



# Cal/OSHA Evolves with COVID-19: **CALIFORNIA EMPLOYERS MUST ALSO**

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**From January 1, 2021, until January 1, 2023**, Cal/OSHA has been empowered to issue citations more quickly for serious violations related to COVID-19.

Employers throughout California are starting to feel the sting of the heightened Cal/OSHA regulations related to COVID-19 through employee class actions and Private Attorney General Actions.

The combined effect of these developments should be incentive for all California employers to become readily familiar with at least the following Cal/OSHA requirements:

## **COVID-19 Emergency Temporary Standards (ETS)**

1. California employers must either develop a standalone written COVID-19 Prevention Program or incorporate it into the existing IIPP.
2. Review Cal/OSHA's Model COVID-19 Prevention Program and compare current practices against it for reasonable compliance.
3. Monitor and correct COVID-19 hazards in the workplace, including employee screening and periodic inspections even after ETS protocols are initially implemented.
4. Offer testing to an employee at no cost and during working hours in the event of a potential COVID-19 work-related exposure.
5. Continue to implement all ETS even if employees are fully vaccinated.

## **Exclusion Pay and Benefits**

1. If an employee who is able and available to work is excluded in order to comply with the ETS, the employer must continue to provide the employee's pay and benefits during that exclusion period. The employer may require that the employee exhaust paid sick leave benefits before providing exclusion pay, to the extent permitted by law, and may offset "exclusion pay" by the amount an employee receives in other benefit payments.
  - a. **NOTE:** The ETS does not require employers to pay workers who are excluded from work if the employer can show that the employee's COVID-19 exposure was not work related.
2. Even an employee who does not have COVID-19 but who was excluded from work because of a workplace COVID-19 exposure should receive exclusion pay if: (a) the employee was not assigned to telework during that time; and (b) the employee would have been able and available to work if they had not been exposed. If the employee was not paid during the exclusion period, the employee can file a claim with the Labor Commissioner's Office.

3. If an employee is unable to work because of his or her COVID-19 symptoms, then he or she would not be eligible for exclusion pay and benefits under section 3205(c)(10)(C). The employee, however, may be eligible for Workers' Compensation or State Disability Insurance benefits.
  4. The employer is not required to maintain the exposed employee's earnings and benefits if the employee with COVID-19 exposure from the workplace is unable to work because of reasons other than protecting persons at the workplace from possible COVID-19 transmission (e.g., a business closure, caring for a family member, disability, or vacation). However, those employees may be eligible for other benefits, including Disability Insurance, Paid Family Leave, or Unemployment Insurance benefits.
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**Karina B. Sterman** is a partner in the Litigation and Employment Law Departments of [Greenberg Glusker](#). A creative and ardent advocate for her clients, Ms. Sterman defends businesses in class action lawsuits as well as in discrimination, harassment, wrongful termination, and other lawsuits. She also defends companies in administrative proceedings in front of the EEOC, Department of Labor, California Labor Commissioner, and other jurisdictions.