




# Memorandum

Date: July 30, 2020

To: Christina Shupe, Executive Officer  
Occupational Safety and Health Standards Board

From: Douglas L. Parker, Chief   
Division of Occupational Safety and Health

Re: Evaluation of Petition 583 to Adopt an Emergency Regulation to Protect Workers from COVID-19, and a Permanent Regulation to Protect Workers from Infectious Diseases

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## 1.0 INTRODUCTION

On May 20, 2020, the Division of Occupational Safety and Health (Cal/OSHA) received a petition from Frances C. Schreiber, National Lawyers Guild, and Stephen Knight, Worksafe (Petitioners). Petitioners propose that the Occupational Safety and Health Standards Board (Standards Board) amend the California Code of Regulations, title 8 (Title 8) as follows:

- Adopt a new emergency regulation<sup>1</sup> to protect employees in any facility, service category, or operation from SARS-CoV-2 (the virus that causes COVID-19) who are not covered by the Aerosol Transmissible Disease standard at Title 8, sections 5199 or 5199.1 ("Non-5199 Workers"); and
- Adopt a permanent regulation to protect employees from infectious diseases, including those caused by novel pathogens.

Labor Code section 142.2 permits interested persons to propose new or revised standards concerning occupational safety and health and requires the Occupational Safety and Health Standards Board (Standards Board) to consider such proposals and render a decision no later than six months following receipt. California Governor Gavin Newsom, in recognition of the State of Emergency that exists in California as a result of the threat of COVID-19, extended this time

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<sup>1</sup> Petitioners use the term "emergency temporary standard" to refer to an emergency regulation.

period by 120 days in [Executive Order N-71-20](#) (modifying extension in Executive Order N-63-20).

Further, as required by Labor Code section 147, any proposed occupational safety or health standard received by the Standards Board from a source other than Cal/OSHA must be referred to Cal/OSHA for evaluation. Cal/OSHA has 60 days after receipt to submit a report to the Standards Board on the proposal. The Governor has also extended this time period an additional 120 days.

For the reasons discussed below, Cal/OSHA recommends that the Standards Board grant the petition, in part, by requesting Cal/OSHA to develop a proposed emergency temporary standard for the consideration of the Standards Board. The Board should also request Cal/OSHA to convene a future advisory committee to determine whether a permanent regulation should be promulgated to protect Non-5199 Workers from infectious diseases, including novel pathogens.

## **2.0 REGULATORY CHANGES REQUESTED BY THE PETITIONER**

Petitioners propose to amend Title 8, through the adoption of an emergency regulation to require employers to take specific steps to protect Non-5199 Workers from COVID-19.

Specifically, Petitioners request that a temporary emergency regulation be adopted that requires employers to:

- a. Minimize the risk of transmission of COVID-19 to employees from other employees or from the public, through procedures that shall include the following elements:
  1. Identification of a competent employer representative to establish, implement, and maintain an effective written Compliance Action Plan (Plan) to protect employees and requires employers to share the Plan with employees and employee representatives;
  2. Procedures to identify and evaluate workplace hazards that may expose employees to COVID-19;
  3. Methods and/or procedures to control employee exposure to COVID-19 and correcting unsafe or unhealthy conditions. These shall include engineering controls, work practices and procedures, and personal protective equipment (PPE); and

4. Procedures to respond to an employee report that:
  - A. The employee has been diagnosed with COVID-19;
  - B. The employee has symptoms of COVID-19; or
  - C. The employee has been exposed to a person who has been diagnosed with COVID-19.
- b. Conduct a Job Hazard Analysis to identify potential modes of COVID-19 transmission and adopt and implement feasible preventive measures to eliminate or minimize transmission risk. A written list of these measures shall be provided to each employee, and shall include at least the following:
  1. Identification of job categories, tasks, and procedures in which employees may have occupational exposure to COVID-19;
  2. Specific measures to ensure social distancing of at least six (6) feet between employees and other persons: measures to be used to protect employees interacting with the public include the use of barriers between employees and the public, limiting the number of members of the public in the facility, marking distances in areas where the public may congregate, and ensuring that where employees interact with the public at a distance of less than six (6) feet, employees are provided with access to N-95 or filtering facepiece respirators and face shields;
  3. Installing ventilation systems to reduce employee exposure to airborne COVID-19 virus;
  4. Implementing measures to ensure personal hygiene;
  5. Immediate cleaning of all shared materials before another employee handles that material and regularly scheduled frequent cleaning and disinfection of areas and surfaces that may become contaminated and pose an infection risk to employees; and
  6. Implementing other procedures to minimize the likelihood the public may contaminate employees, such as providing employees with PPE, *e.g.*, gloves, and requiring members of the public to cover their noses and mouths with face coverings while in the facility to minimize the transmission of airborne pathogens to employees.

- c. Provide employees with the tools, operating equipment, and PPE necessary to comply fully with public health orders, regulations, and laws, at no cost to employees. PPE shall be assessed and certified as required by Title 8, section 3380, subdivision (f) for the hazard of exposure to COVID-19, and employees shall be trained on the proper use of PPE required for potential exposure to COVID-19. Employees who provide their own PPE that meets or exceeds the PPE required by Cal/OSHA shall not suffer any adverse action by the employer. Further, all employees who are directed by their employer to wear compliant PPE shall be provided with a medical evaluation in accordance with Title 8, section 5144, subdivision (e). Employee respiratory protection, including filtering facepiece respirators, designed to protect employees exposed to airborne pathogen hazards, shall comply with Title 8, section 5144.
- d. Train employees on the Plan, ensure compliance with the Plan, and provide each employee with a copy of the Plan, along with the full list of relevant compliance measures.
- e. Maintain records of the Plan, in accordance with Title 8, section 3203, subdivision (b).

In addition, Petitioners propose to amend the California Code of Regulations, title 8, through the adoption of a permanent regulation intended to protect all workers from infectious diseases, including novel pathogens. Petitioners have not provided suggested regulatory language for a permanent regulation.

### **3.0 HAZARDS ASSOCIATED WITH EXPOSURE TO COVID-19**

COVID-19 is widespread in the community and is transmitted easily from person to person. Routes of exposure include:

- **Airborne transmission:** An infected person (with or without symptoms) sheds virus in small particles when breathing, talking, coughing, sneezing, etc. The contaminated particles are suspended in the air. A susceptible person is infected when inhaling the contaminated particles.
- **Droplet transmission:** An infected person expels droplets containing the virus when talking, coughing, and sneezing. A susceptible person is infected when the droplets contact that person's conjunctivae or the mucous membranes of the nose, mouth, or eyes.

- **Surface transmission:** An infected person coughs or sneezes and sheds virus onto a surface or object. A susceptible person is infected when they touch the contaminated surface or object and then touch their own mouth, nose, or eyes.

The airborne transmission is the dominant route for the spread of COVID-19.<sup>2</sup> Surface transmission is believed to be less common than airborne and droplet transmission.<sup>3</sup> Transmission can occur from an infected person who is asymptomatic or presymptomatic.<sup>4</sup>

Infection with COVID-19 may result in a serious illness that includes difficulty breathing, pneumonia, and hospitalization. In some cases, the disease progresses, and organ failure and death may result. Approximately 14% of COVID-19 patients are hospitalized, 2% are admitted to an intensive care unit, and 5% die based on data through May 30, 2020. Hospitalizations are six times higher and deaths are 12 times higher among patients with a reported underlying health condition (cardiovascular disease, diabetes, and chronic lung disease)

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<sup>2</sup> Renyi Zhang, Yixin Li, Annie L. Zhang, Yuan Wang, Mario J. Molina. *Identifying airborne transmission as the dominant route for the spread of COVID-19*. Proceedings of the National Academy of Sciences, Jun 2020, 117 (26) 14857-14863. <https://www.pnas.org/content/117/26/14857>.

Parham Azimi, Zahra Keshavarz, Jose Guillermo Cedeno Laurent, Brent R. Stephens, Joseph G. Allen. Mechanistic Transmission Modeling of COVID-19 on the Diamond Princess Cruise Ship Demonstrates the Importance of Aerosol Transmission. *BMJ*. July 15, 2020. <https://doi.org/10.1101/2020.07.13.20153049>.

Guenther, Thomas and Czech-Sioli, Manja and Indenbirken, Daniela and Robitailles, Alexis and Tenhaken, Peter and Exner, Martin and Ottinger, Matthias and Fischer, Nicole and Grundhoff, Adam and Brinkmann, Melanie, Investigation of a superspreading event preceding the largest meat processing plant-related SARS-Coronavirus 2 outbreak in Germany (July 17, 2020). <http://dx.doi.org/10.2139/ssrn.3654517>

Rachael M. Jones (2020): Relative contributions of transmission routes for COVID-19 among healthcare personnel providing patient care, *Journal of Occupational and Environmental Hygiene*, DOI: 10.1080/15459624.2020.1784427. <https://www.tandfonline.com/doi/full/10.1080/15459624.2020.1784427>

Lidia Morawska, Donald K Milton, It is Time to Address Airborne Transmission of COVID-19, *Clinical Infectious Diseases*, ciaa939, <https://doi.org/10.1093/cid/ciaa939>

Guenther, Thomas and Czech-Sioli, Manja and Indenbirken, Daniela and Robitailles, Alexis and Tenhaken, Peter and Exner, Martin and Ottinger, Matthias and Fischer, Nicole and Grundhoff, Adam and Brinkmann, Melanie, Investigation of a superspreading event preceding the largest meat processing plant-related SARS-Coronavirus 2 outbreak in Germany (July 17, 2020). Available at SSRN: <https://ssrn.com/abstract=3654517>

<sup>3</sup> Centers for Disease Control and Infection. CDC updates COVID-19 transmission webpage to clarify information about types of spread. May 23, 2020. Accessed July 07, 2020. <https://www.cdc.gov/media/releases/2020/s0522-cdc-updates-covid-transmission.html>

<sup>4</sup> Furukawa NW, Brooks JT, Sobel J. *Evidence Supporting Transmission of Severe Acute Respiratory Syndrome Coronavirus 2 While Presymptomatic or Asymptomatic*. *Emerging Infectious Diseases*. 2020 Jul. <https://doi.org/10.3201/eid2607.201595>

compared with those without reported underlying conditions.<sup>5</sup>

There are no established safe exposure limits to an infectious pathogen such as SARS-CoV-2. It is unknown how many infectious particles are needed to cause infection and disease.

#### **4.0 APPLICABLE TITLE 8 REGULATIONS**

The following are Title 8 regulations that are be applicable to protecting Non-5199 Workers from COVID-19. Section 5199 is not discussed as the petition is specific to Non-5199 Workers.

As discussed below, while the following standards require protections against COVID-19, they are not specific to this virus and generally do not identify the particular measures or controls that employers must take to prevent workplace spread of COVID-19. For these reasons, as explained in section 7.0, Cal/OSHA recommends the adoption of an emergency regulation, which would complement and augment the existing rules and provide clear guidance to employers and workers. Given the unprecedented nature of the current pandemic, it is essential that Cal/OSHA have all available tools to protect workers from COVID-19 illness and death.

##### **4.2.1 Section 3203. Injury and Illness Prevention Program.**

Title 8, section 3203 applies to nearly all California workplaces and requires employers to establish, implement, and maintain an effective written Injury and Illness Prevention Program (IIPP) to protect their employees, and to keep records of the steps taken to implement and maintain the IIPP. Its requirements are general in nature, and as such it requires employers to address all workplace hazards, including those that are not specifically addressed by other Cal/OSHA regulations.

##### **4.2.1.1 Title 8, section 3203, subdivision (a)(4), identifying and evaluating workplace hazards**

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<sup>5</sup> Stokes EK, Zambrano LD, Anderson KN, et al. Coronavirus Disease 2019 Case Surveillance — United States, January 22–May 30, 2020. MMWR Morb Mortal Wkly Rep 2020;69:759–765.  
DOI: [http://dx.doi.org/10.15585/mmwr.mm6924e2external\\_icon](http://dx.doi.org/10.15585/mmwr.mm6924e2external_icon)

Section 3203, subdivision (a)(4) requires employers to implement procedures for identifying and evaluating workplace hazards. Due to the widespread transmission of COVID-19 in California, this subdivision requires employers to evaluate COVID-19-transmission hazards and risks in their workplaces.

Section 3203, subdivision (a)(4) reads, in pertinent part, as follows:

Include procedures for identifying and evaluating work place hazards including scheduled periodic inspections to identify unsafe conditions and work practices.

(A) When the Program is first established;

\* \* \* \*

(B) Whenever new substances, processes, procedures, or equipment are introduced to the workplace that represent a new occupational safety and health hazard; and

(C) Whenever the employer is made aware of a new or previously unrecognized hazard.

#### **4.2.1.2 Title 8, section 3203, subdivision (a)(5), investigating occupational injury or occupational illness**

Section 3203, subdivision (a)(5) requires employers to implement procedures to investigate occupational illnesses. If an employer learns of an employee (or employees) who has or is suspected to have COVID-19, the employer must investigate to determine if the transmission was work related and, if it was work-related, how it was transmitted in the workplace.

Section 3203, subdivision (a)(5) reads as follows: Include a procedure to investigate occupational injury or occupational illness.

#### **4.2.1.3 Title 8, section 3203, subdivision (a)(6), correcting unsafe or unhealthy conditions, work practices, and work procedures**

Section 3203, subdivision (a)(6) requires employers to implement methods and/or procedures for correcting unsafe or unhealthy conditions, work practices, and work procedures in a timely manner. It requires employers to take measures to effectively reduce COVID-19-transmission hazards that exist in their workplaces as identified through implementation of subdivisions (a)(4) and (a)(5).

However, section 3203, subdivision (a)(6) does not specify how employers are to correct unsafe workplaces (*i.e.*, engineering controls, administrative controls, personal protective equipment (PPE)). Instead, it puts the responsibility on employers, given their intimate knowledge of the hazards at issue and the workings of the place of employment, to devise such methods or procedures.

Section 3203, subdivision (a)(6) reads as follows:

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:

- (A) When observed or discovered; and,
- (B) When an imminent hazard exists which cannot be immediately abated without endangering employee(s) and/or property, remove all exposed personnel from the area except those necessary to correct the existing condition. Employees necessary to correct the hazardous condition shall be provided the necessary safeguards.

#### **4.2.1.4 Title 8, section 3203, subdivision (a)(7), providing training and instruction**

Subdivision (a)(7) requires employers to train their employees on workplace hazards and their prevention. Due to the widespread transmission of COVID-19 in California, employers must train employees on the transmission hazards of COVID-19 in their workplace, what measures the employer has implemented to reduce the hazard, and what actions employees need to take to help reduce transmission.

Section 3203, subdivision (a)(7) reads, in pertinent part, as follows:

Provide training and instruction:

- (A) When the program is first established;  
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- (B) To all new employees;
- (C) To all employees given new job assignments for which training has not previously been received;



- (D) Whenever new substances, processes, procedures or equipment are introduced to the workplace and represent a new hazard;
- (E) Whenever the employer is made aware of a new or previously unrecognized hazard; and,
- (F) For supervisors to familiarize themselves with the safety and health hazards to which employees under their immediate direction and control may be exposed.

### **4.3 Title 8, section 5141. Control of Harmful Exposure to Employees**

Section 5141 requires employers to control harmful exposures to employees. Under section 5140, harmful exposure is defined as:

An exposure to dusts, fumes, mists, vapors, or gases:

- (a) In excess of any permissible limit prescribed by Section 5155; or
- (b) Of such a nature by inhalation as to result in, or have a probability to result in, injury, illness, disease, impairment, or loss of function.

Exposure to COVID-19 is a harmful exposure, as exposure to aerosols (in the breath of infected persons) containing SARS-CoV-2 has a probability to result in illness, disease, impairment, or loss of function.

#### **4.3.1 Title 8 subsection 5141, subdivision (a), Engineering Controls**

Section 5141, subdivision (a) requires employers to control harmful exposures using feasible engineering controls. Although section 5141 does not specify the controls that must be implemented for any particular hazard, examples of engineering controls for COVID-19 include physical barriers, ventilation, air filtration, source controls (universal masking), etc.

Subsection 5141, subdivision (a) reads, in pertinent part, as follows:

Engineering Controls. Harmful exposures shall be prevented by engineering controls whenever feasible.

#### **4.3.2 Title 8, section 5141, subdivision (b), Administrative Controls**

Section 5141, subdivision (b) requires employers to use practicable administrative controls when engineering controls are not feasible or do not fully

prevent harmful exposure. While not specified in the rule, examples of administrative controls to help prevent transmission of COVID-19 include remote work, physical distancing, changing schedules, reducing the number of persons in spaces, etc.

Section 5141, subdivision (b) reads as follows:

Administrative Controls. Whenever engineering controls are not feasible or do not achieve full compliance, administrative controls shall be implemented if practicable.

#### **4.3.3 Title 8, section 5141, subdivision (c), Control by Respiratory Protective Equipment**

Section 5141, subdivision (c) requires employers to use respiratory protective equipment to prevent harmful exposures when engineering controls and administrative controls are not sufficient to prevent harmful exposures. Given the nature of COVID-19, all California employers unable to control COVID-19 with engineering and administrative controls would need to provide respiratory protection in order to comply with section 5141, subdivision (c) during the current pandemic, but that is not possible due to current respirator supply constraints.

Section 5141, subdivision (c) reads as follows:

Control by Respiratory Protective Equipment. Respiratory protective equipment, in accordance with Section 5144, shall be used to prevent harmful exposures as follows:

- (1) During the time period necessary to install or implement feasible engineering controls;
- (2) Where feasible engineering controls and administrative controls fail to achieve full compliance; and
- (3) In emergencies.

#### **4.4 Title 8, section 5144. Respiratory Protection**

Similar to section 5141, subdivision (c), section 5144 requires respirators be used to protect the health of employees when effective engineering controls to prevent harmful atmospheres are not feasible. Again, compliance with this section for all California workplaces where there are COVID-19 transmission hazards despite

engineering and administrative controls has not been possible during the current pandemic due to respirator supply constraints.

Section 5144 reads, in pertinent part, as follows:

§ 5144. Respiratory Protection.

(a) Permissible practice.

(1) In the control of those occupational diseases caused by breathing air contaminated with harmful dusts, fogs, fumes, mists, gases, smokes, sprays, or vapors, the primary objective shall be to prevent atmospheric contamination. This shall be accomplished as far as feasible by accepted engineering control measures (for example, enclosure or confinement of the operation, general and local ventilation, and substitution of less toxic materials). When effective engineering controls are not feasible, or while they are being instituted, appropriate respirators shall be used pursuant to this section.

(2) Respirators shall be provided by the employer when such equipment is necessary to protect the health of the employee. The employer shall provide the respirators which are applicable and suitable for the purpose intended. The employer shall be responsible for the establishment and maintenance of a respiratory protection program which shall include the requirements outlined in subsection (c).

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(d) Selection of respirators. This subsection requires the employer to evaluate respiratory hazard(s) in the workplace, identify relevant workplace and user factors, and base respirator selection on these factors...

(1) General requirements.

(A) The employer shall select and provide an appropriate respirator based on the respiratory hazard(s) to which the worker is exposed and workplace and user factors that affect respirator performance and reliability.

(B) The employer shall select a NIOSH-certified respirator. The respirator shall be used in compliance with the conditions of its certification.

(C) The employer shall identify and evaluate the respiratory hazard(s) in the workplace; this evaluation shall include a reasonable estimate of employee exposures to respiratory hazard(s) and an identification of the contaminant's chemical state and physical form. Where the employer cannot identify or reasonably estimate the employee exposure, the employer shall consider the atmosphere to be IDLH.

(D) The employer shall select respirators from a sufficient number of respirator models and sizes so that the respirator is acceptable to, and correctly fits, the user.

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#### **4.5 Title 8 section 3362. General Requirements (Sanitation)**

Section 3362, subdivision (a) requires that workplaces be kept clean and in sanitary condition. It also requires that buildings be cleaned and maintained to prevent harmful exposures (defined in section 5140 – see part 4.3 above). Thus, under this rule, employers must perform workplace cleaning to prevent exposure to COVID-19. For example, SARS-CoV-2 can remain viable on surfaces and objects for up to seven days.<sup>6</sup> There are products known to effectively disinfect surfaces from the virus. Thus, use of those products is required by this subdivision where there is a risk of surface contamination.

Section 3362, subdivision (b) requires cleaning and sweeping be done in a manner that does not create a harmful exposure to COVID-19. For example, dry sweeping of floors may aerosolize SARS-CoV-2 and thus is prohibited by this subsection where there is a likelihood of viral contamination.

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<sup>6</sup> Alex Chin, Julie Chu, Mahen Perera, Kenrie Hui, Hui-Ling Yen, Michael Chan, Malik Peiris, Leo Poon. Stability of SARS-CoV-2 in different environmental conditions. *The Lancet Microbe*. 2 April 2020. <https://www.thelancet.com/action/showPdf?pii=S2666-5247%2820%2930003-3>

However, like sections 3203 and 5141, section 3362 does not identify specific sanitation measures that must be taken to protect workers from COVID-19.

Section 3362, subdivisions (a) and (b) read as follows:

(a) To the extent that the nature of the work allows, workplaces, storerooms, personal service rooms and passageways shall be kept clean, orderly and in a sanitary condition. The interiors, exteriors and environs of buildings that contribute to a hazard to which these orders apply shall be cleaned and maintained in such conditions as will not give rise to harmful exposure, as defined in Section 5140.

(b) Cleaning and sweeping shall be done in such a manner as to minimize the contamination of the air and, insofar as is practicable, shall be performed at such time and in such a manner that will avoid harmful exposures as defined in Section 5140.

#### **4.6 Title 8 section 3366. Washing Facilities**

Section 3366, subdivision (a) requires that washing facilities be reasonably accessible to all employees. The section, however, does not specifically require measures to ensure that employees are able to maintain personal hygiene, such as the provision of hand sanitizer by the employer.

Section 3366, subdivision (a) reads as follows:

Washing facilities for maintaining personal cleanliness shall be provided in every place of employment. These facilities shall be reasonably accessible to all employees.

#### **4.7 Title 8 section 3380. Personal Protective Devices**

Section 3380 contains general requirements for PPE. Requirements of this section include that: PPE be labeled, be used in accordance with the manufacturer's instructions, be maintained in a safe and sanitary condition, and fit adequately. The section also requires employers to properly train employees on the use of PPE.

Section 3380, subdivision (f)(1) requires employers to assess the workplace for hazards and select the appropriate PPE. Subdivision (f)(2) requires written documentation that certifies that a workplace-hazard assessment has been performed. Subdivision (f)(4) requires the employer to provide training to employees on the proper use of required PPE.

These subdivisions, however, apply only to PPE required by sections 3381 (head protection), 3382 (eye protection), 3384 (hand protection), and 3385 (foot protection). As explained in parts 4.8 and 4.9 of this evaluation below, none of these sections require PPE to help prevent the transmission of COVID-19. Construction and mining employers are also exempt from section 3380, subdivision (f), which reads, in pertinent part, as follows:

Hazard assessment and equipment selection.

(1) The employer shall assess the workplace to determine if hazards are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards are present, or likely to be present, the employer shall:

(A) Select, and have each affected employee use, the types of PPE that will protect the affected employee from the hazards identified in the hazard assessment;

(B) Communicate selection decisions to each affected employee; and,

(C) Select PPE that properly fits each affected employee.

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(2) The employer shall verify that the required workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date(s) of the hazard assessment; and, which identifies the document as a certification of hazard assessment.

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(4) Training. The employer shall provide training to each employee who is required by this section to use PPE. Each such employee shall be trained to know at least the following:

- (A) When PPE is necessary;
- (B) What PPE is necessary;
- (C) How to properly don, doff, adjust, and wear PPE;
- (D) The limitations of the PPE; and,
- (E) The proper care, maintenance, useful life and disposal of the PPE.

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(8) Subsections (f)(1) and (2) and (f)(4) through (7) of this section apply only to Sections 3381, 3382, 3384 and 3385 of these Orders. Subsections (f)(1) and (2) and (f)(4) through (7) of this section do not apply to Section 5144 of these Orders and Section 2940.6 of the High Voltage Electrical Safety Orders. Subsection (f) does not apply to workplace operations regulated by the Construction Safety Orders or the Mine Safety Orders.

#### **4.8 Title 8 section 3382. Eye and Face Protection**

Section 3382 contains requirements for the provision and use of eye and face protection. Section 3382, subdivision (a) requires eye and face protection only to protect against acute eye injuries. It does not require eye protection to prevent infectious diseases. COVID-19 is believed to be transmissible through the eyes, mouth, and nose, and eye and face protection may help prevent infections.<sup>7</sup>

Section 3382, subdivision (a) reads as follows:

Employees working in locations where there is a risk of receiving eye injuries such as punctures, abrasions, contusions, or burns as a result of contact with flying particles, hazardous substances, projections or injurious light rays which are inherent in the work or environment, shall be safeguarded by means of face or eye protection. Suitable screens or shields isolating the hazardous

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<sup>7</sup> Christian J. Kähler, Rainer Hain, Fundamental protective mechanisms of face masks against droplet infections, *Journal of Aerosol Science*, Volume 148, 2020.

<https://www.sciencedirect.com/science/article/pii/S0140673620311429>

exposure may be considered adequate safeguarding for nearby employees.

#### **4.9 Title 8 section 3384. Hand Protection**

Section 3384 contains requirements for the provision and use of hand protection. Section 3384, subdivision (a) requires hand protection from exposures to harmful substances that absorb through the skin, cuts or lacerations, abrasions, punctures, chemical burns, thermal burns, radioactive materials, and harmful temperature extremes.

Subdivision (a) does not require hand protection when the hands of employees may contact a surface contaminated with SARS-CoV-2 because SARS-CoV-2 does not penetrate the skin, but rather infects persons after they touch their eyes, nose, or mouth with contaminated hands.

Section 3384, subdivision (a) reads as follows:

Employers shall select, provide and require employees to use appropriate hand protection when employee's hands are exposed to hazards such as those from skin absorption of harmful substances, cuts or lacerations, abrasions, punctures, chemical burns, thermal burns, radioactive materials, and harmful temperature extremes.

#### **4.10 Title 8 section 5193. Bloodborne Pathogens**

Section 5193 applies to all occupational exposure to blood or "*other potentially infectious materials*" (the construction industry is exempted). Other potentially infectious materials" is defined in the regulation as follows:

"Other Potentially Infectious Materials" is defined, in pertinent part, as follows:

The following human body fluids: semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, any other body fluid that is visibly contaminated with blood such as saliva or vomitus, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids such as emergency response



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Although SARS-CoV-2 is not likely transmitted through parenteral contact with blood and other potentially infectious materials,<sup>8</sup> it is likely transmitted when infected blood or other potentially infectious materials are aerosolized and are inhaled or contact the eyes, nose, or mouth. This occurs most frequently in settings generally subject to section 5199, the Aerosol Transmissible Disease standard. For workplaces not covered by section 5199 where aerosolization of blood and other potentially infectious materials occurs (such as dentistry and other medical specialties that meet exemptions in 5199), section 5193 contains requirements to reduce the risk of COVID-19 transmission, including requirements for engineering controls, cleaning practices, personal hygiene practices, and personal protective equipment.

Some of the relevant requirements in section 5193 are the following:

(d)(1) ... Universal precautions shall be observed to prevent contact with blood or OPIM [*Other potentially infectious materials*]. Under circumstances in which differentiation between body fluid types is difficult or impossible, all body fluids shall be considered potentially infectious materials.

\* \* \* \*

(d)(2)(A) ... Engineering and work practice controls shall be used to eliminate or minimize employee exposure.

\* \* \* \*

(d)(3)(D) All procedures involving blood or OPIM shall be performed in such a manner as to minimize splashing, spraying, spattering, and generation of droplets of these substances.

\* \* \* \*

(d)(3)(H)(2)a. Contaminated Work Surfaces.

Contaminated work surfaces shall be cleaned and decontaminated with an appropriate disinfectant

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<sup>8</sup> National Institute of Environmental Health Sciences. Can SARS-CoV-2, the Virus that Causes COVID-19 Disease, Be Spread by Blood? 2020. [https://tools.niehs.nih.gov/wetp/public/hasl\\_get\\_blob.cfm?ID=11981](https://tools.niehs.nih.gov/wetp/public/hasl_get_blob.cfm?ID=11981)

immediately or as soon as feasible when:

- i. Surfaces become overtly contaminated;
- ii. There is a spill of blood or OPIM;
- iii. Procedures are completed; and
- iv. At the end of the work shift if the surface may have become contaminated since the last cleaning.

\* \* \* \*

(d)(3)(I) Hygiene.

- 1. Employers shall provide handwashing facilities which are readily accessible to employees.
- 2. When provision of handwashing facilities is not feasible, the employer shall provide either an appropriate antiseptic hand cleanser in conjunction with clean cloth/paper towels or antiseptic towelettes. When antiseptic hand cleansers or towelettes are used, hands shall be washed with soap and running water as soon as feasible.
- 3. Employers shall ensure that employees wash their hands immediately or as soon as feasible after removal of gloves or other personal protective equipment.
- 4. Employers shall ensure that employees wash hands and any other skin with soap and water, or flush mucous membranes with water immediately or as soon as feasible following contact of such body areas with blood or OPIM.

\* \* \* \*

(d)(4) Personal Protective Equipment.

(d)(4) (A) Provision. Where occupational exposure remains after institution of engineering and work practice controls, the employer shall provide, at no cost to the employee, appropriate personal protective equipment such as, but not limited to, gloves, gowns, laboratory coats, face shields or masks and eye protection, and mouthpieces, resuscitation bags, pocket masks, or other ventilation devices. Personal protective equipment will be considered "appropriate" only if it does not permit blood or OPIM to pass through to or reach the employee's work clothes, street clothes, undergarments, skin, eyes, mouth, or other mucous membranes under normal conditions of use and for the

duration of time which the protective equipment will be used.

\* \* \* \*

(d)(4)(G) Gloves. Gloves shall be worn when it can be reasonably anticipated that the employee may have hand contact with blood, OPIM, mucous membranes, and non-intact skin; when performing vascular access procedures except as specified in subsection (d)(4)(G)4.; and when handling or touching contaminated items or surfaces. These requirements are in addition to the provisions of Section 3384.

1. Disposable (single use) gloves such as surgical or examination gloves, shall be replaced as soon as practical when contaminated or as soon as feasible if they are torn, punctured, or when their ability to function as a barrier is compromised.

\* \* \* \*

(d)(4)(H) Masks, Eye Protection, Face Shields, and Respirators.

1. Masks in combination with eye protection devices, such as goggles or glasses with solid side shields, or chin-length face shields, shall be worn whenever splashes, spray, spatter, or droplets of blood or OPIM may be generated and eye, nose, or mouth contamination can be reasonably anticipated. These requirements are in addition to the provisions of Section 3382.

2. Where respiratory protection is used, the provisions of Sections 5144 and 5147 are required as applicable.

\* \* \* \*

(d)(4)(I) Gowns, Aprons, and Other Protective Body Clothing.

1. Appropriate protective clothing such as, but not limited to, gowns, aprons, lab coats, clinic jackets, or similar outer garments shall be worn in occupational exposure situations. The type and characteristics will depend upon the task and degree of exposure anticipated. These requirements are in addition to the provisions of Section 3383.

## 5.0 FEDERAL OSHA REGULATIONS

Federal OSHA standards contain many of the same requirements as Title 8. The foremost exceptions are:

- The IIPP, required by Title 8, has no similar federal regulatory mandate.
- The definition of “harmful exposure.” In Title 8, a *harmful exposure* is defined as exposure to any airborne substance that can cause injury, illness, disease, impairment, or loss of function. This includes SARS-CoV-2. The federal regulations do not have such a broad definition, and they limit regulation of harmful airborne exposures to specific substances listed in title 29 Code of Federal Regulations Subpart Z “Toxic and Hazardous Substances,” which does not include SARS-CoV-2. Thus, protections against SARS-CoV-2 are not required by those federal regulations.

However, while there is no federal regulation governing airborne exposure to substances such as SARS-CoV-2, federal OSHA does have the “General Duty Clause” in section 5(a)(1) of the Occupational Safety and Health Act of 1970. The clause states the following:

Each employer shall furnish to each of his [*sic*] employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;

The General Duty Clause is used by federal OSHA to address conditions that are not subject to other Federal OSHA regulations. As such, it can be used by Federal OSHA to require employers to protect employees from harmful airborne pathogens, such as SARS-CoV-2.

Other federal regulations such as those governing respiratory protection, sanitation, washing facilities, personal protective equipment, and bloodborne pathogens are similar to their counterpart regulations in the California Code of Regulations, title 8, discussed above.

## 6.0 PETITIONERS AND THEIR BASIS FOR NEW REGULATIONS

Petitioners assert that without specific occupational health and safety regulation to protect workers from COVID-19, Californians will become sick and die

unnecessarily. They request regulatory protection for workers not currently protected by the Aerosol Transmissible Disease standard, title 8 section 5199 (“Non-5199 Workers”). Petitioners seek to add both an emergency regulation to immediately protect Non-5199 Workers from COVID-19, and a permanent regulation to protect Non-5199 Workers in the long-term from infectious diseases in general, including novel pathogens such as COVID-19.

Petitioners assert that an emergency regulation to protect Non-5199 Workers from COVID-19 must be issued as soon as possible and take immediate effect. They state that the California economy is in the process of opening back up, and employees currently working, or who will be returning to work in the future, need an emergency regulation now. Many more workers will be exposed to COVID-19 as the economy opens back up. Petitioners contend an emergency regulation is necessary, not only to protect the employees’ health and safety, but also the health and safety of their families and communities.

Petitioners assert that the COVID-19 pandemic is not diminishing and will persist for some time, and in the face of this public health emergency, clarity is required for both employers and employees. They state that the performance-based requirements of Title 8, section 3203, combined with a small number of other regulations, are not adequate in protecting employees from COVID-19.

Thus, Petitioners propose language for a draft emergency regulation to protect Non-5199 Workers standard from COVID-19 and ask the Standards Board to consider their draft as guidance in developing an emergency regulation. They also propose the adoption of a permanent regulation to protect employees from infectious diseases, including those caused by novel pathogens.

## **7.0 ANALYSIS OF THE PROPOSAL**

Cal/OSHA agrees with Petitioners that COVID-19 is a workplace emergency. SARS-CoV-2 is a highly infectious, easily transmissible, and virulent pathogen. It has killed hundreds of workers in California and sickened thousands, and workers will continue to become ill and die until the pandemic subsides. COVID-19 is an occupational health emergency causing more deaths in less time than any other workplace crisis in the nearly fifty-year existence of Cal/OSHA. The COVID-19 public health crisis is exactly the type of catastrophe that the legislature intended an emergency regulation to address.

Cal/OSHA also agrees that an emergency regulation is warranted. Although section 5199 provides specific protections for novel pathogens such as COVID-19, it does not protect all workers. Many Non-5199 Workers are affected by major outbreaks of COVID-19 including workers in the following industries: meat and poultry processing, food processing, agriculture, garment manufacturing, warehousing, public transportation, and retail stores.

There is no existing Title 8 regulation that comprehensively addresses an employer's responsibility to protect Non-5199 Workers from infectious diseases. While many of the regulations discussed above require employers to take steps to protect workers against COVID-19, these standards are not specific to infectious diseases, including COVID-19 and do not necessarily identify specific measures that must be taken to fight the spread of any infectious disease. In the absence of a specific set of mandatory infection-control requirements that employers clearly must implement, there is no assurance that all Non-5199 Workers will be protected from infectious diseases like COVID-19.

Guidance exists on how employers can protect workers from COVID-19. There are a large number of COVID-19 prevention guidelines from myriad government agencies (including federal OSHA and Cal/OSHA), universities, non-profit organizations, business associations, and others. And employers should follow these guidelines to protect Non-5199 Workers from COVID-19 in order to comply with general regulations such as sections 3203, 3362, 3366, 5141, 5144, But these standards themselves do not prescribe specific steps that employers must take to protect workers from COVID-19. Thus, while these general provisions provide Cal/OSHA a regulatory basis for requiring employers to take measures to protect workers from COVID-19, Cal/OSHA's enforcement efforts could be streamlined and strengthened through regulatory mandates specific to preventing the spread of infectious diseases. In addition, the PPE regulations (sections 3380 through 3385) do not apply to infectious-disease prevention and section 5193, which contains applicable PPE requirements, only applies to a very small number of Non-5199 Workplaces.

If COVID-19-specific protections similar to the guidelines were spelled out in the Title 8 standards, Cal/OSHA could more easily enforce requirements that would be specific, detailed, and more protective of workers. Given the unprecedented nature of the COVID-19 pandemic, a new standard that will enhance Cal/OSHA's

ability to protect workers is essential to keep workplaces safe. A specific COVID-19 emergency regulation in Title 8 would provide clear instructions to employers and employees on what needs to be done to protect workers from COVID-19, eliminating any confusion and enhancing compliance.

## **8.0 CONCLUSION**

Pursuant to Labor Code section 147.1, Cal/OSHA has determined there is a necessity for an emergency regulation to protect all Non-5199 Workers from COVID-19. Due to the current COVID-19 pandemic, it is important that a regulation be promulgated as soon as possible to protect employees from exposure to the virus.

Cal/OSHA recommends that the Standards Board grant petition 583, and that an emergency regulation be promulgated to protect employees from exposure to COVID-19. In addition, Cal/OSHA recommends that an advisory committee be convened by Cal/OSHA after the COVID-19 pandemic subsides to determine whether a permanent regulation should be promulgated to protect Non-5199 Workers from infectious diseases, including novel pathogens.

cc: Susan Eckhardt  
Chris Kirkham  
Eric Berg