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COVID-19 Emergency Temporary Standards Frequently Asked Questions

Updated June 18, 2021

On June 17, 2021, the Occupational Safety and Health Standards Board (Standards Board) voted to update the COVID-19 Emergency Temporary Standards (ETS), 8 CCR §§ 3205-3205.4. [Executive Order N-09-21](#) permitted the revised ETS to take effect the same day.

The below FAQs address the June 17, 2021 revision of the ETS. You may also refer to this shorter set of [FAQs](#) that highlight the changes between the original November 30, 2020 ETS and the [revised ETS](#).

Please note: At the bottom of this webpage, you will find [footnotes](#) that describe what updates have been made.

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Scope of Coverage [Back to top](#)

1. Q: Which employers must comply with the COVID-19 emergency temporary standards (ETS)?

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

- Work locations where there is only one employee who does not have contact with other people.
- Employees who are working from home.
- Employees who are covered by the Aerosol Transmissible Diseases regulation.
- Employees working from a location chosen by the employee, which is not under the control of the employer (for instance, an employee teleworking from a café or a friend's home)

2. Q: Does the ETS apply for employees who split their work time between home and the workplace?

A: Yes, however, the regulation applies only when employees work at the workplace, or are exposed at work, but not when they work from home.

3. Q: Does the regulation apply to workplaces with only one employee who has brief contact with other persons?

A: Yes, the regulation applies to such workplaces (unless they fall into one of the exceptions listed above); however, the measures that the employer must implement to comply with the ETS will reflect this type of limited exposure.

4. Q: Does the regulation apply for employees who are working from remote locations other than their home?

A: No, the regulations do not apply to employees an employer assigns to telework but who choose to work elsewhere, such as at a hotel or rental property. The regulation on employer-provided housing (3205.3) applies when a person is working from a hotel arranged for or provided by the employer; however, the rule does not apply to business travel by employees unless they are sharing a room or suite.

5. Q: Does the regulation apply to any facility that is subject to the Aerosol Transmissible Diseases (ATD) standard?

A: The ETS applies to employees at these facilities who are not identified in the employer's Aerosol Transmissible Diseases Exposure Control Plan, as required under California's Aerosol Transmissible Diseases (ATD) standard (8 CCR section 5199), as having occupational exposure to aerosol transmissible diseases, such as administrative employees who work only in an office environment separated from patient care facilities.

6. Q: The regulation exempts employees with occupational exposure as defined by section 5199, when covered by that section. Can an

employee in a single workplace be subject to both the ETS and section 5199 at different times?

A: No. In a facility or operation that is within the scope of section 5199, employees with occupational exposure to aerosol transmissible diseases (ATDs), as defined in section 5199, are covered by the requirements of section 5199, and not the ETS. This is true even when an employee who has occupational exposure performs tasks that do not include exposure to ATDs, e.g., when a hospital nurse who performs patient care spends time in the hospital's human resources office.

7. Q: Can an employer at a workplace covered by section 5199 deem all employees on site to have occupational exposure to COVID-19 and exempt them from the ETS?

A: If the employer provides all employees with protections under its ATD Exposure Control Plan and has incorporated those employees into the plan in accordance with section 5199 because they have an occupational exposure to COVID-19, then those employees would not be subject to the ETS.

8. Q: The regulation exempts employees with occupational exposure as defined by section 5199, when covered by that section. Can a firefighter be subject to both the ETS and section 5199 at different times?

A: No, a firefighter cannot be subject to both the ETS and section 5199. However, a firefighter must be protected from COVID-19 under one of the standards.

If the firefighter performs emergency medical services (EMS) duties, such as those of a paramedic, emergency medical technician or first responder; or if the firefighter otherwise provides support in the field to those performing EMS duties, the firefighter has occupational exposure to aerosol transmissible diseases (ATDs), as defined in section 5199, and is covered by the requirements of section 5199, and not the ETS. This is true even when that firefighter performs tasks that do not necessarily involve potential exposure to ATDs, e.g., when responding to non-EMS calls and when otherwise traveling in fire department vehicles; when performing routine tasks, such as training and maintenance; and while engaged in the normal routines of a fire station, including meals and sleeping.

Section 5199(e) requires employers to use feasible engineering and work practice controls to minimize employee exposures to aerosol transmissible pathogens. This includes implementing COVID-19 protections in fire department vehicles and facilities, such as by improving ventilation, physical distancing and mask use in accordance with CDPH requirements, including in facility sleeping quarters and other common areas.

Under Section 5199(h)(6)-(9), covered employers must implement specific follow-up requirements in the event an employee is exposed to an aerosol

transmissible pathogen. This includes fire departments when firefighters are potentially exposed to COVID-19, regardless of the source of the exposure.

If a firefighter is not identified as having occupational exposures to ATDs in the employer's ATD Prevention Plan or if a firefighter is not protected under that plan, the firefighter would be subject to the ETS.

The COVID-19 Prevention Program [Back to top](#)

1. Q: What are the main requirements of the ETS?

A: To comply with the ETS, an employer must develop a written COVID-19 Prevention Program or ensure its elements are included in an existing [Injury and Illness Prevention Program](#) (IIPP). The employer must do the following in accordance with their written program:

- Communicate to employees about the employer's COVID-19 prevention procedures.
- Identify, evaluate and correct COVID-19 hazards.
- Require and provide face coverings and respirators in the manner and in the circumstances specified in the ETS.
- Advise employees they can wear face coverings at work, regardless of their vaccination status, without fear of retaliation by the employer.
- Use engineering controls, administrative controls and personal protective equipment under certain circumstances.
- Follow procedures to investigate and respond to COVID-19 cases in the workplace.
- Provide COVID-19 training to employees.
- Make testing available at no cost to employees who have had a “close contact” (as defined in the ETS) with a person with COVID-19, and in the case of multiple infections or a major outbreak, make testing available at no cost on a regular basis for employees in the exposed work areas. This requirement does not apply to exposed employees who are fully vaccinated and have no symptoms, except during major outbreaks.
- Exclude COVID-19 cases and exposed employees from the workplace until they are no longer an infection risk. Exposed employees who are fully vaccinated and have no symptoms do not need to be excluded.
- Follow return to work criteria.
- Maintain records of COVID-19 cases, and report serious illnesses to Cal/OSHA and to the local health department when required.

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

Communication with Employees [Back to top](#)

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

A: Requirements include:

- How to report COVID-19 symptoms, possible close contacts and hazards to the employer without fear of reprisal
- COVID-19 hazards in the workplace and the employer's policies and procedures to address them
- Best practices for preventing the transmission of COVID-19, including information on respirators
- When and how unvaccinated persons can request a respirator
- That employees may wear face coverings at work, regardless of their vaccination status, without fear of retaliation by their employer
- How employees with elevated risk factors for COVID-19, which can be found on the CDC's website, can request accommodations from their employer
- How the employee can obtain testing for COVID-19, such as through the employer's workplace-based testing program, or through the local health department, a health plan, or at a community testing center
- Notice of potential exposure to COVID-19
- How to participate in workplace hazard identification and evaluation
- Information regarding COVID-related benefits to which the employee may be entitled under federal, state or local laws

Identifying, Evaluating and Correcting COVID-19 Hazards [Back to top](#)

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

A: Identifying, evaluating and correcting workplace hazards includes:

- Developing and implementing a process for screening employees for and responding to employees with COVID-19 symptoms.
- Reviewing existing state and local guidance and orders on hazard prevention, [including industry-specific guidance found on Cal/OSHA's website](#).
- Reviewing existing practices for controlling COVID-19.

- Conducting a site-specific evaluation of where COVID-19 transmission could occur, including interactions between employees and any other persons, and places employees may congregate or interact with members of the public.
 - Allowing employees or employees' authorized representatives to participate in hazard identification and evaluation.
 - Ensuring a process is in place to immediately address COVID-19 cases.
 - Conducting periodic inspections of the workplace to ensure compliance with the ETS and check for new hazards.
 - Implementing procedures to correct identified hazards.
2. **Q: How does an employer allow employees or employees' representatives to participate in hazard identification or evaluation?**
A: The employer has flexibility in how it allows worker participation in hazard identification and evaluation. The rule does not explicitly require employee participation, but employers must allow it. Cal/OSHA encourages the participation of employees and employees' authorized representatives in hazard identification and evaluation. Employers must train employees on how to participate.

Face Coverings and Other Controls [Back to top](#)

1. **Q: What are the face covering requirements of the ETS?**
A: The ETS requires employers to provide employees who are not fully vaccinated with face coverings of at least 2 layers or more and ensure they are worn over the nose and mouth when indoors, in vehicles and when required by orders from the CDPH. Outdoors, no employees need to use face coverings, regardless of vaccination status, unless there is an outbreak.

Exceptions include: when an employee is alone in a room or vehicle, while eating or drinking provided employees are six feet apart or outside, employees wearing respirators, employees who cannot wear face coverings due to a medical or mental health condition or disability or who are hearing-impaired or communicating with a hearing-impaired person, or when an employee performs specific tasks which cannot be performed with a face covering.

Employers must also provide face coverings to employees upon request, regardless of their vaccination status.

2. **Q: What if an employee is not required to wear a face covering under the ETS, but wishes to do so?**

A: Employers must allow employees to wear face coverings if they voluntarily choose to do so, unless it would create a safety hazard, such as interfering with the safe operation of equipment.

3. Q: May an employer require an employee to wear a face covering at work even if the employee provides documentation verifying that they are fully vaccinated?

A: Yes, employers can have policies that are stricter than those required by the ETS. However, an accommodation must be made for those who cannot wear face coverings due to a medical or mental health condition or disability, who are hearing-impaired or communicating with a hearing-impaired person, or when an employee performs specific tasks which cannot be performed with a face covering.

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

A: Requirements include:

- Engineering controls
 - Maximize the amount of outside air to the extent feasible, unless there is poor outside air quality (an AQI of 100 or higher for any pollutant) or some other hazard to employees such as excessive heat or cold
- Administrative controls
 - Implement effective cleaning procedures of commonly touched surfaces, such as doorknobs, elevator buttons, equipment, tools, handrails, handles, controls, phones, headsets, bathroom surfaces, and steering wheels
 - Clean areas and material where a COVID-19 case has been during the "high risk exposure period," as defined in these FAQs, and disinfect if indoors and used by another employee within 24 hours
 - Provide for, encourage and allow time for frequent hand washing, and provide hand sanitizer
- Personal protective equipment (PPE)
 - Evaluate the need for PPE, including but not limited to gloves, eye protection and respiratory protection as required by Cal/OSHA standards
 - Upon request, provide respirators for voluntary use to all employees who are not fully vaccinated and who are working indoors or in vehicles with more than one person ("respirator" means a respiratory protection device approved by the National

Institute for Occupational Safety and Health (NIOSH) to protect the wearer from particulate matter, such as an N95 mask)

- When respirators are provided for voluntary use, encourage their use and ensure the respirator is the correct size for the employee
- Provide eye and respiratory protection for employees exposed to procedures that aerosolize saliva or other potentially infectious materials, such as some dental procedures.

Ventilation [Back to top](#)

1. Q: What should be done about building ventilation?

A: If a building or structure has natural or mechanical ventilation, or both, the employer should maximize as much as possible the quantity of outside air provided, except when the United States Environmental Protection Agency (EPA) Air Quality Index is greater than 100 for any pollutant or if opening windows or maximizing outdoor air by other means would cause a hazard to employees, for instance from excessive heat or cold.

2. Q: How can employers who rent buildings or workspace in buildings over which they do not have control comply with the requirements regarding maximizing outdoor air?

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

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

A: The ETS requires, with some exceptions, the employer to maximize the use of outdoor air to the extent feasible. Cal/OSHA will consider the processes or environments necessary to perform the work when assessing feasibility. The employer should filter recirculated air with the highest filtration efficiency compatible with the ventilation system.

Vaccines [Back to top](#)

1. Q: When is an employee considered vaccinated under the ETS?

A: An employee is considered fully vaccinated if the employer has documented that the employee received, at least 14 days prior, either the second dose in a two-dose COVID-19 vaccine series or a single-dose COVID-19 vaccine.

2. Q: What COVID-19 vaccines are acceptable under the ETS?

A: Vaccines must be FDA approved; have an emergency use authorization

from the FDA; or, for persons fully vaccinated outside the United States, be listed for emergency use by the World Health Organization (WHO).

3. Q: Must the ETS still be followed for vaccinated persons?

A: Yes, some of the requirements of the ETS must still be followed by vaccinated employees, as discussed in the Face Covering, Testing, and Outbreak sections of this FAQ.

4. Q: May an employer require employees to submit proof of their being “fully vaccinated”?

A: Yes. As explained by the Department of Fair Employment and Housing, https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2020/03/DFEH-Employment-Information-on-COVID-19-FAQ_ENG.pdf because the reasons that any given employee or applicant is not vaccinated may or may not be related to disability or religious creed, simply asking employees or applicants for proof of vaccination is not a disability-related inquiry, religious creed-related inquiry, or a medical examination, employers may wish to instruct their employees or applicants to omit any medical information from such documentation. Any record of employee or applicant vaccination must be maintained as a confidential medical record.

Under the ETS, an employer is not obligated to require employees to submit proof of being fully vaccinated.

5. Q: May an employer require employees to be vaccinated against COVID-19?

A: This is an issue outside the scope of the ETS. For guidance, employers may wish to refer to information provided by the federal Equal Employment Opportunity Commission (EEOC) and/or the California Department of Fair Employment and Housing at the following webpages. Both of these “FAQ” resources address this question.

EEOC FAQ’s regarding COVID-19: <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

DFEH FAQs regarding COVID-19: https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2020/03/DFEH-Employment-Information-on-COVID-19-FAQ_ENG.pdf

6. Q: What is the employer required to do if it does not want to ask employees whether they are vaccinated?

A: If the employer does not wish to ask about and document the vaccination status of their employees, the employer must treat all employees as unvaccinated.

7. Q: After asking about an employees’ vaccination status, how can an employer document that an employee is “fully vaccinated”?

A: An employer is not compelled to use any specific method of documenting their employees' vaccination status, though whichever method is used, the information must be kept confidential. Acceptable options include:

- Employees provide proof of vaccination (vaccine card, image of vaccine card or health care document showing vaccination status) and employer maintains a copy.
- Employees provide proof of vaccination. The employer maintains a record of the employees who presented proof, but not the vaccine record itself.
- Employees self-attest to vaccination status and employer maintains a record of who self-attests.

Nothing in the ETS prevents an employer from treating all employees as unvaccinated and taking the most protective steps under the ETS (such as requiring all employees to wear a face covering) instead of having a documentation process.

8. Q: How long are employers required to maintain documentation of employee vaccination status?

A: Vaccination records created by the employer under the ETS need to be maintained for the length of time necessary to establish compliance with the regulation, including during any Cal/OSHA investigation or appeal of a citation.

In order to encourage documentation using vaccination records, Cal/OSHA has determined that it would not effectuate the purposes of the Labor Code to subject such records to the thirty (30) year record retention requirements that apply to some medical records.

Training [Back to top](#)

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

A: Employee training must cover:

- Employer policies and procedures to protect employees from COVID-19 hazards and how to participate in the identification and evaluation of those hazards.
- COVID-19 related benefit information, from either the employer or from federal, state or local government that may be available to employees impacted by COVID-19. Information on COVID-19 benefits such as paid sick leave and workers' compensation benefits is posted on the [Department of Industrial Relations' Coronavirus Resources](#) webpage.

- The fact that COVID-19 is an infectious disease that can be spread through the air when an infectious person talks or vocalizes, sneezes, coughs, or exhales; that COVID-19 may be transmitted when a person touches a contaminated object and then touches their eyes, nose, or mouth, although that is less common; and that an infectious person may show no symptoms.
- Proper use of face coverings and the fact that face coverings are not respiratory protective equipment.
- The conditions under which face coverings must be worn at the workplace and that face coverings are additionally recommended outdoors for people who are not fully vaccinated if six feet of distance between people cannot be maintained.
- That employees can request face coverings from the employer at no cost to the employee and can wear them at work, regardless of vaccination status, without fear of retaliation. That respirators such as N95s are more effective at preventing COVID-19, an airborne disease.
- The Employer's policies for providing respirators, and the right of employees who are not fully vaccinated to request a respirator for voluntary use, without fear of retaliation and at no cost to employees.
- When respirators are provided for voluntary use, how to properly wear them and perform a seal check, and the fact that facial hair interferes with a seal.
- The importance of frequent hand washing for at least 20 seconds and use of hand sanitizer when handwashing facilities are not available.
- The symptoms of COVID-19 and the importance of not coming to work and getting tested if an employee has symptoms. Information on the employer's COVID-19 policies; how to access COVID-19 testing and vaccination; and the fact that vaccination is effective at preventing COVID-19, protecting against both transmission and serious illness or death.

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

Addressing COVID-19 Cases in the Workplace [Back to top](#)

1. **Q: What must an employer do to investigate and respond to a COVID-19 case?**

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

- Determining when the COVID-19 case was last in the workplace, and if possible the date of testing and onset of symptoms.

- Determining which employees may have been exposed to COVID-19 through a close contact.
- Notifying employees, in writing, of any potential exposures within one business day (and notifying any other employer who has potentially exposed employees in the workplace).
- Make COVID-19 testing available to potentially exposed employees with a close contact at no cost and during working hours, with the exception of asymptomatic employees who were fully vaccinated before the close contact and—for a limited period—employees who recently recovered from COVID-19 and have not developed COVID-19 symptoms since returning to work.
- Exclude COVID-19 cases and exposed employees from the workplace until they are no longer an infection risk. Exposed employees who are fully vaccinated or who recently recovered from COVID-19 and have no symptoms do not need to be excluded.
- Investigate the exposure, whether workplace conditions could have contributed to the risk of exposure, and what corrections would reduce exposure.

2. Q: What is a “close contact”?

A: An employee has had a close contact if they were within six feet of a COVID-19 case for a cumulative total of 15 minutes or greater in any 24-hour period within or overlapping with the “high risk exposure period.”

3. Q: What is the “high risk exposure period”?

A:

- For COVID-19 cases who develop COVID-19 symptoms, from two days before they first develop symptoms until 10 days after symptoms first appeared, and 24 hours have passed with no fever, without the use of fever-reducing medications, and symptoms have improved.
- For persons who test positive but never develop COVID-19 symptoms, from two days before until ten days after the specimen for their first positive test for COVID-19 was collected.

4. Q: Must an employer exclude an employee who claims a COVID-19 workplace exposure?

A: An employer should take any reports of exposure seriously and should investigate any evidence of an exposure. It is ultimately the employer's responsibility to determine if a close contact occurred.

Testing [Back to top](#)

1. Q: What are the testing requirements in the ETS?

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

- Inform all employees on how they can obtain testing. This could be through the employer, local health department, a health plan, or at a community testing center. The only obligation to all employees is to provide information. Offer testing to employees who are not fully vaccinated or who are vaccinated with symptoms at no cost and during paid time in the event of a close contact at work, with an exception for certain symptom-free employees who recently recovered from COVID-19.
- Make available at no cost periodic (at least weekly or twice per week depending on the magnitude of the outbreak) COVID-19 testing to all employees within an exposed group during an outbreak, except for those employees who were not at work during the relevant period; for vaccinated employees without symptoms; and—for a limited period—employees who recently recovered from COVID-19 and have not developed COVID-19 symptoms since returning to work.
- Testing must be provided in a manner that ensures employee confidentiality.

2. Q: Does the employer have to provide testing to employees at their work location?

A: No. The employer may provide or make available testing to employees at a testing site separate from their work location.

3. Q: Can employers send their employees to a free testing site for testing (e.g., run by their county) and is this considered to be "at no cost to employees?"

A: Yes, as long as employees incur no cost for the testing. Ensuring that an employee does not incur costs would include paying employees' wages for their time to get tested, as well as travel time to and from the testing site. It would also include reimbursing employees for travel costs to the testing site (e.g., mileage or public transportation costs).

4. Q: What do employers do if employees refuse to take the tests required by various provisions of the emergency regulations?

A: An employer that offers a test at no cost to the employee does not violate the regulation if an employee declines or refuses to take it. The employer is not required to obtain a signed declination from employees who refuse to take a COVID-19 test offered by the employer.

5. Q: What does "paid time" mean, in relation to providing COVID-19 testing?

A: This means that the employer must make testing available during paid time. While the employee must be compensated for their time and travel expenses, the employer is not obligated to provide the test during the employee's normal working hours

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

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

7. Q: In a non-outbreak setting, how does an employer determine which employees may have had close contact with a COVID-19 case?

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

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

A: Employers must:

- Notify all employees and employees' authorized representatives who may have had close contact with a COVID-19 case within one business day in a manner that does not reveal the COVID-19 case's personal identifying information.
- Offer testing during paid time, and at no cost, to any employee with a close contact which occurred in the workplace, and provide applicable benefit information. There is an exception for an employee who was fully vaccinated before the close contact and has no symptoms. There is also an exception for an employee who had COVID-19, returned to work after the end of the required exclusion period, and have had no symptoms since returning—but that exception lasts only 90 days after the employee's original onset of symptoms or, if the recovered COVID-19 case never developed symptoms, 90 days following the first positive test.
- Exclude from the workplace employees who test positive for COVID-19.
- Exclude employees after a COVID-19 close contact, unless they were fully vaccinated before the close contact, or recently recovered from COVID-19 as described above, and do not show any symptoms of COVID-19. Follow the requirements for preserving their pay and benefits.
- Follow the return to work criteria for returning excluded employees to work.
- Investigate the exposure and address hazards.

- Follow all recordkeeping and reporting requirements for employee COVID-19 cases.

9. Q: Where can I find COVID-19 testing for my employees?

A: Some of the simplest ways to get testing include the following:

- At the [California Department of Public Health](#) or the [National Association of County and City Health Officials](#) website, click on the county or city health department in the area where you would like employees to be tested. Many local health departments maintain websites with up-to-date information on testing locations. Click on the appropriate health department's website and search for testing sites. Follow instructions to identify testing locations and schedule a test. All counties offer free testing for individuals at designated testing sites.
 - Note that in most cases, prior to scheduling a testing appointment, the employee who will be getting tested is required to answer questions in an online form about whether or not they have symptoms, whether they have been exposed to someone with COVID-19, etc. To complete the online scheduling process, the employee also must provide their consent to receive the test.
- An employer can partner with a medical provider to establish a testing program. Some providers offer on-site testing of employees.

However testing is arranged, employers must ensure employees do not incur any costs for COVID-19 testing required by title 8 of the California Code of Regulations, sections 3205 through 3205.4.

10.Q: Are there resources available for employers who need to offer testing to a large number of employees on a regular basis?

A: The State of California Valencia Branch Laboratory (VBL) opened on October 30, 2020 to increase the state's COVID-19 testing capacity and reduce test turnaround time.

- Large employers can partner with VBL to set up on-site testing of employees. Getting the testing site set up requires approximately 2-3 weeks to complete. Visit the [Valencia Branch Laboratory](#) website for more information. To set up a local testing site, get started by filling out the [Valencia Lab Interest Form](#).

11.Q: May employers require employees to undergo COVID-19 testing?

A: The ETS requires employers to make testing available to employees at no cost. Employers should consult EEOC and/or DFEH "FAQ" resources referenced above regarding their ability to mandate testing.

1. Q: In an outbreak (three or more COVID-19 cases among employees in an "exposed group" within a 14-day period), what are an employer's requirements?

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

- Immediately make testing available to all employees in the exposed group and exclude positive cases and exposures from work; repeat the testing one week later; and
- Continue to make tests available to employees at least weekly until the workplace no longer qualifies as an outbreak.
- An employer need not make testing available to employees who were absent from the workplace during the relevant 14 day period, or to fully vaccinated employees or recent COVID-19 cases that have returned to work and do not have symptoms. The exception for returned COVID-19 cases lasts for 90 days after the employee's original onset of symptoms or, if the recovered COVID-19 case never developed symptoms, 90 days following the first positive test.
- Perform a review of potentially relevant COVID-19 policies, procedures, and controls and implement changes as needed to prevent further spread of COVID-19.
- Implement ventilation changes to mechanical ventilation systems including increasing filtration efficiency to at least MERV-13, or the highest efficiency compatible with the ventilation system. Evaluate whether HEPA air filtration units are needed.
- All employees in the exposed group, regardless of vaccination status, must wear face coverings when indoors, or when outdoors and less than six feet from another person, unless an exception applies.

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

A: In addition to the requirements in FAQ 1 above, an employer must:

- Make testing available to all employees in the exposed group at least twice weekly and exclude positive cases and exposures until there are no new cases detected for a 14-day period;
- Offer respirators to all employees, regardless of vaccination status, to use on a voluntary basis;
- Separate employees in the exposed group from other persons by at least six feet where feasible;
- Determine the need for a respiratory protection program (non-voluntary, with fit testing and medical evaluation requirements) or changes to an existing respiratory protection program under section 5144 to address COVID-19 hazards; and

- Consider halting all or part of operations to control the virus.

3. Q: What is an "exposed group"?

A: All employees at a work location, working area, or a common area at work, where an employee COVID-19 case was present at any time during the high-risk exposure period. A common area at work includes bathrooms, walkways, hallways, aisles, break or eating areas, and waiting areas. A place where persons momentarily pass through while everyone is wearing face coverings, without congregating, is not a work location, working area, or a common area at work.

If the COVID-19 case was part of a distinct group of employees who are not present at the workplace at the same time as other employees, for instance a work crew or shift that does not overlap with another work crew or shift, only employees within that distinct group are part of the exposed group. If the COVID-19 case visited a work location, working area, or a common area at work for less than 15 minutes during the high-risk exposure period, and all persons were wearing face coverings at the time the COVID-19 case was present, other people at the work location, working area, or common area are not part of the exposed group.

4. Q: Is the make-testing-available requirement for outbreaks triggered by three or more employee cases in an entire building?

A: No, the testing requirement is triggered by three or more employee cases in a 14-day period present in the same "exposed group" during the "high-risk exposure period." For other areas of the workplace, follow the requirements for employees who are exposed to COVID-19 cases.

5. Q: Can an employer separate employees into cohorts to reduce the likelihood of COVID-19 cases occurring in the same work locations/areas?

A: Yes, that is an acceptable strategy to reduce risk and reduce testing obligations. The ETS requirements must still be implemented in the cohort.

6. Q: How can an employer measure the 14- or 30-day period in which to look for positive employee cases to determine if there has been an outbreak or major outbreak?

A: The employer should look to the testing date of the employee cases. Any employee cases for which the tests occurred within a 14-day period of each other would be reviewed to see if the other criteria for an outbreak have been met.

7. Q: Is the "three or more cases" outbreak requirement limited to employee cases, or do cases involving anyone that has been in the workplace count towards the requirement?

A: The cases are only among employees. However, this may include contractors, subcontractors, or employees of other businesses or agencies.

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

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

- For employees with symptoms all of these conditions must be met:
 1. At least 24 hours have passed since a fever of 100.4 or higher has resolved without the use of fever-reducing medications;
 2. COVID-19 symptoms have improved; and
 3. At least 10 days have passed since COVID-19 symptoms first appeared
- For employees without symptoms, at least 10 days have passed since the COVID-19 case's first positive test.

9. Q: What are the criteria for an unvaccinated employee who had a close contact to return to work?

A: An employer must exclude from the workplace unvaccinated employees who had a close contact until the applicable return to work criteria are met. (An exception applies if the employee had COVID-19 in the preceding 90 days and has remained symptom free.) If the unvaccinated employee had no symptoms, they may return to work when 10 days have passed since the last known close contact. If the employee developed any symptoms, the person can be returned if they either meet the criteria required to return a COVID-19 case, or the person (1) tested negative using a PCR test after the onset of symptoms, and (2) waited 10 days following the last known close contact and (3) has been symptom-free for at least 24 hours without fever reducing medications.

There are special provisions during critical staffing shortages, when there are not enough staff to provide safe patient care, for certain health care, emergency, and social service workers. However, this will not be applicable to most employers. In most cases, these workers will be covered by section 5199 rather than the ETS.

10.Q: What are the exclusion requirements for a fully vaccinated employee exposed to a COVID-19 case?

A: A fully vaccinated exposed employee does not need to be excluded from the workplace unless they develop symptoms, in which case the exclusion requirements are the same as for unvaccinated employees.

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

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

1. **Q: If an employee is excluded from work because of workplace exposure under the ETS, is the employee eligible for exclusion pay?**
A: Yes. An employee who was excluded from work because of a workplace COVID-19 exposure should receive exclusion pay if: 1) the employee was not assigned to telework during that time; and 2) the employee did not receive Disability Payments or Workers' Compensation Temporary Disability Payments during the exclusion period.
2. **Q: How does Labor Code section 248.2, the [2021 COVID-19 Supplemental Paid Sick Leave law](#) interact with the ETS?**
3. **A:** From January 1, 2021 through September 30, 2021, Section 248.2 requires employers with 26 or more employees to provide up to 80 hours of paid sick leave to employees unable to work or telework for the following reasons:
 - Caring for Yourself: The covered employee is subject to a quarantine or isolation period related to COVID-19 (see note below), or has been advised by a healthcare provider to quarantine due to COVID-19, or is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
 - Caring for a Family Member: The covered employee is caring for a family member who is either subject to a quarantine or isolation period related to COVID-19 (see note below) or has been advised by a healthcare provider to quarantine due to COVID-19, or the employee is caring for a child whose school or place of care is closed or unavailable due to COVID-19 on the premises.
 - Vaccine-Related: The covered employee is attending a vaccine appointment or cannot work or telework due to vaccine-related side effects.

Additional information on 2021 COVID-19 Supplemental Paid Sick Leave is posted on topic-specific FAQs at <https://www.dir.ca.gov/dlse/COVID19Resources/FAQ-for-SPSL-2021.html>

Unlike exclusion pay available under the ETS, employees need not have been exposed to COVID-19 at work for 2021 Supplemental Paid Sick Leave to apply. Employers may require employees who are excluded from work under the ETS to first exhaust 2021 Supplemental Paid Sick Leave.

4. **Q: Can employers require employees who are excluded due to workplace exposure to take paid sick leave under the ETS?**
A: Employers that provide a paid leave policy that is separate and in addition to the paid sick leave policy required by California's Paid Sick Leave law (Labor Code section 246) may require their employees to use that separate sick leave as permitted by law. An employer may require an employee to use any supplemental leave available to the employee under the [2021 COVID-19](#)

[Supplemental Paid Sick Leave law](#) (Labor Code section 248.2). However, an employer cannot require the employee to use the standard paid sick leave mandated under Labor Code section 246, even when there has been a workplace exposure and the employer is required to exclude employees under the ETS.

5. Q: How long does an employee with COVID-19 exposure, or who tests positive for COVID-19 from the workplace, receive pay while excluded from the workplace?

A: An employee would typically receive pay for the period the employee is excluded, which could be 10 or more days. If an employee is out of work for more than a standard exclusion period based on a single exposure or positive test, but still does not meet the regulation's requirements to return to work, the employee may be entitled to other benefits, such as Temporary Disability, Disability, or Supplemental Paid Sick Leave.

6. Q: What rights do employees have if their employer retaliates against them for requesting exclusion pay?

A: Employees are protected under various California statutes prohibiting retaliation for exercising workplace rights. Employees should seek assistance from the Labor Commissioner's Office if they have questions about retaliation or want to file a retaliation complaint.

7. Q: Does an employer have to maintain an employee's earnings and benefits under section 3205(c)(9)(C) if the employee is unable to work because of reasons other than COVID-19 exposure at work?

A: No, the employer need not maintain the exposed employee's earnings and benefits if the excluded employee is unable to work because of reasons other than exposure to COVID-19 at work (e.g., a non-work exposure, business closure, caring for a family member, disability, or vacation). Such employees may be eligible for other leave, including sick leave, or other benefits such as Disability Insurance, Paid Family Leave, or Unemployment Insurance Benefits.

8. Q: The ETS states that an employer is not required to provide exclusion pay if the employer can demonstrate that an employee's "close contact" was not work related. What does that mean?

A: The ETS does not require employers to pay workers who are excluded from work if the employer can show that the employee's COVID-19 exposure was not work related. In such circumstances, employers may have other legal or contractual payment obligations, but pay and benefits are not mandated by section 3205.

9. Q: How does an employer show that a COVID-19 exposure is not work related?

A: Proving that COVID-19 exposure is not work related to avoid the ETS' exclusion pay requirement involves an employer conducting an investigation

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

10.Q: How is exclusion pay calculated for employees excluded from the workplace due to exposure to COVID-19 at work?

A: The rate of pay for exclusion pay is an employee's regular rate of pay for the pay period in which the employee is excluded. These employees are entitled to exclusion pay, depending on the length of the required exclusion period and how many days they were scheduled to work during that exclusion period. Employees must be paid no later than the regular payday for the pay period(s) in which the employee is excluded.

11.Q: Can Cal/OSHA enforce the exclusion pay provision?

A: As with any violation, Cal/OSHA has the authority to issue a citation and require abatement for violations of Cal/OSHA standards.

12.Q: If an employee is excluded from work because of workplace exposure under the ETS and is not paid, where can the employee file a claim?

A: If the employee did not receive pay for the exclusion period, the employee can file a claim with the Labor Commissioner's Office. The Labor Commissioner's Office can accept claims only for those employees who have been excluded from the workplace due to exposure at work.

13.Q: What if an employer does not exclude an employee from the workplace who was exposed to COVID-19?

A: The ETS requires employers to exclude workers who had a close contact to persons with COVID-19. If an employer has improperly failed to exclude employees under the ETS, employees should contact Cal/OSHA: [File a Workplace Safety Complaint \(ca.gov\)](#). For more information, see [Cal/OSHA's COVID-19 Guidance and Resources](#).

14.Q: How can an employee file a claim for exclusion pay with the Labor Commissioner's Office?

A: The employee may [file an individual wage claim for exclusion pay with the Labor Commissioner's Office](#). Alternatively, the employee may file a [Report of a Labor Law Violation](#) (RLLV) with the Labor Commissioner's Office. A RLLV is a claim that alleges a systemic violation of law that affects several individuals. The Labor Commissioner's Office in such a case would evaluate whether the report involved the whole workforce and whether the Labor Commissioner's Office bring claims on behalf of the entire workforce or direct employees to file individual claims.

15.Q: Can employees qualify for Workers' Compensation if they were exposed to COVID-19 in the workplace and test positive or are unable to work due to COVID-19 related symptoms?

A: Employees who test positive for COVID-19 or are unable to work due to COVID-19 and believe they contracted COVID-19 at work should consider

filing a Workers' Compensation claim with their employer. For more information, see the [Division of Workers' Compensation COVID-19 Guidance and Resources](#).

Employees who have received Disability Payments or are covered by Workers' Compensation and received Temporary Disability Payments are not eligible for exclusion pay.

16.Q: What pay or benefits may an employee be entitled to if they were exposed to COVID 19 outside the workplace?

A: Employees may be entitled to other pay and benefits. Please see [additional resources on various programs administered by the Labor Commissioner's Office and other government agencies](#).

Waivers of Exclusion Requirements Based on Community Health and Safety [Back to top](#)

1. Q: What should an employer consider before seeking a waiver from Cal/OSHA from the return-to-work requirements of section 3205(c)(10)?

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

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

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

1. Employer name and business or service;
2. Employer point-of-contact name, address, email and phone number;

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

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

Recordkeeping and Reporting [Back to top](#)

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

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

- Following state and local health department reporting requirements.
- Reporting serious occupational illnesses to Cal/OSHA, consistent with existing regulations.
- Maintaining records required by 8 CCR [section 3203\(b\)](#), which include inspection records, documentation of hazard corrections, and training records (requirements vary by employer size).
- Making the written COVID-19 Prevention Program available upon request to Cal/OSHA, employees, and employees' authorized representatives.
- Recording and tracking all COVID-19 cases with the employee's name, contact information, occupation, location where the employee worked, the date of the last day at the workplace, and the date of a positive COVID-19 test. The information must be provided to the local health department, Cal/OSHA, the Department of Public Health and the National Institute for Occupational Safety and Health immediately upon request. Otherwise, medical information must be kept confidential unless disclosure is required or permitted by law.

- Documenting that employees who do not wear face coverings indoors or in vehicles with others are fully vaccinated.

Employer-Provided Housing [Back to top](#)

1. Q: Does the section of the ETS regarding Employer-Provided Housing (3205.3) apply to housing in which all residents are fully vaccinated?

A: No. If all residents are fully vaccinated, the section does not apply.

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

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

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

A: Yes, the ETS applies to housing subject to an H-2A contract. The H-2A program requires H-2A employers to comply with state laws, including health and safety laws.

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

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

- Ensuring housing units, kitchens, bathrooms, and common areas are effectively cleaned.
- Providing face coverings to all residents and along with information regarding when they should be used in accordance with state or local health officer orders or guidance.
- Instructing employees not to share unwashed dishes, drinking glasses, cups, eating utensils.
- Maximizing the quantity and supply of outdoor air and increasing filtration efficiency.
- Encouraging residents to report COVID-19 symptoms.
- Communicating to residents the policies and procedures for COVID-19 testing.

Additional Resources [Back to top](#)

1. Q: What additional resources are available for employers and workers to understand the rule and comply?

A: Cal/OSHA has a number of resources in place and in development to assist with compliance with the ETS:

- These FAQs will be expanded on an ongoing basis to assist stakeholders in understanding the ETS.
 - The Consultation Services Branch will be available to answer employer questions about the ETS.
 - Cal/OSHA is updating its training on the ETS to provide in a webinar format.
 - Cal/OSHA has developed a Model Program to assist employers in developing a [COVID-19 Prevention Program](#).
 - Materials will continue to be posted and updated on [Cal/OSHA's COVID-19 webpage](#).
 - [COVID-19 Sick Leave and Employment Law](#)
 - For questions on paid sick leave, retaliation protections, filing a wage claim, or retaliation complaint, call 833-LCO-INFO (833-526-4636)
 - [COVID-19 Workplace Safety and Health Information](#)
 - You can file a [workplace safety and health complaint with Cal/OSHA online](#), or by telephone at the [district office closest to you](#).
 - [COVID-19 Resources for Workers' Compensation](#)
 - Call 1-800-736-7401 for recorded information on workers' compensation benefits from Information and Assistance staff 24 hours a day, or [contact a local Division of Workers' Compensation office](#) during business hours to reach a live person.
 - [Department of Fair Employment and Housing COVID-19 Resources and Guidance](#) (Includes Information on COVID-19 Vaccinations in the Workplace)
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FAQ Revision and Updates [Back to top](#)

- **January 8, 2021:**
 - Added seven new subheadings, and added the following new Q&A:
 - Scope of Coverage Q&A number(s): 3, 4, 6, and 7
 - Enforcement Q&A number(s): 1
 - The COVID-19 Prevention Program Q&A number(s): 1
 - Communication with Employees Q&A number(s): 1
 - Physical Distancing, Face Coverings and Other Controls Q&A number(s): 2, 3, 4, and 5
 - Ventilation Q&A number(s): 1 and 2
 - Vaccines Q&A number(s): 1
 - Testing Q&A number(s): 2, 3, and 4
 - Outbreaks and the “Exposed Workplace” Q&A number(s): 5, 7, 8, 9, 10, and 14
 - Exclusion Pay and Benefits Q&A number(s): 2, 3, 4, 5, 6, 7, 8, 9, and 10
 - Waivers of Exclusion Requirements Based on Community Health and Safety Q&A number(s): 1 and 2
 - Employer-Provided Housing Q&A number(s): 1, 2, 3, and 4
- **January 26, 2021**
 - Added new [Testing](#) Q&A number(s): 10 and 11
- **February 26, 2021**
 - Added new [Scope of Coverage](#) Q&A: 8
- **March 10, 2021**
 - Added new [Exclusion Pay and Benefits](#) Q&A: 11
- **March 26, 2021**
 - Added new [Exclusion Pay and Benefits](#) Q&A: 12, 13, 14, 15, 16, 17, 18, 19, and 20.
- **May 5, 2021**
 - Updated language in [Outbreaks and the “Exposed Workplace”](#) Q&A 12 answer section.
 - Added link in [Outbreaks and the “Exposed Workplace”](#) Q&A 14 answer section: created hyperlink to [EO N-84-20](#)
 - Added new [Outbreaks and the “Exposed Workplace”](#) Q&A: 15

- Previous [Outbreaks and the “Exposed Workplace”](#) Q&A 15 was moved to 16
- Updated language in [Testing](#) Q&A 9 answer section third bullet
- **June 18, 2021**
 - Revised entire FAQ to reflect COVID-19 ETS approved by Standards Board on June 17, 2021