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November 10, 2022

Cal/OSHA Amends Proposed COVID-19 Regulation

CDPH Revises the Definition of Close Contact

The California Department of Public Health (CDPH) is an authority on public health policy in California. CDPH issues recommendations regarding isolation and quarantine periods for persons infected with or exposed to COVID-19.

The Division of Occupational Safety and Health (Cal/OSHA), an agency that enforces safe and healthy working conditions for California workplaces, issues regulations that often incorporate CDPH definitions. Cal/OSHA's definition of "close contact" affects employer obligations such as determining who may need to be excluded from the workplace.

For some time, CDPH defined "close contact" as being within six feet of an individual infected with COVID-19 for a cumulative total of 15 minutes or greater. In June 2022, the CDPH updated its definition of "close contact" to mean individuals sharing the same indoor airspace instead of the previous six-foot rule. CDPH's revised definition left employers with large facilities with more questions than answers.

On October 14, 2022, [CDPH changed the definition](#) of "close contact" again. Effective as of October 14, 2022, the CDPH defines "close contact" to mean:

- In indoor spaces 400,000 or fewer cubic feet per floor (such as home, clinic waiting room, airplane, etc.), a close contact is defined as sharing the same indoor airspace for a cumulative total of 15 minutes or more over a 24-hour period (for example, three separate five-minute exposures for a total of 15 minutes) during an infected person's (confirmed by COVID-19 test or clinical diagnosis) infectious period.
- In large indoor spaces greater than 400,000 cubic feet per floor (such as open-floor-plan offices, warehouses, large retail stores, manufacturing, or food processing facilities), a close contact is defined as being within six feet of the infected person for a cumulative total of 15 minutes or more over a 24-hour period during the infected person's infectious period.
- Spaces that are separated by floor-to-ceiling walls (e.g., offices, suites, rooms, waiting areas, bathrooms, or break or eating areas that are separated by floor-to-ceiling walls) must be considered distinct indoor airspaces.

The revised definition will likely reduce employer obligations for testing and masking in large spaces like warehouses. Additionally, it reflects that health authorities are showing more flexibility for employers.

Cal/OSHA Makes Changes to Proposed Two-Year Standard

On October 14, 2022, Cal/OSHA issued a 15-day change notice that included changes to the draft regulations that will be voted on in December. The significant changes include:

- Cal/OSHA has incorporated CDPH's new definition of "close contact" based on the size of the employer's workspace.
- The threshold for an "outbreak" was lowered to two cases during a two-week period.

- Notice requirements were adjusted to match [AB 2963](#). AB 2963 allows employers to communicate notice in the manner the employer normally communicates with employees such as by email or text message if the employer reasonably anticipates the notice will be received by the employee within one business day.

Cal/OSHA's proposed two-year standard is part of a larger trend towards codifying COVID-19 requirements into more permanent measures.

Takeaways

Employers will have to carefully determine whether workspaces qualify as large indoor spaces, since the standard is not based solely on the workspace's outer walls. Workspaces may be viewed as several smaller workspaces that do not meet the 400,000 cubic feet threshold. Employers should seek the advice of counsel if they have questions related to the revised definition of "close contact" or the related changes to Cal/OSHA's proposed two-year standard.

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