



Cal/OSHA's COVID-19 Rule About to Expire – But Employers Have 2 Lingered Compliance Obligations

Insights

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The California workplace safety rule that required employers to adopt and deploy measures to address COVID-19 hazards is set to sunset on February 3 – but there are some wrinkles that will require you to continue with some compliance obligations for the time being. First, the Cal/OSHA rule's **recordkeeping requirements** will remain in effect until February 3, 2026. Second, Cal/OSHA's **Injury and Illness Prevention Program (IIPP) Rule may be applied to COVID-19 related hazards**, and you'll need to continue to follow its requirements. What do you need to know about these two lingering compliance obligations?

Keep Up With Your Recordkeeping

For at least the next year, you must continue to record 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 the positive COVID-19 test or COVID-19 diagnosis. Despite the fact that this exercise will have limited utility – since the rule's requirements for conducting contact tracing and excluding workers with COVID-19 from the worksite are expiring – you should continue to log these COVID-19 case details over the next year.

But you can breathe a sigh of relief when it comes to your notice obligations. The non-emergency rule's recordkeeping section also required that employers “retain” notice given to employees who had a close contact, “in accordance with Labor Code section 6409.6.” Because the rule's notice requirement is expiring and the related Labor Code provision has already expired, employers do not appear to have any ongoing obligation for providing notice to close contacts.

Continue to Follow the Cal/OSHA Injury and Illness Prevention Standard

You should continue to address COVID-19 hazards as necessary under Cal/OSHA's Injury and Illness Prevention Program (IIPP) Rule. That standard requires a comprehensive system for identifying, evaluating, and correcting workplace hazards, ensuring employee training on safe work practices, and investigating and reporting workplace injuries and illnesses.

Based on inspections early in the pandemic before the adoption of the COVID-19 emergency rule, the Cal/OSHA Appeal Board's administrative law judges (ALJ) have found IIPP violations based on an employer's alleged failure to implement its safety provisions to assess the hazard of COVID-19

infection and adopt corrective measures. While these were nonprecedential decisions, the Cal/OSHA Appeals Board (the three-member body reviewing ALJ decisions and rendering precedential decisions) likely would recognize the enforcement agency's ability to cite employers for IIPP violations stemming from COVID-19 related hazards. This is particularly true given that the Board has in the past affirmed IIPP violations concerning employee exposure to fungal spores that could result in employees contracting Valley Fever.

Yet, the IIPP is a performance standard that provides employers some flexibility in determining what corrective measures are needed depending on the nature of the identified hazard. Now that COVID-19 has become endemic, you certainly can take the position that many measures taken during the pandemic are no longer necessary given the disease's evolving outcomes. You will want to work with your workplace safety counsel to make this individual determination.

2 Steps California Employers Should Take Now

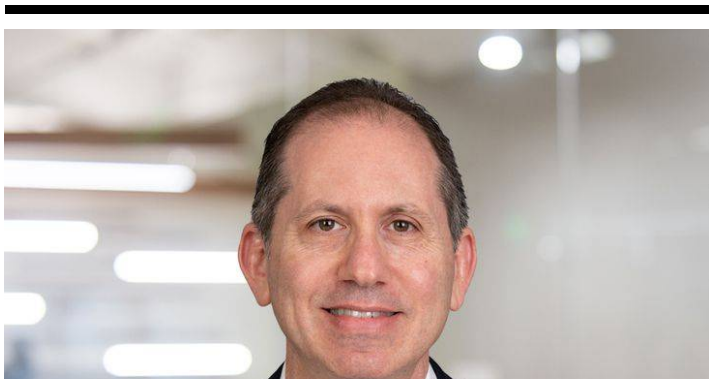
This year Cal/OSHA is expected to consider a permanent infectious disease standard for most employers applying to future infectious diseases (not specific to COVID-19). If adopted, that standard would impose new prescriptive requirements for addressing infectious diseases including COVID-19. In the meantime, however, it is advisable that California employers:

1. Continue to log COVID-19 cases through February 3, 2026, as required under the Cal/OSHA COVID-19 non-emergency rules; and
2. Maintain scaled-down procedures for addressing COVID-19 in the workplace consistent with the IIPP Standard's general requirements and as appropriate in your circumstances.

Conclusion

If you have any questions, contact the author of this insight, any member of our [Workplace Safety and Catastrophe Management Practice Group](#), any attorney in [our California offices](#), or your Fisher Phillips attorney for guidance. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information on workplace safety issues.

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