

Addendum #1 to the Finding of Emergency.

Further Basis for the Finding of Emergency:

- i. During the early stage of the pandemic, among other things the Division was directed to “have primary focus on providing technical assistance and support to have maximum effect to address to risk of COVID-19” and to “focus enforcement efforts where there are allegations of the most serious violations impacting health and safety.” (Executive Order N-27-20, March 15, 2020.)
- ii. At that point, and throughout the spring, the expected length of the pandemic was unclear. Stay-at-home orders had initially “flattened the curve” relative to other states, such as New York. Among the workplaces most affected by the pandemic, the existing Aerosol Transmissible Disease Standard, title 8 section 5199, protected many employees because they were involved in patient care or other activities covered by that section. For all other employees, the Division relied on existing regulations, including title 8 section 3203, Injury and Illness Prevention Plans.
- iii. In May, businesses began to reopen according to the state’s phased reopening plan. On May 20, 2020, the Occupational Safety and Health Standards Board (OSHSB) received a petition, filed by Worksafe and the National Lawyers’ Guild, Labor & Employment Committee (Petitioners), requesting the Board amend title 8 standards to create new temporary emergency standards. Petitioners requested OSHSB provide specific protections to California employees who may have exposure to COVID-19, but who are not protected by the Aerosol Transmissible Diseases standards (sections 5199 and 5199.1).
- iv. The Board directed Staff to prioritize the evaluation of this petition and the efficacy of existing regulations to address the health and safety of workers in the wake of the novel corona virus. The evaluation process included an analysis of current regulations, finding that while protections exist in Cal/OSHA’s Aerosol Transmissible Diseases (ATD) standard (title 8, section 5199), they are limited in scope primarily to medical facilities. Employers not included in the scope of the ATD standard have generally applicable requirements, which include the Injury and Illness Prevention Program (IIPP, section 3203), Washing facilities (sections 1527, 3366, 3457, and 8397.4), PPE (section 3380), Respiratory Protection (section 5144), Sanitation (article 9), and Control of Harmful Exposures (section 5141).
- v. While existing regulations (such as IIPP, section 3203) require employers to protect workers from harmful exposures, they do not necessarily identify specific measures that must be taken to fight the spread of a novel infectious disease. Instead, the responsibility is placed on employers, given their intimate knowledge of the hazards at issue and the workings of the place of employment, to devise such methods or procedures. Investigations in the field over the summer, along with rising positivity

- rates, showed that employers were struggling to address the novel hazards presented by COVID-19.
- vi. Given the unprecedented nature of the COVID-19 pandemic, and informed by analysis performed by OSHSB staff and the Division, on September 17, 2020, the Board found a specific emergency regulation in title 8 is necessary to provide clear instructions to employers and employees on what needs to be done to protect workers from COVID-19, eliminating any confusion and enhancing compliance. The Board requested the Division work with Board staff to expeditiously submit a proposal for an emergency regulation to protect all workers not covered by section 5199 from COVID-19 exposure in the workplace, for consideration no later than the November 19, 2020 Board meeting.
 - vii. Throughout the course of the pandemic, the Division issued guidance for employers regarding safe reopening. This guidance, much of which was issued jointly with other state agencies, included industry-specific information. Nonetheless, cases began to rise precipitously in October and November 2020. Guidance is not sufficient to address the present increase in cases and the risk of occupational spread. Furthermore, the proposed emergency regulations introduce specific requirements, such as employer-provided testing, that are critical to reduce occupational spread during the ongoing rise in infections. The present threat of exponential growth in COVID-19 cases demands immediate action.

Documents Relied Upon:

The dates of the following documents-relied-upon are corrected as follows:

34. CDC; People with Certain Medical Conditions. October 6, 2020.

<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>

35. CDC; Evidence used to update the list of underlying medical conditions that increase a person's risk of severe illness from COVID-19. October 6, 2020.

<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/evidence-table.html>

38. CDC; Considerations for Restaurants and Bars. September 6, 2020.

<https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/business-employers/bars-restaurants.html>

61. CDC; Agriculture Workers and Employers. November 10, 2020.

<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-agricultural-workers.html>

Local Mandate Determination

There is no local mandate imposed by these proposed regulations.

Non-duplication

Portions of the proposed regulations repeat or rephrase, in whole or part, state statutes and regulations. This duplication is necessary so that employers and employees will be able to review all provisions specific to prevention of COVID-19 in the workplace within the same portion of title 8, making compliance easier. In addition, to the extent that some language within the proposed regulations may repeat portions of AB 685 (Chaptered September 17, 2020), that bill does not take effect until January 1, 2021, after the effective date of these regulations.