



## CAL/OSHA'S EMERGENCY COVID-19 REGULATIONS

# General Industry Safety Orders §3205 Summary

California's Office of Administrative Law recently approved the standard known as General Industry Safety Order (GISO) §3205. This Emergency Work Order was adopted on November 19, 2020, approved on November 30, 2020, and will expire on October 2, 2021. It establishes statewide occupational safety standards, specific to how employers must provide written notification to employees after acknowledgement of a potential exposure to COVID-19.

The Emergency Work Order mandates that a written COVID-19 prevention program be developed and implemented in concert with business Injury & Illness Prevention Programs (IIPPs). The program must include procedures for employees to report symptoms, identification of workplace hazards by management, a process for investigating positive cases, a process for conducting contact tracing, and the requirement that workers who have potentially been exposed be notified within one business day.

As of December 18, 2020, a coalition of employers and associations have sued Cal/OSHA to invalidate this recently enacted COVID Emergency Work Order and enjoin the Division of Occupational Safety and Health from enforcing it. A recent California OSHA conference call included a slide presentation from the OSHA GISO §3205 authors that described their interpretation of the Emergency Work Order. After the slide presentation, individuals representing the legal community and public and private industry groups noted their objections and questions concerning the verbiage within the Emergency Work Order.

It's possible that the lawsuit will get accepted and put a stop to the GISO §3205 regulation. The comments submitted to the OSHA Advisory Board may also result in a rewrite to the existing regulation. The next few months will reveal answers to the lawsuit and industry group's questions.

## Who Does the GISO §3205 Apply To?

The regulation applies to all employees and businesses except for businesses with one employee who doesn't have contact with other people, employees working from home, and those covered by California's Aerosol Transmissible Disease (ATD) standards including emergency responders and employees of various health facilities and care organizations.

A "COVID-19 Case" is a person who:

- Has a positive "COVID-19 test" as defined in these regulations; or,
- Is subject to COVID-19-related order to isolate issued by a local or state health official; or,
- Dies due to COVID-19, in the determination of a local Health Department or part per inclusion in the COVID-19 statistics of a County.

A person is no longer a COVID-19 case when a licensed healthcare professional determines the person does not have COVID-19, in accordance with the recommendations made by the California Department of Health (CDPH) or the local health department pursuant to authority granted under the Health and Safety Code or Title 17.

A "COVID-19 Exposure" means being within 6 feet of a COVID-19 case for a cumulative total of 15 minutes or greater in any 24-hour period within or overlapping with the "high-risk exposure period" as defined in the regulations. This definition applies **regardless** of the use of face coverings.

An "Exposed Workplace" means any work location, working area or common area at a workplace that's used or accessed by a COVID-19 case during the high-risk period, including bathrooms, walkways, hallways, isles, break or eating areas, and waiting areas. The exposed workplace does not include buildings or facilities not entered by a COVID-19 case.

## COVID-19 Prevention Programs

The regulation requires that businesses draft and maintain an effective written COVID-19 prevention program. The document can be either integrated into the employer's IIPP or maintained as a separate document. The written elements of the COVID-19 prevention program include:

1. How to report COVID-19 symptoms, possible COVID-19 exposures, and possible COVID-19 hazards at the workplace
2. Procedures for accommodating employees with medical conditions or other conditions that put them at an increased risk of contracting COVID-19
3. Information about COVID-19 testing. If the employer provides COVID-19 testing, the document should describe the testing policies and procedures, including the reason for COVID-19 testing and the consequences of a positive test
4. A policy for screening employees and responding to employees with COVID-19 symptoms
5. Information about COVID-19 hazards and the employer's COVID-19 policies and procedures. Employers must make available its COVID-19 prevention program to anyone who comes on to the worksite. This could include employees, independent contractors, vendors, members of the public, etc.
6. How the employer will comply with physical distancing requirements and the provision of face coverings and other personal protective equipment (PPE)
7. How the employer will respond "rapidly and effectively" when COVID-19 cases occur, as well as ways to reduce or prevent the transition of COVID-19 in the workplace
8. The employer's investigatory procedures when a COVID-19 case occurs, including how the employer will provide notice to potentially exposed employees and others
9. Information about the employer's training program to insure all employees are informed of COVID-19 transmission, symptoms, employee benefits if they must quarantine, physical distancing and mask policies, and the importance of staying home when sick

The employer must also maintain records, or the steps taken to implement the written COVID-19 prevention program.

## Evaluation and Identification of COVID-19 Hazards

Required investigation and evaluation of hazard areas includes the following items to be completed by the employer:

1. Investigation of the workplace and identification of "all interactions, areas, activities, processes, equipment, and material that could potentially expose employees to COVID-19 hazards"
  - a. Evaluation and determination of how to reduce the hazards in places where people may congregate, meet, encounter each other, even when not working
  - b. Evaluation and determination of how to reduce hazards in areas that might affect the health and safety of others traveling through the workplace and entering or exiting the facility
2. Allowing employees and the union representatives to participate in the "identification and evaluation of COVID-19 hazards"
3. For indoor locations, evaluation of the ventilation system and how to maximize the flow of outdoor air and whether the system operates at the highest efficiency
4. Reviewing all local and state orders and guidance and orders and implementing them in the prevention plan
5. Reviewing existing COVID-19 policies and controls and evaluating whether they are still effective or need to be modified or added to
6. Performing periodic inspections to identify unhealthy conditions — this includes ensuring that work practices or procedures are being followed

## Investigating and Responding to COVID-19 Cases in the Workplace

Investigation of COVID-19 cases must include the following:

1. Determining the day and time the COVID-19 case was last present and, if possible, the date of the positive COVID-19 test and/or diagnosis, and the date the COVID-19 case first had one or more COVID-19 symptoms
2. Determining who may have had a COVID-19 exposure — evaluating where the COVID-19 case was within the workplace, the activities of the COVID-19 case, and all locations at the workplace which may have been visited during the high-risk exposure period
3. Giving notice of the potential COVID-19 exposure, within one business day, in a way that does not reveal any personal identifying information of the COVID-19 case, to the following parties:
  - a. All employees who may have had COVID-19 exposure and their authorized representatives
  - b. Independent contractors and other employers present at the workplace during the high-risk exposure
4. Offering COVID-19 testing at no cost to employees (during their working hours, to all employees who must be quarantined and excluded from the workplace) within COVID-19-related benefits to which they may be entitled under federal, state and local laws
5. Investigating if a workplace condition could contribute to the risk of COVID-19 exposure and what could be done to reduce exposure to COVID-19 hazards
6. Enacting procedures to correct unsafe and unhealthy work conditions, in a timely manner. These can include not only physical working conditions but also policies and methods of performing job duties

## Employee Training and Instruction

Employers must also provide “effective training and instruction” to employees. There are no requirements regarding the length of the training or who can perform the training.

The following must be included in the training:

- The employer’s COVID-19 policies and procedures intended to protect employees from COVID-19 hazards
  - Information regarding COVID-19-related benefits to which employees may be entitled under applicable federal, state, or local laws
    - Benefits include those available under workers’ compensation law, the Families First Coronavirus Response Act, Labor Code §248.1 and 248.5 (Supplemental Paid Sick Leave for Large Employers), Labor Code §3212.86 through 3212.88, (SB 1159 – workers compensation presumption of work relatedness) local governmental requirements, the employer’s own leave policies, and leave guaranteed by contract
- Note:** This information is the same as is required under AB-685
- Instruction that “COVID-19 is an infectious disease that can be spread through the air when an infectious person talks or vocalizes, sneezes, coughs, or exhales; that COVID-19 may be transmitted when a person touches a contaminated object and then touches their eyes, nose, or mouth, although that is less common; and that an infectious person may have no symptoms”
  - Instruction on the importance of social distancing, including a separation of at least 6 feet, and the importance of wearing face coverings
  - Communication of the fact that “particles containing the virus can travel more than 6 feet, especially indoors, so physical distancing must be combined with other controls, including face covering and hand hygiene, to be effective”

- Instruction on frequent hand washing with soap and water for at least 20 seconds and using hand sanitizer when employees do not have immediate access to a sink or handwashing facility. Employees must be instructed that “hand sanitizer does not work if the hands are soiled”
- Proper use of face coverings and the fact that face coverings are not respiratory protective equipment.
- Instruction on the importance of not coming to work when sick, obtaining a COVID-19 test if the employee has COVID-19 symptoms, and a list of COVID-19 symptoms

## Physical Distancing, Face Coverings, Ventilation and Other Engineering Controls

Employees must be separated from others “by at least 6 feet, except where the employer can demonstrate that 6 feet of separation is not possible, and except for momentary exposure while the persons are in movement.” When it is not possible to maintain a distance of at least 6 feet, individuals should be as far apart as possible.

Employers must evaluate whether it’s possible to physically distance by implementing alternatives to working in the workplace. Alternatives could include:

- Telework or other remote work arrangements
- Reducing the number of persons in an area at one time, including visitors or customers
- Providing visual cues such as signs and floor markings to indicate where employees and others should be located or their direction and path of travel
- Staggered arrival, departure, work and break times
- Adjusted work processes or procedures, such as reducing production speed, to allow greater distance between employees

Employers must provide face coverings and ensure they are worn by employees over the nose and mouth when indoors, when outdoors and less than 6 feet away from another person, and where required by orders from CDPH or local health department. Moreover, employers must ensure that face coverings are clean and undamaged. The regulations state that face shields are not a replacement for face coverings, although they may be worn in addition to face coverage for additional protection.

Exceptions to the face coverings requirement are:

- When an employee is alone in a room
- While eating and drinking at the workplace, provided employees are at least 6 feet apart, and if indoors, outside air supply to the area has been maximized to the extent possible
- Employees wearing “respiratory protection in accordance with Section 5144 or other Title 8 Safety Orders”
- Employees who cannot wear face coverings due to a medical or mental health condition or disability, or who are hearing impaired or communicating with a hearing-impaired person. These employees must wear an effective nonrestrictive alternative.
- When specific tasks cannot be performed while wearing a face covering. This exception is expressly limited to “the time period in which such tasks are actually being performed, and the unmasked employee shall be at least 6 feet away from all other persons unless unmasked employees are tested at least twice weekly for COVID-19.”

An employer cannot prevent an employee from wearing a face covering when not otherwise required under these regulations, unless it would provide a safety hazard, “such as interfering with the safe operation of equipment.” Employers must inform the face covering requirements of the premises to non-employees, like customers, vendors, suppliers, and members of the general public. Finally, the employer must draft and implement policies and practices to minimize employee exposure to COVID-19 hazards “originating from any person not wearing a face covering, including a member of the public.”

## Disinfecting and Cleaning:

Employers must implement cleaning and disinfecting procedures, which include:

- Identification and regular cleaning and disinfecting of frequently touched surfaces and objects
- Prohibiting the sharing of PPE
- Procedures for disinfecting and cleaning area worked in by COVID-19 case

## PPE:

Employers have been required to evaluate the need for PPE in their workplaces.

## Exclusion of COVID-19 Cases From Workplace During Quarantine

The stated purpose of this subsection is to “limit transmission of COVID-19 in the workplace.” It imposes affirmative duties on employers when handling COVID-19 case and requires that:

- Employers must ensure COVID-19 cases are excluded from the workplace until the return to work requirements are met.
- Employers must exclude employees with COVID-19 exposure from the workplace for 14 days after the last known “COVID-19 exposure to a COVID-19 case.”
- For employees excluded from work and otherwise able and available to work, “employers shall continue and maintain an employee’s earnings, seniority, and all other employee rights and benefits, including the employee’s right to their former job status, as if the employee had not been removed from their job. Employers may use employer-provided employee sick leave for this purpose and consider benefit payment from public sources in determining how to maintain earnings, rights and benefits, where permitted by law and when not covered by offers compensation.” Exceptions to this include:
  - Any period during which the employee is “unable to work for reasons other than protecting persons at the workplace from possible COVID-19 transmission”
  - Where the employer demonstrates that the COVID-19 exposure is not work-related
- Employers are entitled to have benefits that provide for greater protections to the employees, including benefits provided by collective bargaining agreement.
- At the time the employee is excluded from work, the employer shall provide the employee the information on benefits available to them including state and local paid sick leave, and leaves of absence, employer-provided paid leave and information related to workers compensation. **NOTE:** This requirement mirrors that of AB 685.
  - Exception: “Employees who have not been excluded or isolated by the local health department need not be excluded by the employer, if they are temporarily reassigned to work where they do not have contact with other persons until the return to work requirements are met.
- COVID-19 cases with COVID-19 symptoms shall not return to work until:
  - At least 24 hours have passed since a fever of 100.4 or higher has resolved without the use of fever-reducing medication,
  - COVID-19 symptoms have improved, and
  - At least 10 days have passed since COVID-19 symptoms first appeared.
- COVID-19 cases who tested positive but never developed COVID-19 symptoms shall not return to work until a minimum of 10 days have passed since the date of specimen collection of their first positive COVID-19 test.

- A negative COVID-19 test shall not be required for an employee to return to work.
- If there are no violations of local or state health officer orders for isolation or quarantine, Cal/OSHA (also called the Division) may, upon request, allow employees to return to work on the basis that the removal of an employee would create undue risk to a community's health and safety.

## Reporting, Recording and Access

The employer must track and keep record of all COVID-19 cases with the employee's name, contact information, occupation, location where the employee worked, the date of the last day at the workplace, and the date of a positive COVID-19 test. The requirement to record does not require the employer determine whether the COVID-19 case was work related.

## Multiple COVID-19 Infections, COVID-19 Outbreaks and Major Outbreaks

Infections identified by a local health department as the location of a COVID-19 outbreak, or where there are 3 or more COVID-19 cases in an exposed workplace within a 14-day period are covered under this section. Moreover, this section continues to apply until no new COVID-19 cases are detected in a workplace for a 14-day period. If a worksite is identified as one with multiple infections or outbreaks, the employer must provide COVID-19 testing to all employees at the exposed workplace, "except for employees who were not present during the period" of an outbreak.

The regulations explicitly require the following COVID-19 testing:

1. All employees in the exposed workplace shall be tested, then retested one week later. Negative COVID-19 test results "shall not impact the duration of any quarantine period required by, or orders issued by, the local health department."
2. After the first two COVID-19 tests, the employer shall provide continuous COVID-19 testing of employees who remain at the workplace at least once per week, or more frequently if recommended by the local health department.

The employer must investigate and determine what workplace factors contributed to the COVID-19 outbreak and take steps to remedy the issue.

The investigation and review must be documented, and the documentation shall include:

1. Investigation of new or unabated COVID-19 hazards, including the employer's leave policies and whether employees are discouraged from taking leave or encouraged to return to work early from quarantine. Investigation should also include the ventilation system, lack of distancing or use of PPE, and the employer's testing policy.
2. The review must be updated every 30 days when the outbreak is continuing or in response to new hazards or information.
3. The employer must make changes to the workplace when hazards are identified. Possible changes include moving indoor activities outdoors, implementing remote work, or increasing physical distancing or PPE use.

As required by AB-685, the regulations confirm the employer's requirement to report outbreaks to the local public health department within 48 hours "after the employer knows, or with diligent inquiry would have known, of the outbreak."

**Major Outbreaks:** A major outbreak is defined as 20 or more COVID-19 cases in a 30-day period. As with other outbreaks, an outbreak will be considered "major" until there are no new cases detected for 14 days.

When a workplace experiences a major outbreak, over a 30-day period the employer must provide twice-weekly COVID-19 testing to workers who were present during the exposure period and to workers who remain at the workplace. All requirements related to investigations during outbreaks apply during major outbreaks.

In addition, to the hazard correction procedures required for outbreaks, employers must also take the following specific actions during a major outbreak:

1. Filtration units must be inspected, and efficiency filters must be installed.
2. The employer must determine whether there is a need for a respiratory protection program or improvements to the existing system can be made.
3. The employer must implement any other measures deemed necessary by Cal/OSHA.

## How USI Can Help

USI Insurance Services recognizes that this new order will present additional challenges for our clients' environmental health and safety programs. We are closely monitoring the situation and are here to assist you in complying with the state requirements. Contact your USI representative to learn more about our risk control solutions or for additional guidance.

### Helpful Resources

To help clients navigate these challenging times USI has implemented a **STEER (Steer Through Epidemic & Economic Recovery) Task Force**. This cross-functional team is working to provide timely COVID-19 information, understand cross-industry and geographic impact and evolving responses, and to develop and deliver tailored solutions to help clients steer through this epidemic challenge and economic recovery.

For additional resources, tools, information, please visit our COVID-19 resource page:  
[www.usi.com/public-health-emergencies](http://www.usi.com/public-health-emergencies)



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