

### **Cal OSHA Extends COVID-19 Regulations Until 2024**

The California Division of Occupational Safety and Health (Cal/OSHA) Standards Board recently voted to adopt the [COVID-19 prevention non-emergency regulations](#). The COVID-19 emergency temporary standards (ETS) will remain in place while the California Office of Administrative Law (OAL) reviews the non-emergency standard.

If the non-emergency standard is approved, it will likely be effective on January 1, 2023, through December 31, 2024.

#### **Key Summary**

Although the non-emergency standard would extend many of the current ETS requirements, the changes overall are less onerous for employers.

Credit unions may now prepare for compliance with the non-emergency standard and consider the following notable changes:

- **Termination of Exclusion Pay.** As drafted, the new non-emergency regulations do not require employers to provide exclusion pay. This means that employers will no longer be required to provide unlimited paid sick leave whenever a COVID-19 case occurs in the workplace. However, the obligation to provide employees supplemental COVID-19 paid sick leave has been extended through December 31, 2022.
- **COVID Workplace Measures.** Employers will have greater flexibility and control over their written Injury and Illness Prevention Programs (IIPP). Under the new non-emergency standard, employers are still required to maintain a plan that addresses COVID-19 in the workplace, including measures to prevent workplace transmission, employee training, and methods for responding to COVID-19 cases at the workplace – however – most of the specific detailed requirements of the ETS have been eliminated. Employers may address COVID-19 workplace measures within their written IIPP or in a separate document.
- **Revised Definition of Close Contact.** The non-emergency standard incorporates the definition of a close contact that the California Department of Public Health (CDPH) adopted by order effective Oct. 14, 2022.
  - For 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 in the regulations, regardless of the use of face coverings.
  - For 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 in the regulations, 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.

- **COVID-19 Testing.** Employers must make COVID-19 testing available at no cost and during paid time to employees who meet the revised definition of a close contact, except for returned cases.
- **Ventilation.** For all indoor locations regardless of size, employers must review applicable CDPH guidance and implement effective measures to prevent transmission through improved filtration and/or ventilation.
- **Infectious Period Definition.** The non-emergency standard uses the definition of “infectious period” found in the most recent [CDPH State Public Health Officer Order](#).
- **Reporting and Recordkeeping.** Employers will still be required to maintain records of workers’ infections, but they will not need to maintain records of employees deemed a close contact.
- **Outbreaks.** The non-emergency standard permits to end the outbreak procedures when there are “one or fewer new COVID-19 cases detected in the exposed group for a 14-day period.” Under the current ETS, it requires *zero* new cases within the relevant period before employers may end outbreak procedures.
- **Notification Requirements.** Employers are still required to notify employees and independent contractors who had close contact with a COVID-19 case. The non-emergency standard requires the notice to be provided “as soon as possible,” and in no case longer than needed to comply with exclusion requirements. However, it also incorporates the requirements of Cal. Labor Code §6409.6 or any successor law is in effect, which currently continues to require that notice be given to a close contact within one business day, among other requirements. [Assembly Bill 2693 \(AB 2693\)](#), which was signed into law on September 29, 2022, extends certain COVID-19 related requirements, including Cal. Labor Code §6409.6, until January 1, 2024. As such, employers must continue to comply with the one-business day notice requirement through January 1, 2024, though there are additional notice options under AB 2693, including posting a notice of potential COVID-19 exposure at the worksite (and on existing employee portals) instead of providing written notice.

### **Recommendations/Things to Consider**

- Credit unions should continue to comply with the current ETS until it expires on December 31, 2022.
- Become familiar with the new requirements of the non-emergency standards.
- Work with legal counsel to review and assess existing COVID-19 prevention programs to determine whether modifications should be made and whether to incorporate COVID-19 safety protocols into IPPs or into a separate document.