CLIENT ALERTS & INSIGHTS

New Cal/OSHA Emergency Regulation Requires All California Employers to Implement COVID-19 Prevention Programs

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Authors: Margo Wolf O'Donnell

On November 19, 2020, California's Occupational Safety and Health Standards Board ("OSHSB") voted unanimously to pass an emergency COVID-19 regulation that will impose new obligations on California employers. The 21-page regulation governs all employers and workplaces not governed by the Aerosol Transmittable Diseases (ATD) standard (such as hospitals, skilled nursing facilities, correctional facilities, and mortuaries). The regulation can be broken down into three composite parts: COVID-19 prevention planning; COVID-19 testing obligations; and COVID-19 prevention in employer-provided housing and employer-provided transportation.

The regulation's centerpiece, and the provision most likely to have an immediate impact on employers, is the obligation to implement and maintain a written "COVID-19 Prevention Program." These programs must include eleven discrete written elements: (1) a system for communicating about COVID-19 with employees; (2) a method of identifying and (3) correcting COVID-19 hazards; (4) a system for investigating cases in the workplace; (5) employee training on COVID-19; the implementation of (6) physical distancing and (7) face coverings; (8) utilization of engineering and administrative controls; (9) recordkeeping protocols; (10) excluding COVID-19 cases from the workplace; and (11) return to work criteria. Notably, the regulation's recordkeeping requirements mirror those in Assembly Bill (AB) 685, which will be effective January 1, 2021.

All employers, regardless of size, are responsible for the immediate preparation and implementation of a COVID-19 Prevention Program. No effective date is currently listed for the regulation. However, based on the statutory framework guiding the timeline, the regulation will take effect within ten days of its approval by the Board-by November 29, 2020.

Regarding testing, the regulation's provisions mandate that employers provide COVID-19 testing to all employees at an exposed workforce where the worksite experiences 3 or more cases within a 14-day period ("COVID-19 Outbreak"), and impose heightened testing requirements where the worksite experiences 20 or more cases within a 30-day period ("Major COVID-19 Outbreak").

Finally, the regulation imposes heightened requirements on employers who offer housing and transportation to their employees. Notable inclusions are the requirements that employer-provided housing ensure spacing of six feet of distancing between beds, and that employer-provided transportation provide all passengers distancing of "at least three feet in all directions."

Key Takeaways for Employers

California Employers should take immediate steps to carefully review the COVID-19 Prevention Program requirements outlined in the emergency regulation, and to implement a program that meets the regulation's requirements in all respects. To this end, employers whose current practices do not meet the minimum requirements outlined in the regulation will need to revise their practices to correspond with the regulation and with their newly-implemented COVID-19 Prevention Program. Failure to heed the emergency regulation's mandates carefully may result in Cal/OSHA-imposed penalties, and perhaps more costly, the obligation to purchase COVID-19 testing for every employee under the emergency regulation's terms.

For more information, contact a member of Benesch's Labor & Employment Practice Group.

Margo Wolf O'Donnell at **modonnell@beneschlaw.com** or 312.212.4982.

Eric M. Flagg at **eflagg@beneschlaw.com** or 216.363.6196.