I have --

10 CHAIR THOMAS: Call the roll. You got it?

11 MS. MONEY: I have the motion is Ms. Laszcz-Davis
12 and the second as Ms. Crawford, correct?

13 CHAIR THOMAS: Correct.

14 MS. MONEY: Ms. Burgel?

15 BOARD MEMBER BURGEL: Aye.

16 MS. MONEY: Ms. Crawford?

17 MS. MONEY: Ms. Laszcz-Davis?

18 BOARD MEMBER LASZCZ-DAVIS: Aye.

19 MS. MONEY: Ms. Stock?

20 BOARD MEMBER STOCK: Aye.

21 MS. MONEY: Chairman Thomas?

22 CHAIR THOMAS: Aye. And the motion passes.

23 Division updates. Mr. Berg, will you please
24 brief the Board?

25 MR. BERG: No other updates at the time. Thank

1 you.

2 CHAIR THOMAS: All right, so there will be no
3 questions for Mr. Berg.

4 MR. BERG: I hope not.

5 MS. SHUPE: We'll just note for the record that
6 Board Member Chris Laszcz-Davis has had to leave. We still
7 have a quorum though.

8 CHAIR THOMAS: Legislative Update. Ms. Gonzalez,
9 will you --

10 BOARD MEMBER BURGEL: (Overlapping colloquy)
11 Dave, can I ask a question though? Just an update around
12 where the indoor heat standard is? That's a quick one.

13 CHAIR THOMAS: Mr. Berg?

14 MR. BERG: It's gone back and forth between the
15 Standards Board and us. I think it's -- I forget where it
16 is now. Christina, is it with you guys, I think?

17 MS. SHUPE: Yeah, so it is with us right now.
18 We've been making very good progress on it. But we've also
19 been working on the Lead Standard as well. And I have some
20 more information on the activities for Board staff in the
21 Executive Officer's Report.

22 BOARD MEMBER BURGEL: Great. Thank you.

23 CHAIR THOMAS: Legislative Update, Ms. Gonzalez.

24 MS. GONZALEZ: Thank you, Chair Thomas.

25 Since we provided you this update on September 6,

1 we had some movement, AB 257, which is the Fast-Food
2 Facilities Employment Bill was signed by the Governor as
3 was AB 1643. AB 1775 has been presented to the Governor.
4 And AB 2243, which is the Wildfire Smoke, has also been
5 presented to the Governor.

6 CHAIR THOMAS: Thank you, any questions for Ms.
7 Gonzalez?

8 BOARD MEMBER STOCK: Yes. This is, Laura. I
9 have a question. Do you have any -- maybe we could put
10 this on a future agenda if it's something too complicated.
11 But I'd be curious to see about the Fast-Food
12 Accountability Act and what impact that will have on how
13 Board activities and regulations -- and what's the overlap
14 between the work of those councils and our work. So if you
15 had a quick answer to that, otherwise maybe we can add that
16 to a future agenda.

17 MS. GONZALEZ: Sure. I mean, sounds like the way
18 the council is going to work is they are going to present
19 in sort of a petition fashion, ideas for standards for the
20 Board to consider. So they don't have overlapping
21 jurisdiction per se, but they will be coming to the Board
22 with ideas about new standards, which will potentially
23 bring new work to you.

24 CHAIR THOMAS: Thank you. Executive -- oh, any
25 other questions?

1 Executive Officer's Report. Ms. Shupe, will you
2 please brief the Board?

3 MS. SHUPE: Thank you, Chair Thomas.

4 So before we get too far into it, I just want to
5 take a minute. I'm very pleased to introduce the Standards
6 Board's newest employee, Jesi Mowry. (phonetic). She has
7 joined us. She'll be our personnel specialist and she's
8 here at the meeting with us today. Her primary
9 responsibility will be to help us fill our vacant
10 positions, so yay.

11 She comes to us from the private sector and she
12 brings an excellent foundation of experience in both
13 personnel and private sector administrative management.
14 And she's already helped move several of our hiring
15 packages forward, so she's very much hit the ground
16 running. And I'm very pleased on that note.

17 Which brings me directly to our second item. The
18 Standards Board is currently accepting applications to fill
19 the permanent Principal Safety Engineer vacancy. Mr. Smith
20 has been filling in very graciously as a retired annuitant,
21 but unfortunately has told me that has got an expiration
22 date on it. The window to submit applications for the
23 permanent PSE position closes on September 20th, at which
24 point we'll move to review of applications and eventually
25 an interview process. Anyone wishing to apply should

1 review the job posting on the CalCareers website for
2 specific instructions.

3 And then, Barbara, I promised I would speak a
4 little bit more on what our staff has been up to over the
5 past month. OSHSB staff hosted an advisory committee
6 meeting on August 31st to consider updates to Section 1630.
7 This is for elevators used in construction. And some of
8 the Board members may recall that we received a Form 9 on
9 this several years ago from the Division identifying it as
10 a regulation that was in need of update. We also received
11 a petition from both management and labor stakeholders
12 requesting that 1630 be updated. So this rulemaking has a
13 lot of support moving forward, and we wanted to make sure
14 that A/C happened.

15 And then on October 13th and 14th OSHSB staff will
16 be hosting a second advisory committee to consider changes
17 related to Walking-Working Surfaces Regulations. These are
18 general industry regulations that impact pretty much every
19 employment space in California, so this is a massive
20 undertaking. And it's in response to changes in federal
21 regulations. So we want to make sure that we bring our
22 California standards up to and make sure they're at least
23 as effective as the federal standards.

24 Do I have any questions from the Board?

25 BOARD MEMBER STOCK: Yes, Christina, do you have

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1 anything more you could add around the indoor heat? Just I
2 know you were going to be touching on that. It's in the --
3 it's in your -- if it's with your staff now, and clearly
4 you have a lot on your plate. But with that, is there any
5 update you can give about when that might -- your work on
6 it might be completed and when we might see something?

7 MS. SHUPE: So it hasn't yet been submitted for
8 SAR submission. What we're doing is we're finalizing the
9 package that will go over to the Labor Secretary for review
10 and approval. Once it is approved by the Labor Secretary,
11 and there isn't a fixed timeline on that, once that occurs
12 then we'll provide it for public notice. And then you'll
13 hold a public hearing.

14 So I wouldn't expect to see anything come before
15 the Board until next year. But I can tell you that we are
16 very close to SAR submission. We've been making great
17 progress.

18 And in fact, the lead regulations, which have
19 also been in the works for quite some time, we're expecting
20 those to go for SAR submission within the week.

21 BOARD MEMBER STOCK: Thank you.

22 CHAIR THOMAS: Any other questions for
23 Christina?

24 BOARD MEMBER STOCK: Thank you.

25 CHAIR THOMAS: Future agenda items, I think we --

1 all right, do you have any questions about future agenda
2 items, Board Members? How about lead, where's lead at?

3 MS. SHUPE: So lead will be submitted for SAR
4 approval, review and approval, probably within the next
5 week.

6 CHAIR THOMAS: Okay. Any other questions?

7 BOARD MEMBER BURGEL: I just wanted to keep the
8 whole issue of those avalanche, remote avalanche control
9 systems -- I know that they need an advisory committee.
10 And I know that that's sort of currently tabled, but I just
11 would like an update on that. Just not to lose sight of
12 those constituents who spoke several months ago. Thank
13 you.

14 MS. SHUPE: Absolutely. And I want to assure the
15 Board that we are not losing sight of that issue. That's
16 one of the reasons we're so grateful to have Ms. Mowry on
17 staff, because part of what we're facing is a resource
18 crunch. We need to prioritize rulemaking packages that we
19 have. And as we fill our vacancies, as we fill that
20 permanent Principal Safety Engineer position, and as we
21 fill our vacant Senior Safety Engineers. And as we add in
22 administrative support for those engineer positions we'll
23 be able to start addressing additional rulemaking packages
24 such as Avalanche.

25 CHAIR THOMAS: Any other questions? Seeing that

1 there are none, the next Standards Board regular meeting is
2 scheduled for October 20th, 2022 in San Diego and via
3 teleconference and video conference. Please visit our
4 website and join our mailing list to receive the latest
5 updates.

6 Thank you for your attendance today. There being
7 no further business to attend to (indiscernible) this
8 meeting. Thank you.

9 (The Business Meeting adjourned at 2:01 p.m.)

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CERTIFICATE OF REPORTER

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

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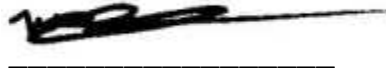
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I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.



Myra Severtson
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