

State of California

Department of Industrial Relations
Division of Occupational Safety and Health
Oakland District Office
1515 Clay Street, Suite 1303
Oakland, CA 94612
Phone: (510) 622-2916 Fax: (510) 622-2908

Inspection #: 1508050
Inspection Dates: 12/22/2020 – 06/30/2021
Issuance Date: 06/30/2021
CSHO ID: U1591
Optional Report #: 019-21



Citation and Notification of Penalty

Company Name: Wine.com
Establishment DBA:
and its successors
Inspection Site: 2220 4th Street
Berkeley, CA 94710

Citation 1 Item 1 Type of Violation: **Regulatory**

California Code of Regulations. Title 8 §3203(b)(2). Injury and Illness Prevention Program.

(b) Records of the steps taken to implement and maintain the Program shall include:

(2) Documentation of safety and health training required by subsection (a)(7) for each employee, including employee name or other identifier, training dates, type(s) of training, and training providers. This documentation shall be maintained for at least one (1) year.

Violation:

Prior to and during the course of the investigation, including, but not limited to, on December 22, 2020, the employer failed to document training and instruction provided to its employees on COVID-19 including the information set forth in Section 3205(c)(5)(A)-(E).

Date By Which Violation Must be Abated: **Corrected During Inspection**
Proposed Penalty: **\$375.00**

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Company Name: Wine.com
Establishment DBA:
and its successors
Inspection Site: 2220 4th Street
Berkeley, CA 94710

Citation 1 Item 2 Type of Violation: **General**

California Code of Regulations. Title 8 §3203(a). Injury and Illness Prevention Program.

(a) Effective July 1, 1991, every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum:

- (1) Identify the person or persons with authority and responsibility for implementing the Program.**
- (2) Include a system for ensuring that employees comply with safe and healthy work practices.**
- (3) Include a system for communicating with employees in a form readily understandable by all affected employees on matters relating to occupational safety and health.**
- (4) Include procedures for identifying and evaluating work place hazards including scheduled periodic inspections to identify unsafe conditions and work practices.**
- (5) Include a procedure to investigate occupational injury or occupational illness.**
- (6) Include methods and/or procedures for correcting unsafe or unhealthy conditions, work practices and work procedures in a timely manner based on the severity of the hazard.**
- (7) Provide training and instruction.**

Violation:

Prior to and during the course of the investigation, including, but not limited to, on December 22, 2020, the employer did not establish, implement, and maintain an effective Injury and Illness Prevention Program. The written program was missing elements (a)(1) through (a)(7).

Date By Which Violation Must be Abated:	Corrected During Inspection
Proposed Penalty:	\$840.00

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**Citation and Notification of Penalty**

Company Name: Wine.com

Establishment DBA:

and its successors

Inspection Site: 2220 4th Street
Berkeley, CA 94710

Citation 1 Item 3 Type of Violation: **General**

California Code of Regulations, Title 8, §3205(c). COVID-19 Prevention.

(c) Written COVID-19 Prevention Program. Employers shall establish, implement, and maintain an effective, written COVID-19 Prevention Program, which may be integrated into the employer's Injury and Illness Program required by section 3203, or be maintained in a separate document. The written elements of a COVID-19 Prevention Program shall include:

(1) System for communicating. The employer shall do all of the following in a form readily understandable by employees:

- (A) Ask employees to report to the employer, without fear of reprisal, COVID-19 symptoms, possible COVID-19 exposures, and possible COVID-19 hazards at the workplace.**
- (B) Describe procedures or policies for accommodating employees with medical or other conditions that put them at increased risk of severe COVID-19 illness.**
- (C) Provide information about access to COVID-19 testing. If testing is required under this section, section 3205.1, or section 3205.2, the employer shall inform affected employees of the reason for the COVID-19 testing and the possible consequences of a positive test.**
- (D) In accordance with subsection (c)(3)(B)3., communicate information about COVID-19 hazards and the employer's COVID-19 policies and procedures to employees and to other employers, persons, and entities within or in contact with the employer's workplace.**

(2) Identification and evaluation of COVID-19 hazards.

- (A) The employer shall allow for employee and authorized employee representative participation in the identification and evaluation of COVID-19 hazards.**
- (C) The employer shall develop COVID-19 policies and procedures to respond effectively and immediately to individuals at the workplace who are a COVID-19 case to prevent or reduce the risk of transmission of COVID-19 in the workplace.**
- (D) The employer shall conduct a workplace-specific identification of all interactions, areas, activities, processes, equipment, and materials that could potentially expose employees to COVID-19 hazards. Employers shall treat all persons, regardless of symptoms or negative COVID-19 test**

results, as potentially infectious.

1. This shall include identification of places and times when people may congregate or come in contact with one another, regardless of whether employees are performing an assigned work task or not, for instance during meetings or trainings and including in and around entrances, bathrooms, hallways, aisles, walkways, elevators, break or eating areas, cool-down areas, and waiting areas.

2. This shall include an evaluation of employees' potential workplace exposure to all persons at the workplace or who may enter the workplace, including coworkers, employees of other entities, members of the public, customers or clients, and independent contractors. Employers shall consider how employees and other persons enter, leave, and travel through the workplace, in addition to addressing fixed work locations.

(F) The employer shall review applicable orders and guidance from the State of California and the local health department related to COVID-19 hazards and prevention, including information of general application and information specific to the employer's industry, location, and operations.

(G) The employer shall evaluate existing COVID-19 prevention controls at the workplace and the need for different or additional controls. This includes evaluation of controls in subsections (c)(4), and (c)(6) through (c)(8).

(H) The employer shall conduct periodic inspections as needed to identify unhealthy conditions, work practices, and work procedures related to COVID-19 and to ensure compliance with employers' COVID-19 policies and procedures.

(3) Investigating and responding to COVID-19 cases in the workplace.

(A) Employers shall have an effective procedure to investigate COVID-19 cases in the workplace. This includes procedures for verifying COVID-19 case status, receiving information regarding COVID-19 test results and onset of COVID-19 symptoms, and identifying and recording COVID-19 cases.

(B) The employer shall take the following actions when there has been a COVID-19 case at the place of employment:

1. Determine the day and time the COVID-19 case was last present and, to the extent possible, the date of the positive COVID-19 test(s) and/or diagnosis, and the date the COVID-19 case first had one or more COVID-19 symptoms, if any were experienced.

3. Give notice of the potential COVID-19 exposure, within one business day, in a way that does not reveal any personal identifying information of the COVID-19 case, to the following:

a. All employees who may have had COVID-19 exposure and their authorized representatives.

b. Independent contractors and other employers present at the workplace during the high-risk exposure period.

4. Offer COVID-19 testing at no cost to employees during their working hours to all employees who had potential COVID-19 exposure in the workplace and provide them with the information on benefits described in subsections (c)(5)(B) and (c)(10)(C).

5. Investigate whether any workplace conditions could have contributed to the risk of COVID-19 exposure and what could be done to reduce exposure to COVID-19 hazards.

(C) Personal identifying information of COVID-19 cases or persons with COVID-19 symptoms shall be kept confidential. All COVID-19 testing or related medical services provided by the employer under this section and sections 3205.1 through 3205.4 shall be provided in a manner that ensures the confidentiality of employees.

(D) The employer shall ensure that all employee medical records required by this section and sections 3205.1 through 3205.4 are kept confidential and are not disclosed or reported without the employee's express written consent to any person within or outside the workplace.

(4) Correction of COVID-19 hazards. Employers shall implement effective policies and/or procedures for correcting unsafe or unhealthy conditions, work practices, policies and procedures in a timely manner based on the severity of the hazard. This includes, but is not limited to, implementing controls and/or policies and procedures in response to the evaluations conducted under subsections (c)(2)

and (c)(3) and implementing the controls required by subsection (c)(6) through (c)(8).

(5) Training and instruction. The employer shall provide effective training and instruction to employees that includes the following:

(A) The employer's COVID-19 policies and procedures to protect employees from COVID-19 hazards.

(B) Information regarding COVID-19-related benefits to which the employee may be entitled under applicable federal, state, or local laws. This includes any benefits available under workers' compensation law, the federal Families First Coronavirus Response Act, Labor Code sections 248.1 and 248.5, Labor Code sections 3212.86 through 3212.88, local governmental requirements, the employer's own leave policies, and leave guaranteed by contract.

(C) 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 have no symptoms.

(G) Proper use of face coverings and the fact that face coverings are not respiratory protective equipment.

(8) Other engineering controls, administrative controls, and personal protective equipment.

(A) At fixed work locations where it is not possible to maintain the physical distancing requirement at all times, the employer shall install cleanable solid partitions that effectively reduce aerosol transmission between the employee and other persons.

(B) For buildings with mechanical or natural ventilation, or both, employers shall maximize the quantity of outside air provided to the extent feasible, except when the United States Environmental Protection Agency (EPA) Air Quality Index is greater than 100 for any pollutant or if opening windows or letting in outdoor air by other means would cause a hazard to employees, for instance from excessive heat or cold.

(C) Employers shall implement cleaning and disinfecting procedures, which require:

3. Cleaning and disinfection of areas, material, and equipment used by a COVID-19 case during the high-risk exposure period.

NOTE: Cleaning and disinfecting must be done in a manner that does not create a hazard to employees. See Group 2 and Group 16 of the General Industry Safety Orders for further information.

(9) Reporting, recordkeeping, and access.

(A) The employer shall report information about COVID-19 cases at the workplace to the local health department whenever required by law, and shall provide any related information requested by the local health department.

(B) The employer shall report immediately to the Division any COVID-19-related serious illnesses or death, as defined under section 330(h), of an employee occurring in a place of employment or in connection with any employment.

(C) The employer shall maintain records of the steps taken to implement the written COVID-19 Prevention Program in accordance with section 3203(b).

(D) The written COVID-19 Prevention Program shall be made available at the workplace to employees, authorized employee representatives, and to representatives of the Division immediately upon request.

(E) The employer shall keep a record of and track all COVID-19 cases with the employee's name, contact information, occupation, location where the employee worked, the date of the last day at the workplace, and the date of a positive COVID-19 test. Medical information shall be kept confidential in accordance with subsections (c)(3)(C) and (c)(3)(D). The information shall be made available to employees, authorized employee representatives, or as otherwise required by law, with personal identifying information removed.

(11) Return to work criteria.

(A) COVID-19 cases with COVID-19 symptoms shall not return to work until:

- 1. At least 24 hours have passed since a fever of 100.4 or higher has resolved without the use of ever-reducing medications;**
- 2. COVID-19 symptoms have improved; and**
- 3. At least 10 days have passed since COVID-19 symptoms first appeared.**

(B) COVID-19 cases who tested positive but never developed COVID-19 symptoms shall not return to work until a minimum of 10 days have passed since the date of specimen collection of their first positive COVID-19 test.

(C) A negative COVID-19 test shall not be required for an employee to return to work.

(D) If an order to isolate or quarantine an employee is issued by a local or state health official, the employee shall not return to work until the period of isolation or quarantine is completed or the order is lifted. If no period was specified, then the period shall be 10 days from the time the order to isolate was effective, or 14 days from the time the order to quarantine was effective.

(E) If there are no violations of local or state health officer orders for isolation or quarantine, the Division may, upon request, allow employees to return to work on the basis that the removal of an employee would create undue risk to a community's health and safety. In such cases, the employer shall develop, implement, and maintain effective control measures to prevent transmission in the workplace including providing isolation for the employee at the workplace and, if isolation is not possible, the use of respiratory protection in the workplace.

Violation

Prior to and during the course of the inspection, including but not limited to, on December 22, 2020 the employer failed to establish, implement, and maintain an effective, written COVID-19 Prevention Program, with the required written elements, which may be integrated into the employer's Injury and Illness Program required by section 3203, or be maintained in a separate document, in the following instances.

Instance 1:

The employer failed to establish, implement, and maintain an effective written element for a system for communicating, including sections (c)(1)(A), (c)(1)(B), (c)(1)(C), and (c)(1)(D), within their COVID-19 Prevention Program. Employer's Covid-19 Prevention Program failed to include a system for communicating with employees. [Ref. T8 CCR Section 3205(c)(1)]

Instance 2:

The employer failed to establish, implement, and maintain an effective written element for the identification and evaluation of COVID-19 hazards, including sections (c)(2)(A), (c)(2)(C), (c)(2)(D), (c)(2)(F) (c)(2)(G), and (c)(2)(H), within their COVID-19 Prevention Program. Employer's Covid-19 Prevention Program failed to include procedures for the identification and evaluation of Covid-19 hazards. [Ref. T8 CCR Section 3205(c)(2)]

Instance 3:

The employer failed to establish, implement, and maintain an effective written element for investigating and responding to COVID-19 cases in the workplace, including sections (c)(3)(A), (c)(3)(B), (c)(3)(C), and (c)(3)(D), within their COVID-19 Prevention Program. Employer's Covid-19 Prevention Program failed to include procedures for investigating and responding to Covid-19 cases in the workplace. [Ref. T8 CCR Section 3205(c)(3)]

Instance 4:

The employer failed to establish, implement, and maintain an effective written element for the

correction of COVID-19 hazards, within their COVID-19 Prevention Program. Employer's Covid-19 Prevention Program failed to include procedures for correction of Covid-19 hazards. [Ref. T8 CCR Section 3205(c)(4)]

Instance 5:

The employer failed to establish, implement, and maintain an effective written element for training and instruction, including sections (c)(5)(A), (c)(5)(B), (c)(5)(C), and (c)(5)(G), within their COVID-19 Prevention Program. Employer's Covid-19 Prevention Program failed to include training and instruction to employees on the required elements listed in the foregoing sections. [Ref. T8 CCR Section 3205(c)(5)]

Instance 6:

The employer failed to establish, implement, and maintain an effective written element for engineering controls, administrative controls, and personal protective equipment, including sections (c)(8)(A), (c)(8)(B), and (c)(8)(c)3., within their COVID-19 Prevention Program. Employer's Covid-19 Prevention Program failed to include engineering controls, administrative controls, and personal protective equipment to address COVID-19 hazards. [Ref. T8 CCR Section 3205(c)(8)]

Instance 7:

The employer failed to establish, implement, and maintain an effective written element for reporting, recordkeeping, and access, including section (c)(9)(A), (c)(9)(B), (c)(9)(C), (c)(9)(D), and (c)(9)(E), within their COVID-19 Prevention Program. Employer's Covid-19 Prevention Program failed to include reporting, recordkeeping, and access elements listed in the foregoing sections. [Ref. T8 CCR Section 3205(c)(9)]

Instance 8:

The employer failed to establish, implement, and maintain an effective written element for the return to work criteria, including sections (c)(11)(A)1., (c)(11)(A)2., (c)(11)(B), (c)(11)(C), (c)(11)(D) and (c)(11)(E), within their COVID-19 Prevention Program. Employer's Covid-19 Prevention Program failed to include return to work criteria for employees who were COVID-19 cases or were exposed to COVID-19 cases. [Ref. T8 CCR Section 3205(c)(11)]

Date By Which Violation Must be Abated:	Corrected During Inspection
Proposed Penalty:	\$0.00

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Citation and Notification of Penalty

Company Name: Wine.com
Establishment DBA:
and its successors
Inspection Site: 2220 4th Street
Berkeley, CA 94710

Citation 1 Item 4 Type of Violation: **General**

California Code of Regulations. Title 8 §3205.1(b)(1). Multiple COVID-19 Infections and COVID-19 Outbreaks.

(b) COVID-19 testing.

(1) The employer shall provide COVID-19 testing to all employees at the exposed workplace except for employees who were not present during the period of an outbreak identified by a local health department or the relevant 14-day period(s) under subsection (a), as applicable. COVID-19 testing shall be provided at no cost to employees during employees' working hours.

(2) COVID-19 testing shall consist of the following:

(A) Immediately upon being covered by this section, all employees in the exposed workplace shall be tested and then tested again one week later. Negative COVID-19 test results of employees with COVID-19 exposure shall not impact the duration of any quarantine period required by, or orders issued by, the local health department.

(B) After the first two COVID-19 tests required by subsection (b)(2)(A), employers shall provide continuous COVID-19 testing of employees who remain at the workplace at least once per week, or more frequently if recommended by the local health department, until this section no longer applies pursuant to subsection (a)(2).

(C) Employers shall provide additional testing when deemed necessary by the Division through the Issuance of Order to Take Special Action, in accordance with title 8, section 332.3.

Violation:

Prior to and during the course of the investigation, including, but not limited to, on December 22, 2020, the employer failed to provide COVID-19 testing to all employees in accordance with subsection (b)(2) in the exposed workplace after more than three COVID-19 cases were identified in an exposed workplace within a 14-day period.

Date By Which Violation Must be Abated:
Proposed Penalty:

Corrected During Inspection
\$0.00

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Inspection Site: 2220 4th Street
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Citation 1 Item 5 Type of Violation: **General**

California Code of Regulations. Title 8 §3205.1(f)(1). Multiple COVID-19 Infections and COVID-19 Outbreaks.

(f) Notifications to the local health department.

(1) The employer shall contact the local health department immediately but no longer than 48 hours after the employer knows, or with diligent inquiry would have known, of three or more COVID-19 cases for guidance on preventing the further spread of COVID-19 within the workplace.

Violation:

Prior to and during the course of the investigation, including, but not limited to, on December 22, 2020, the employer failed to contact the local health department for guidance on preventing the further spread of COVID-19 within the workplace immediately but no longer than 48 hours after the employer knew, or with diligent inquiry would have known, of three or more COVID-19 cases.

Date By Which Violation Must be Abated: Corrected During Inspection
Proposed Penalty: \$0.00

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Citation 1 Item 6 Type of Violation: **General**

California Code of Regulations. Title 8 §3225(a)(1). Maintenance and Access to Exits.

(a) Exits shall be so located and arranged that they are readily accessible at all times. Where exits are not immediately accessible from an open floor area, safe and continuous passageways, aisles, or corridors leading directly to every exit and so arranged as to provide convenient access for each occupant to at least two exits by separate ways of travel shall be maintained, except as a single exit or limited dead ends are permitted by other provisions of these regulations.

(1) Every required exit shall be maintained free of all obstructions or impediments to full instant use in the case of fire or other emergency.

Violation:

Prior to and during the course of the investigation, including, but not limited to, on December 22, 2020, the employer did not ensure that all marked exits were maintained to be free of all obstructions or impediments to full instant use in the case of fire or other emergency.

Date By Which Violation Must be Abated: **Corrected During Inspection**
Proposed Penalty: **\$935.00**

State of California

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**Citation and Notification of Penalty**

Company Name: Wine.com

Establishment DBA:

and its successors

Inspection Site: 2220 4th Street
Berkeley, CA 94710

Citation 2 Item 1 Type of Violation: **Serious**

California Code of Regulations. Title 8 §3205(c)(3)(B). COVID-19 Prevention.

(c) Written COVID-19 Prevention Program. Employers shall establish, implement, and maintain an effective, written COVID-19 Prevention Program, which may be integrated into the employer's Injury and Illness Prevention Program required by section 3203, or be maintained in a separate document. The written elements of a COVID-19 Prevention Program shall include:

(3) Investigating and responding to COVID-19 cases in the workplace.

(A) Employers shall have an effective procedure to investigate COVID-19 cases in the workplace. This includes procedures for verifying COVID-19 case status, receiving information regarding COVID-19 test results and onset of COVID-19 symptoms, and identifying and recording COVID-19 cases.

(B) The employer shall take the following actions when there has been a COVID-19 case at the place of employment:

- 1. Determine the day and time the COVID-19 case was last present and, to the extent possible, the date of the positive COVID-19 test(s) and/or diagnosis, and the date the COVID-19 case first had one or more COVID-19 symptoms, if any were experienced.**
- 2. Determine who may have had a COVID-19 exposure. This requires an evaluation of the activities of the COVID-19 case and all locations at the workplace which may have been visited by the COVID-19 case during the high-risk exposure period.**
- 3. Give notice of the potential COVID-19 exposure, within one business day, in a way that does not reveal any personal identifying information of the COVID-19 case, to the following:**
 - a. All employees who may have had COVID-19 exposure and their authorized representatives.**
 - b. Independent contractors and other employers present at the workplace during the high-risk exposure period.**
- 4. Offer COVID-19 testing at no cost to employees during their working hours to all employees who had potential COVID-19 exposure in the workplace and provide them with the information on benefits described in subsections (c)(5)(B) and (c)(10)(C).**

5. Investigate whether any workplace conditions could have contributed to the risk of COVID-19 exposure and what could be done to reduce exposure to COVID-19 hazards.

Violation:

Prior to and during the course of the Division's investigation, the employer failed to investigate and take the following required actions when it became aware on or about December 2, 2020 that there had been COVID-19 cases in the workplace:

Instance 1: The employer did not perform an evaluation of the activities of all COVID-19 cases and all locations at the workplace which may have been visited by the COVID-19 cases during the high-risk exposure periods to determine who may have had a COVID-19 exposure. [3205(c)(3)(B)2.]

Instance 2: The employer did not give notice to all employees who may have had potential exposure to the COVID-19 case. [3205(c)(3)(B)3.]

Instance 3: The employer did not investigate whether any workplace conditions could have contributed to the risk of COVID-19 exposure and what could be done to reduce exposure to COVID-19 hazards. [3205(c)(3)(B)5.]

**Date By Which Violation Must be Abated:
Proposed Penalty:**

**Corrected During Inspection
\$11250.00**

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Citation 3 Item 1 Type of Violation: **Serious**

California Code of Regulations. Title 8 §3205(c)(6)&(8). COVID-19 Prevention.

(c) Written COVID-19 Prevention Program. Employers shall establish, implement, and maintain an effective, written COVID-19 Prevention Program, which may be integrated into the employer's Injury and Illness Program required by section 3203, or be maintained in a separate document. The written elements of a COVID-19 Prevention Program shall include:

(6) Physical distancing.

(A) All employees shall be separated from other persons by at least six feet, except where an employer can demonstrate that six feet of separation is not possible, and except for momentary exposure while persons are in movement. Methods of physical distancing include: telework or other remote work arrangements; reducing the number of persons in an area at one time, including visitors; visual cues such as signs and floor markings to indicate where employees and others should be located or their direction and path of travel; staggered arrival, departure, work, and break times; and adjusted work processes or procedures, such as reducing production speed, to allow greater distance between employees.

Violation:

Prior to and during the course of the inspection, including, but not limited to, on December 22, 2020 the employer failed to ensure that employees were separated from other persons by at least six feet in the lunch / break room.

Or in the alternative:

(8) Other engineering controls, administrative controls, and personal protective equipment.

(A) At fixed work locations where it is not possible to maintain the physical distancing requirement at all times, the employer shall install cleanable solid partitions that effectively reduce aerosol transmission between the employee and other persons.

Violation:

Prior to and during the course of the inspection, including, but not limited to, on December 22, 2020, the employer failed to have installed cleanable solid partitions to effectively reduce aerosol transmission between employees and other persons in the lunch / break room.

Date By Which Violation Must be Abated:
Proposed Penalty:

Corrected During Inspection
\$11250.00

Wendy Hogle-Lui
Compliance Officer / District Manager