

CALIFORNIA'S COVID-19 REGULATIONS EXTENDED: 3 DEVELOPMENTS FOR EMPLOYERS TO NOTE

Insights

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Fans of the 1984 fantasy film *The NeverEnding Story* might remember the famous line, "Every real story is a never-ending story." For California employers that have been grappling with COVID-19 for the better part of the last three years, it might seem like California's regulation of the pandemic might be never ending as well. While much of the country appears to be moving on from pandemic regulation in the workplace, California recently extended two COVID-19 laws for another year and extended COVID-19 supplemental paid sick leave until the end of this year. In addition, the Cal/OSHA Standards Board is set to vote later this fall on a "permanent" COVID-19 standard that will replace the current Emergency Temporary Standard (ETS) and will likely be in effect for two years. What three developments do employers need to note about their ongoing obligations under these regulations?

1. Cal/OSHA is Considering a 'Permanent' Standard

California employers are all too familiar with the ETS, which has been amended and modified multiple times over the last two years. The ETS is set to expire on December 31, 2022, and there are no indications that Cal/OSHA intends to further extend it (and that would require executive action by the Governor to do so).

However, that's not the end of Cal/OSHA's COVID-19 story. The Cal/OSHA Standards Board is currently considering a **"permanent" standard** that would go into effect in 2023 and likely remain on the books for two years. A few key features of the current proposal include:

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- **Elimination of Exclusion Pay** – The proposal would eliminate Cal/OSHA's mandate to provide "exclusion pay" to employees who are excluded from the workplace due to COVID-19.
- **Injury and Illness Prevention Program** – The proposal would require employers to address COVID-19 through their existing IIPP, rather than through a Written COVID-19 Prevention Program (WCPP) as required under the current ETS.
- **Deference to CDPH Definitions** – The proposal will continue to incorporate and reference definitions from the California Department of Public Health (CDPH), including for terms like "close contacts," "infectious period," and "returned case."
- **Recordkeeping** – The proposal would require employers to identify and track COVID-19 close contacts and maintain such records for two years.

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At a recent hearing of the Standards Board on September 15, criticism about the proposal was levied by both employer and labor representatives. Employers argued that a two-year permanent COVID-19 regulation was unnecessary and expressed concerns with other requirements of the proposal, while labor argued mainly for continued exclusion pay in any COVID-19 standard. The Standards Board directed Cal/OSHA to take these comments into consideration and perhaps come back with revised language.

Despite the fluid nature of these discussions, it is still anticipated that the Standards Board will adopt a regulation later this fall to go into effect next year (after expiration of the ETS).

2. Two COVID-19 Laws were Extended for Another Year

With Governor Newsom's recent signature on a pair of bills, California will also extend two pieces of COVID-19 related legislation that were set to expire at the end of the year.

- **AB 2693 extends the statutory COVID-19 notice requirements** (originally enacted as AB 685) until January 1, 2024. Previously, these notice requirements generally required employers to provide notice to employees and

others who may have been exposed to COVID-19 in the workplace.

AB 2693 also makes some important changes to the notice requirements. Most significantly, in lieu of individual notice, the bill will allow employers to simply post a notice in the workplace for 15 days when there has been a COVID-19 exposure. In the alternative, an employer can provide individual notices in the same general manner as previously required under the law.

However, employers should keep in mind that Cal/OSHA may impose additional notice requirements that maintain an individual notification requirement. Employers will need to closely monitor Cal/OSHA's proposed "permanent" COVID-19 regulation to see if it maintains an individual notice requirement (such as for close contacts), regardless of whether the notification requirements under the California Labor Code are changed.

- A second measure, AB 1751, **extends a previous "rebuttable presumption" established for workers' compensation purposes** for COVID-19. Previous legislation (SB 1159) established a rebuttable presumption that some COVID-19 cases are work-related under certain outbreak circumstances and required employers to provide information about COVID-19 cases to their workers' compensation claims administrator. AB 1751 extends these requirements until January 1, 2024.

3. COVID-19 Supplemental Paid Sick Leave was Extended Until the End of the Year

Since the COVID-19 pandemic began, California has adopted a series of statewide requirements for employers to provide COVID-19 Supplemental Paid Sick Leave (SPSL) to employees who test positive or are otherwise impacted by COVID-19.

The current iteration of the SPSL requirement was set to expire on September 30, 2022. However, Governor Newsom signed a measure into law that extends that requirement until the end of the year. Importantly, this extension will not entitle employees to a new bank of SPSL. Rather, it will merely extend the existing entitlement until the end of the year.

AB 152 makes a few small changes to the SPSL law and also establishes a new grant program for specified small businesses to provide up to \$50,000 in grants to cover some of the costs of SPSL provided in 2022. [Read more in our recent Insight here.](#)

Conclusion

It's clear that COVID-19 regulation in California will continue for the near future. In fact, there are reports that we may be in store for another wave of COVID-19 cases in the United States in the coming weeks and months. California employers must remain vigilant and compliant with these ongoing obligations and requirements, even when it might seem like the rest of the world has moved on.

We will continue to monitor these developments, so make sure you are subscribed to [Fisher Phillips' Insight system](#) to keep up with the most up-to-date information. Please contact your Fisher Phillips attorney, the author of this Insight, or [any attorney in our California offices](#) should you have any questions.