



COVID-19 Non-Emergency Regulation Bulletin

On December 15, 2022, the Cal/OSHA Standards board voted and PASSED the COVID-19 Non-Emergency Regulation. This Non-Emergency Regulation will be in effect for two years and will sunset on December 31, 2024, with the record keeping sunset of December 31, 2025.

COVID-19 Prevention Scope

This emergency temporary standard applies to all employees and places of employment with the following exceptions:

- Work locations with one employee who does not have contact with other persons.
- Employees working from home.
- Employees with occupational exposure as defined by section 5199, when covered by that section.
- Employee's teleworking from a location of the employee's choice, which is not under the control of the employer.

The scope of 3205 does not limit state or local health departments from more stringent mandates, or guidance.

Definitions

Below is a list of new or changed definitions:

"Close contact" means the following, unless otherwise defined by regulation or order of the California Department of Public Health (CDPH), in which case the CDPH definition shall apply:

- In indoor spaces of 400,000 or fewer cubic feet per floor, a close contact is defined as sharing the same indoor airspace as a COVID-19 case for a cumulative total of 15 minutes or more over a 24-hour period during the COVID-19 case's infectious period, as defined by this section, regardless of the use of face coverings.
- In indoor spaces of greater than 400,000 cubic feet per floor, a close contact is defined as being within six feet of the COVID-19 case for a cumulative total of 15 minutes or more over a 24-hour period during the COVID-19 case's infectious period, as defined by this section, regardless of the use of face coverings.
- Offices, suites, rooms, waiting areas, break or eating areas, bathrooms, or other spaces that are separated by floor-to-ceiling walls shall be considered distinct indoor spaces.



EXCEPTION: Employees have not had a close contact if they wore a respirator required by the employer and used in compliance with section 5144 whenever they would otherwise have had a close contact under subsections 3205(b)(1)(A) or (b)(1)(B).

“COVID-19 Case” means a person who:

- Has a positive COVID-19 test; or
- Has a positive COVID-19 diagnosis from a licensed health care provider; or
- Is subject to a COVID-19-related order to isolate issued by a local or state health official; or
- Has died due to COVID-19, in the determination of a local health department or per inclusion in the COVID-19 statistics of a county.

“COVID-19 Hazard” means potentially infectious material that may contain SARS-CoV-2, the virus that causes COVID-19. Potentially infectious materials include airborne droplets, small particle aerosols, and airborne droplet nuclei, which most commonly result from a person or persons exhaling, talking or vocalizing, coughing, or sneezing, or from procedures performed on persons which may aerosolize saliva or respiratory tract fluids.

“COVID-19 Symptoms” means fever of 100.4 degrees Fahrenheit or higher, chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea, unless a licensed health care professional determines the person’s symptoms were caused by a known condition other than COVID-19.

“COVID-19 Test” means a test for SARS-CoV-2 that is:

- Cleared, approved, or authorized, including in an Emergency Use Authorization (EUA), by the United States Food and Drug Administration (FDA) to detect current infection with the SARS-CoV-2 virus (e.g., a viral test).
- Administered in accordance with the authorized instructions.
- To meet the return to work criteria set forth in subsection (c)(10), a COVID-19 test may be both self-administered and self-read only if another means of independent verification of the results can be provided (e.g., a time-stamped photograph of the results).



“Exposed Group” means all employees at a work location, working area, or a common area at work, within employer-provided transportation covered by section 3205.3, or residing within housing covered by section 3205.2, where an employee COVID-19 case was present at any time during the infectious period. A common area at work includes bathrooms, walkways, hallways, aisles, break or eating areas, and waiting areas.

- For the purpose of determining the exposed group, a place where persons momentarily pass through, 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 infectious period, and the COVID-19 case was wearing a face covering during the entire visit, other people at the work location, working area, or common area are not part of the exposed group.

NOTE: An exposed group may include the employees of more than one employer. See Labor Code sections 6303 and 6304.1.

“Face Covering” means a surgical mask, a medical procedure mask, a respirator worn voluntarily, or a tightly woven fabric or non-woven material of at least two layers that completely covers the nose and mouth and is secured to the head with ties, ear loops, or elastic bands that go behind the head. If gaiters are worn, they shall have two layers of fabric or be folded to make two layers. A face covering is a solid piece of material without slits, visible holes, or punctures, and must fit snugly over the nose, mouth, and chin with no large gaps on the outside of the face. A face covering does not include a scarf, ski mask, balaclava, bandana, turtleneck, collar, or single layer of fabric.

This definition includes clear face coverings or cloth face coverings with a clear plastic panel that, otherwise meet this definition and which may be used to facilitate communication with people who are deaf or hard-of-hearing or others who need to see a speaker’s mouth or facial expressions to understand speech or sign language respectively.



“Infectious Period” means the following time period, unless otherwise defined by CDPH regulation or order, in which case the CDPH definition shall apply:

1. For COVID-19 cases who develop COVID-19 symptoms, from two days before the date of symptom onset until:
 - 10 days since symptoms first appeared or through day five if testing negative on day of or later and;
 - 24 hours have passed with no fever, without the use of fever-reducing medications; and symptoms have improved.
2. For COVID-19 cases who never develop COVID-19 symptoms, from two days before the positive specimen collection date through 10 days (or through day five if testing negative on day five or later) after the date on which the specimen for their first positive test for COVID-19 was collected.

“Returned Case” means a COVID-19 case who returned to work pursuant to subsection (c)(10) and did not develop any COVID-19 symptoms after returning. A person shall only be considered a returned case for 90 days after the initial onset of COVID-19 symptoms or, if the person never developed COVID-19 symptoms, for 90 days after the first positive test. If a period of other than 90 days is required by a CDPH regulation or order, that period shall apply.

“Worksite,” for the limited purposes of sections 3205 through 3205.4 only, means the building, store, facility, agricultural field, or other location where a COVID-19 case was present during the infectious period. It does not apply to buildings, floors, or other locations of the employer that a COVID-19 case did not enter, locations where the worker worked by themselves without exposure to other employees, or to a worker's personal residence or alternative work location chosen by the worker when working remotely.

Written COVID-19 Prevention Program

COVID-19 is a workplace hazard and shall be addressed under section 3203, which requires employers to establish, implement, and maintain an effective Injury and Illness Prevention Program. The employer's COVID-19 procedures shall either be addressed in the written Injury and Illness Prevention Program or maintained in a separate document.



When determining measures to prevent COVID-19 transmission and to identify and correct COVID-19 hazards, employers shall consider all persons to be potentially infectious, regardless of symptoms, vaccination status, or negative COVID-19 test results.

When determining measures to prevent COVID-19 transmission and to identify and correct COVID-19 hazards, employers shall review applicable orders and guidance related to COVID-19 from the State of California and the local health department with jurisdiction over the workplace and shall treat COVID-19 as an airborne infectious disease. COVID-19 prevention controls include remote work, physical distancing, reducing the density of people indoors, moving indoor tasks outdoors, implementing separate shifts and/or break times, restricting access to the work area, and other prevention measures, in addition to the requirements of this section.

Employees shall receive training regarding COVID-19 in accordance with subsection 3203(a)(7).

Investigating COVID-19 at the Workplace

The employer shall determine the day and time a 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.

The employer shall effectively identify and respond to persons with COVID-19 symptoms at the workplace. Employees shall be encouraged to report COVID-19 symptoms and to stay home when ill.

Investigating and responding to COVID-19 cases in the workplace

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

- Employers shall immediately exclude from the workplace all COVID-19 cases and employees excluded under section 3205.1. The employer shall demonstrate it has met the applicable requirements below:
- COVID-19 cases who do not develop COVID-19 symptoms shall not return to work during the infectious period.
- COVID-19 cases who develop COVID-19 symptoms shall not return to work during the shorter of the following: the infectious period; or through 10 days after the onset of symptoms and at



least 24 hours have passed since a fever of 100.4 degrees Fahrenheit or higher has resolved without the use of fever-reducing medication.

- Regardless of vaccination status, previous infection, or lack of COVID-19 symptoms, a COVID-19 case shall wear a face covering in the workplace until 10 days have passed since the date that COVID-19 symptoms began or, if the person did not have COVID-19 symptoms, from the date of their first positive COVID-19 test.
- The requirements in subsections 3205(c)(5)(A)1. and (c)(5)(A)2. apply regardless of whether an employee has previously been excluded or other precautions were taken in response to an employee's close contact or membership in an exposed group.
- Upon excluding an employee from the workplace based on COVID-19 or a close contact, the employer shall give the employee 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 legally mandated sick leave, if applicable, workers' compensation law, local governmental requirements, the employer's own leave policies, and leave guaranteed by contract.

Notification Requirements

The employer shall notify employees and independent contractors who had a close contact, as well as any employer with an employee who had a close contact. The notice shall be provided as soon as possible, and in no case longer than the time required to ensure that the exclusion requirements of subsection 3205(c)(5)(A) are met.

When Labor Code section 6409.6 or any successor law is in effect, the employer shall provide notice of a COVID-19 case, in a form readily understandable to employees. Notice shall be given to all employees, employers, and independent contractors at the worksite in accordance with the applicable law.

When Labor Code section 6409.6 or any successor law is in effect, the employer shall provide notice in accordance with the applicable law to the authorized representative, if any, of the COVID-19 case and of any employee who had a close contact. The employer shall also provide notice in accordance with the applicable law to the authorized representative, if any, of all employees on the premises at the same worksite as the COVID-19 case within the infectious period.



AB 2693 (Reyes) effective January 1, 2023, extends Labor Code 6409.6 requirement until Jan. 1, 2025, and also allows for a workplace notice of COVID-19 cases in lieu of individual notifications.

Reporting and Record Keeping

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 the positive COVID-19 test and/or COVID-19 diagnosis. These records shall be retained for two years beyond the period in which the record is necessary to meet the requirements of this section or sections 3205.1 through 3205.3.

Employers shall retain the notices required by subsection 3205(e) in accordance with Labor Code section 6409.6 or any successor law.

Confidential Information

Personal identifying information of COVID-19 cases or persons with COVID-19 symptoms, and any employee medical records required by this section or by sections 3205.1 through 3205.3, shall be kept confidential unless disclosure is required or permitted by law. Unredacted information on COVID-19 cases shall be provided to the local health department with jurisdiction over the workplace, CDPH, the Division, and NIOSH immediately upon request, and when required by law.

COVID-19 Testing

The employer shall make COVID-19 testing available at no cost, during paid time, to all employees of the employer who had a close contact in the workplace and provide them with the information on benefits.

Exceptions:

- COVID-19 cases who returned to work pursuant to subsection 3205(c)(10)(A) or (B) and have remained free of COVID-19 symptoms, for 90 days after the initial onset of COVID-19 symptoms or, for COVID-19 cases who never developed symptoms, for 90 days after the first positive test.

Face Coverings

Employers shall provide face coverings and ensure they are worn by employees when required by a CDPH regulation or order. When a CDPH regulation or order requires face coverings indoors, that includes spaces within vehicles. Face coverings shall be clean, undamaged, and worn over the nose and mouth



Exceptions:

- When an employee is alone in a room or vehicle.
- While eating or drinking at the workplace, provided employees are at least six feet apart and outside air supply to the area, if indoors, has been maximized to the extent feasible.
- Employees wearing respirators required by the employer and used in compliance with section 5144.
- 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.
- Specific tasks which cannot feasibly be performed with a face covering. This exception is limited to the time period in which such tasks are actually being performed.

If an employee is not wearing a face covering pursuant to the exceptions in subsections 3205(f)(2)(D) and (f)(2)(E) the employer shall assess COVID-19 hazards and take action as necessary based on subsection 3205(c) and on section 3203.

No employer shall prevent any employee from wearing a face covering when not required by this section, unless it would create a safety hazard, such as interfering with the safe operation of equipment.

Respirators

Upon request, employers shall provide respirators for voluntary use in compliance with subsection 5144(c)(2) to all employees who are not fully vaccinated and who are working indoors or in vehicles with more than one person. Whenever an employer makes respirators for voluntary use available, the employer shall encourage their use and shall ensure that employees are provided with a respirator of the correct size.

[Respirator Overview: CDC Listed Manufacturers: CDC](#)

[N95 Respirator Mask FAQ: CDPH](#)

Ventilation

For indoor workplaces, employers shall review CDPH and the Division guidance regarding ventilation, including “Interim Guidance for Ventilation, Filtration, and Air Quality in Indoor Environments.” Employers shall develop, implement, and maintain effective methods to prevent transmission of COVID-19 including one or more of the following actions to improve ventilation:



- Maximize the supply of outside air 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 maximizing outdoor air by other means would cause a hazard to employees, for instance from excessive heat or cold.
- In buildings and structures with mechanical ventilation, filter circulated air through filters at least as protective as Minimum Efficiency Reporting Value (MERV)-13, or the highest level of filtration efficiency compatible with the existing mechanical ventilation system.
- Use High Efficiency Particulate Air (HEPA) filtration units in accordance with manufacturers' recommendations in indoor areas occupied by employees for extended periods, where ventilation is inadequate to reduce the risk of COVID-19 transmission.
- In vehicles, employers shall maximize the supply of outside air to the extent feasible, except when doing so would cause a hazard to employees or expose them to inclement weather.

Return to Work Criteria

COVID-19 cases, regardless of vaccination status or previous infection, who do not develop COVID-19 symptoms or whose COVID-19 symptoms are resolving, shall not return to work until:

1. COVID-19 Case with Symptoms: 10 days have passed after symptoms first appeared or receive a negative COVID test after day five or later, AND 24 hours have passed with no fever, without the use of fever reducing medication.
2. COVID-19 Case without Symptoms: Ten days have passed since receiving the positive test or received a negative COVID-19 test after Day 5 or later.

COVID-19 cases, regardless of vaccination status or previous infection, whose COVID-19 symptoms are not resolving, may not return to work until:

1. At least 24 hours have passed since a fever of 100.4 degrees Fahrenheit or higher has resolved without the use of fever-reducing medication; and
2. Symptoms are resolving or 10 days have passed from when the symptoms began.

Regardless of vaccination status, previous infection, or lack of COVID-19 symptoms, a COVID-19 case shall wear a face covering in the workplace until 10 days have passed since the date that COVID-19



symptoms began or, if the person did not have COVID-19 symptoms, from the date of their first positive COVID-19 test.

The requirements in subsections (c)(10)(A) and (c)(10)(B) apply regardless of whether an employee has previously been excluded or other precautions were taken in response to an employee's close contact or membership in an exposed group.

For Close Contact Cases employers shall review current CDPH guidance for persons who had close contacts, including any guidance regarding quarantine or other measures to reduce transmission. Employers shall develop, implement, and maintain effective policies to prevent transmission of COVID-19 by persons who had close contacts.

Employees who had close contacts shall have a negative COVID-19 test taken within three and five days after the close contact or shall be excluded and follow the return-to-work requirements of subsection 3205(c)(10) starting from the date of the last known close contact.

COVID-19 Outbreaks

This section applies to a workplace covered by section 3205 if three or more employee COVID-19 cases within an exposed group, as defined by subsection 3205(b)(7), visited the worksite during their infectious period at any time during a 14-day period, unless a California Department of Public Health (CDPH) regulation or order defines outbreak using a different number of COVID-19 cases and/or a different time period, in which case this section applies when the number of cases at the worksite constitutes an outbreak under CDPH's definition.

This section shall apply until there are one or fewer new COVID-19 cases detected in the exposed group for a 14-day period.

COVID-19 testing shall be made available immediately upon being covered by this section, the employer shall make COVID-19 testing available at no cost to its employees within the exposed group, regardless of vaccination status, during employees' paid time, except for returned cases and employees who were not present at the workplace during the relevant 14-day period(s) under subsection 3205.1(a).



Employer shall then make testing available on a weekly basis to all employees in the exposed group who remain at the workplace.

Employees who had close contacts shall have a negative COVID-19 test taken within three to five days after the close contact or shall be excluded and follow the return-to-work requirements of subsection 3205(c)(5) starting from the date of the last known close contact.

COVID-19 investigation, review, and hazard correction. The employer shall perform a review of potentially relevant COVID-19 policies, procedures, and controls and implement changes as needed to prevent further spread of COVID-19 when this section initially applies and periodically thereafter. The investigation, review, and changes shall be documented and shall include:

- Investigation of new or unabated COVID-19 hazards including the employer's leave policies and practices and whether employees are discouraged from remaining home when sick; the employer's COVID-19 testing policies; insufficient supply of outdoor air to indoor workplaces; insufficient air filtration; and insufficient physical distancing.
- The review shall be updated every 30 days that this section continues to apply, in response to new information or to new or previously unrecognized COVID-19 hazards, or when otherwise necessary.
- Any changes implemented to reduce the transmission of COVID-19 based on the investigation and review, which may include: moving indoor tasks outdoors or having them performed remotely; increasing the outdoor air supply when work is done indoors; improving air filtration; increasing physical distancing to the extent feasible; requiring respiratory protection in compliance with section 5144; and other applicable controls.

In buildings or structures with mechanical ventilation, employers shall filter recirculated air with Minimum Efficiency Reporting Value (MERV) 13 or higher efficiency filters if compatible with the ventilation system. If MERV-13 or higher filters are not compatible with the ventilation system, employers shall use filter with the highest compatible filtering efficiency. Employers shall also evaluate whether portable or mounted High Efficiency Particulate Air (HEPA) filtration units or other air cleaning systems would reduce the risk of transmission and, if so, shall implement their use to the degree feasible.



Major COVID-19 Outbreaks

This section applies where 20 or more **employee** COVID-19 Cases are found within an exposed group.

This section of the regulation will apply until there are fewer than three COVID-19 Cases detected in the exposed group for a 14-day period.

Multiple COVID-19 Outbreaks the employer shall take these actions:

- All employees in the exposed group, regardless of vaccination status, twice a week or more frequently if recommended by the local health department with jurisdiction over the workplace. Employees in the exposed group shall be tested or shall be excluded and follow the return-to-work requirements of subsection 3205(c)(5).
- Report the outbreak to the Division. This subsection does not limit the employer's obligation to report employee deaths, serious injuries, or serious illnesses when required by subsection 342(a).
- Provide respirators for voluntary use in compliance with subsection 5144(c)(2) to employees in the exposed group, shall encourage their use, and shall train employees provided respirators for voluntary use, as set forth in subsection 3205(g).
- Any employees in the exposed group who are not wearing respirators required by the employer and used in compliance with section 5144 shall be separated from other persons by at least six feet, except where an employer can demonstrate that at least six feet of separation is not feasible, 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. When it is not feasible to maintain a distance of at least six feet, individuals shall be as far apart as feasible.

Employer Provided Housing

Employer-provided housing is any place or area of land, any portion of any housing accommodation, or property upon which a housing accommodation is located, consisting of: living quarters, dwelling, boardinghouse, tent, bunkhouse, maintenance-of-way car, mobile home, manufactured home, recreational vehicle, travel trailer, or other housing accommodations. Employer-provided housing includes a "labor camp" as that term is used in title 8 of the California Code of Regulations or other regulations or codes.



The employer-provided housing may be maintained in one or more buildings or one or more sites, including hotels and motels, and the premises upon which they are situated, or the area set aside and provided for parking of mobile homes or camping. Employer-provided housing is housing that is arranged for or provided by an employer, other person, or entity to workers, and in some cases to workers and persons in their households, in connection with the workers' employment, whether or not rent or fees are paid or collected.

The following exceptions apply:

- This section does not apply to housing provided for the purpose of emergency response, including firefighting, rescue, and evacuation, and support activities directly aiding response such as utilities, communications, and medical operations, if:
 - The employer is a government entity; or
 - The housing is provided temporarily by a private employer and is necessary to conduct the emergency response operations.
- This section does not apply to housing in which all residents maintained a household together prior to residing in employer-provided housing, such as family members.
- This section does not apply to employees with occupational exposure as defined by section 5199, when covered by that section.
- This section does not apply to employer-provided housing used exclusively to house COVID-19 cases or where a housing unit houses one employee.

To the extent feasible, employers shall assign employee housing to cohorts that travel and work together, separate from other workers. To the extent feasible, residents who usually maintain a household together shall be housed in a single housing unit without other persons.

The employer shall establish, implement, and maintain effective policies and procedures for COVID-19 testing of residents who had a close contact or COVID-19 symptoms. These policies and procedures shall be communicated to the residents.

Employers shall effectively isolate COVID-19 cases from all residents who are not COVID-19 cases, for the period established by subsection 3205(c)(5)(A). Effective isolation shall include housing COVID-19



cases only with other COVID-19 cases, and providing COVID-19 case residents with a sleeping area and bathroom that is not shared by non-COVID-19 case residents.

Employers shall effectively quarantine residents who have had a close contact from all other residents, in accordance with subsection 3205(c)(5)(B). Effective quarantine shall include providing residents who had a close contact with a private bathroom and sleeping area.

Employer Provided Transportation

This section applies to employer-provided motor vehicle transportation to and from work, during the course and scope of employment, which is provided, arranged for, or secured by an employer regardless of the travel distance or duration involved, with the following exceptions:

- Employees alone in a vehicle, employees taking public transportation, or vehicles in which the driver and all passengers are from the same household outside of work, not subject to section 3205.2.
- Employer-provided transportation necessary for emergency response, including firefighting, rescue, and evacuation, and support activities directly aiding response such as utilities, communications, and medical operations.
- Employees with occupational exposure as defined by section 5199, when covered by that section.

Employers shall comply with the requirements of section 3205 within a vehicle and shall respond to a COVID-19 case within the vehicle in accordance with the requirements of that section.

Assignment of transportation. To the extent feasible, employers shall assign transportation such that cohorts travel and work together, separate from other workers. To the extent feasible, employees who usually maintain a household together shall travel together.

