

CALIFORNIA LOOSENS QUARANTINE REQUIREMENTS FOR FULLY VACCINATED EMPLOYEES – MORE TO COME?

Insights
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Employers in California have been clamoring for changes to workplace health and safety COVID-19 standards as a result of the growing numbers of employees who are fully vaccinated. Recent updated guidance from the California Department of Public Health (CDPH) appears to open the door to lifting certain requirements in the workplace for fully vaccinated employees.

CDPH Updated Guidance Says Fully Vaccinated Employees Do Not Need to Quarantine if Asymptomatic

As COVID-19 cases continue to decline and vaccination numbers increase, there has been pressure to modify or loosen COVID-19 health and safety requirements in the workplace – particularly the Cal/OSHA Emergency Temporary Standard (ETS) requirements for fully vaccinated employees. [As the CDC has recently issued guidance loosening certain health and safety restrictions for fully vaccinated persons](#), many California employers have questioned the need for strict quarantine, continued face coverings, and other rules for employees who have been fully vaccinated.

On May 3, 2021 the CDPH released updated [COVID-19 Public Health Recommendations for Fully Vaccinated People](#).

Significantly, the updated guidance eases quarantine restrictions for fully vaccinated asymptomatic employees in non-healthcare workplaces. The guidance states the following:

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provisions related to the quarantine of fully vaccinated persons apply to non-healthcare workplaces and the Cal/OSHA COVID-19 Prevention Emergency Temporary Standards that apply to fully vaccinated persons.

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Following a known exposure at work, fully vaccinated workers do not need to quarantine if asymptomatic.

Cal/OSHA acknowledged this updated CDPH guidance on May 5 and has adopted this change regarding quarantine, such that individuals no longer need to be excluded from the workplace under the ETS if asymptomatic and fully vaccinated as well as loosening other workplace restrictions. However, other requirements such as face coverings and testing requirements continue to apply to all employees.

Significantly, the ETS has updated several FAQs to reflect the following changes:

- The language in [Outbreaks and the "Exposed Workplace"](#) Q&A 12 answer section has been updated to reflect the updated guidance:

Q: When must an employer exclude employees from work?

A: Employers must exclude from work employees who are not fully vaccinated if they (1) are COVID-19 cases, or (2) have had COVID-19 exposure. Applying [Executive Order N-84-20](#) and the [new CDPH COVID-19 Public Health Recommendations for Fully Vaccinated Individuals](#), employers must also exclude fully vaccinated employees if they (1) are COVID-19 cases, or (2) have had a COVID-19 exposure and exhibit COVID-19 symptoms. However, employers do not need to exclude fully vaccinated employees who had a COVID-19 exposure who are asymptomatic

- Q&A answer section 14 in [Outbreaks and the "Exposed Workplace"](#) has also been updated with reference to the updated guidance:

Q: What are the criteria for an employee who is not fully vaccinated and exposed to a COVID-19 case to return to work?



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A: Applying [Executive Order N-84-20](#) and [the CDPH quarantine guidance](#), while a 14-day quarantine is recommended, an exposed employee who does not develop symptoms of COVID-19 may return to work after 10 days have passed since the date of last known exposure. Additionally, CDPH has provided guidance permitting health care, emergency response and social services workers to return to work after 7 days with a negative PCR test result collected after day 5 when there is a critical staffing shortage.

- A new Q&A: 15 in [Outbreaks and the “Exposed Workplace”](#) was added to address the updated guidance:

Q: What are the quarantine requirements for a fully vaccinated employee exposed to a COVID-19 case?

A: Applying [Executive Order N-84-20](#) and [the new CDPH COVID-19 Public Health Recommendations for Fully Vaccinated People](#), an exposed employee who does not develop symptoms of COVID-19, does not need to quarantine.

- Previous [Outbreaks and the “Exposed Workplace”](#) Q&A 15 was moved to 16

Q: Is a negative test required for an employee to return to work?

A: No, the ETS does not require an employee to have a negative test to return to work. The criteria for returning to work are listed above.

- The language in [Testing](#) Q&A 9 answer section third bullet has been updated as follows:

Q: In a non-outbreak setting, what are employers required to do when they learn that one or more of their employees had a COVID-19 exposure at the workplace?

A: Employers must:

- Notify all employees and employees’ authorized representatives who may have had COVID-19 exposure within one business day in a manner that does not reveal the COVID-19 case’s personal identifying information
- Offer testing at no cost to any employee potentially exposed to COVID-19 in the workplace, and provide applicable benefit information. The time an employee

spends being tested is considered compensable hours worked.

- Exclude from the workplace employees who test positive for COVID-19, and exclude employees with COVID-19 exposure *unless they are fully vaccinated and do not show any symptoms of COVID-19, and follow the requirements for preserving their pay and benefits.*
- Follow the return to work criteria for returning excluded employees to work.
- Investigate the exposure and address hazards.

Who Is Considered a “Fully Vaccinated” Employee?

The updated CDPH guidance defines a “fully vaccinated” person as an individual who has gone two weeks or more after receiving the second dose in a two-dose vaccine series (Pfizer-BioNTech or Moderna) or two weeks or more after receiving a single-dose vaccine (Johnson and Johnson/Janssen). The guidance states it will be updated as additional vaccines are approved.

There is currently no time limitation on these recommendations. Though the CDC similarly eliminated time limitations with regard to fully vaccinated individuals, this is significant as there had been indications that loosening of restrictions for vaccinated persons would be limited to a finite period (e.g., three to six months) after receipt of the vaccine.

Additional Modifications to the Cal/OSHA ETS On The Horizon?

There has been discussion regarding further possible changes to the ETS to accommodate the increasing number of employees who are fully vaccinated.

Cal/OSHA convened a recent advisory committee where the issue was discussed and indicated that proposed changes to the ETS would be on the way in the near future.

There are some indications such changes may be imminent, and the recent CDPH update may help to propel further changes. Proposed revised ETS language could be released for public review in a matter of days, and there is speculation

that the Cal/OSHA Standards Board may take up the proposed changes at its upcoming meeting on May 20.

What Will Eased Restrictions for Vaccinated Individuals Mean For Employers?

Below are some issues for employers to consider as they navigate through these changes to the ETS and loosening of certain requirements for vaccinated employees:

1. Should we ask about an employees' vaccination status?

Current DFEH and EEOC guidance confirms an employer may inquire about vaccination status. Simply asking employees to verify vaccination status is not a disability-related or religious-related inquiry, or a medical examination (you should instruct employees to omit any such information from any documentation). However, many employers have been hesitant to collect this information given the additional considerations related to maintaining confidentiality of the information and other concerns. With changes to quarantine requirements for vaccinated employees, employers who are not confirming vaccination status will want to consider doing so, subject to the restrictions noted. Moreover, employers subject to the CCPA, will want to review their CCPA notice (or see our [sample CCPA Notice](#)) to ensure notice regarding collection of medical information is included.

2. Should we ask for "proof" of vaccination status?

Given the confidentiality and disability-related inquiry concerns, coupled with the fact there is no single standard "proof" of vaccination, employers have debated whether actual proof is necessary. Many employers have been using acknowledgment forms collecting the minimum information necessary, such as date(s) and type of vaccination. California's recently updated guidance for private venues and events provides insight with regard to possible forms of proof of vaccination, listing the following as acceptable methods of proof of full vaccination: "vaccination card (which includes name of person vaccinated, type of vaccine provided and date last dose administered) OR a photo of a vaccination card as a separate document OR a photo of the attendee's vaccine card stored on a phone or electronic device OR documentation of vaccination from a healthcare provider."

As noted above, you should proceed with caution to avoid

making a disability-related inquiry. Additionally, if employees are asked to provide proof, you should instruct employees not to provide or to omit any medical information from such documentation. We have a fuller discussion on vaccine tracking for employees [here](#).

3. What if an employee declines or refuses to disclose their vaccination status?

If an employee declines or refuses to provide their vaccination status, it would be wise to remind the employee of the legitimate business-related reasons for making the inquiry, but proceed with caution before disciplining or taking any other adverse action, even if the employer has a mandatory vaccination policy. Even with a mandatory vaccination policy, you must ensure that you have a process in place to address issues of reasonable accommodation with employees prior to moving to discipline or any adverse action. You should also consider whether reprimanding an employee for declining to disclose their vaccination status could be viewed as a *per se* mandatory vaccination policy, which requires an accommodation analysis in the event the employee cannot get the vaccine for disability or religious reasons.

4. What if a fully vaccinated employee *wants* to quarantine after a workplace exposure?

It is recommended to engage in a dialogue to determine why the employee wants to quarantine. If the employee can work remotely during this period, you may consider this as an accommodation. If remote work is not available, the employee is likely not entitled to paid time off under California's COVID-19 Supplemental Paid Sick Leave or federal emergency paid sick leave under ARPA, as with the updated guidance, such asymptomatic, fully vaccinated employees are not generally subject to a federal, state or local guidance or order requiring them to quarantine. Another consideration is to offer the employee use of any existing paid sick leave or vacation.

5. What if an employee is dishonest in providing information about vaccination status?

It is recommended to have employees sign to acknowledge and attest that their vaccination information provided is accurate and complete. If you discover the information is not truthful or has been falsified, then discipline may be appropriate. But given the ever-changing landscape, it would be recommended to consult with employment counsel to discuss further.

Conclusion

We will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, any attorney in [our California offices](#), or visit our [Vaccine Resource Center for Employers](#).