

This document is intended as a draft starting point for further discussion, and it is intended for use in only California. Country, state, and local laws vary. **This document does not constitute legal advice regarding the topics contained herein. For more information, please contact Kevin Bland (kevin.bland@ogletree.com) or Karen Tynan (karen.tynan@ogletree.com).**

Issue	Emergency Temporary Standard (Section 3205, et seq.)	Aerosol Transmissible Diseases (Section 5199)
Scope	<p>Applies to all employees with the following <u>exceptions</u>:</p> <ol style="list-style-type: none"> 1. Places of employment with one employee who does not have contact with other persons. 2. Employees working from home. 3. Employees when covered by section 5199.¹ 	<p>Each of the following health care facilities, services, or operations²:</p> <ol style="list-style-type: none"> 1. Hospitals 2. Skilled nursing facilities 3. Clinics, medical offices, and other outpatient medical facilities 4. Facilities where high hazard procedures, as defined in subsection (b), are performed 5. Home health care 6. Long term health care facilities and hospices 7. Medical outreach services 8. Paramedic and emergency medical services including these services when provided by firefighters and other emergency responders 9. Medical transport
Written Program Requirements	<p>COVID-19 Prevention Program (CPP)</p> <ol style="list-style-type: none"> 1. Communication to employees about the employer’s COVID-19 prevention procedures 	<p>Aerosol Transmissible Diseases Exposure Control Plan</p> <ol style="list-style-type: none"> 1. The name(s) or title(s) of the person(s) responsible for administering the Plan. This person shall be knowledgeable in infection control principles and

¹ Cal/OSHA FAQ published 1/8/21 (<https://www.dir.ca.gov/dosh/coronavirus/COVID19FAQs.html#>):

Q: Can an employer at a workplace covered by section 5199 deem all employees on site to have occupational exposure to COVID-19 and exempt them from the ETS?

A: If the employer provides all employees with protections under its ATD Exposure Control Plan and has incorporated those employees into the plan in accordance with section 5199 because they have an occupational exposure to COVID-19, then those employees would not be subject to the ETS.

² This is not a complete list.

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	<ol style="list-style-type: none"> 2. Identify, evaluate and correct COVID-19 hazards 3. Physical distancing of at least six feet unless it is not possible 4. Use of face coverings 5. Use engineering controls, administrative controls and personal protective equipment as required to reduce transmission risk 6. Procedures to investigate and respond to COVID-19 cases in the workplace 7. Provide COVID-19 training to employees 8. Provide testing to employees who are exposed to a COVID-19 case, and in the case of multiple infections or a major outbreak, implement regular workplace testing for employees in the exposed work areas 9. Exclusion of COVID-19 cases and exposed employees from the workplace until they are no longer an infection risk 10. Return to work criteria 11. Maintain records of COVID-19 cases and report serious illnesses and multiple cases to Cal/OSHA 	<p>practices as they apply to the facility, service or operation.</p> <ol style="list-style-type: none"> 2. A list of all job classifications in which employees have occupational exposure. 3. A list of all high hazard procedures performed in the facility, service or operation, and the job classifications and operations in which employees are exposed to those procedures. 4. A list of all assignments or tasks requiring personal or respiratory protection. 5. The methods of implementation of subsections (e), (g), (h), (i) and (j) as they apply to that facility, service or work operation. Specific control measures shall be listed for each operation or work area in which occupational exposure occurs. These measures shall include applicable engineering and work practice controls, cleaning and decontamination procedures, and personal protective equipment and respiratory protection. In establishments where the Plan pertains to laboratory operations, it also shall contain the methods of implementation for subsection (f), unless those operations are included in a Biosafety Plan. 6. A description of the source control measures to be implemented in the facility, service or operation, and the method of informing people entering the work setting of the source control measures. 7. The procedures the employer will use to identify, temporarily isolate, and refer or transfer AirID cases or suspected cases to All rooms, areas or facilities. These procedures shall include the methods the employer will use to limit employee exposure to these persons during

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	<p>and the local health department, as required</p>	<p>periods when they are not in airborne infection isolation rooms or areas. These procedures shall also include the methods the employer will use to document medical decisions not to transfer patients in need of AI in accordance with subsection (e)(5)(B).</p> <ol style="list-style-type: none"> 8. The procedures the employer will use to provide medical services, including recommended vaccinations and follow-up, as required in subsection (h). This shall include the procedures the employer will use to document the lack of availability of a recommended vaccine. 9. The procedures for employees and supervisors to follow in the event of an exposure incident, including how the employer will determine which employees had a significant exposure, in accordance with subsections (h)(6) through (h)(9). 10. The procedures the employer will use to evaluate each exposure incident, to determine the cause, and to revise existing procedures to prevent future incidents. 11. The procedures the employer will use to communicate with its employees and other employers regarding the suspected or confirmed infectious disease status of persons to whom employees are exposed in the course of their duties, in accordance with subsection (h). 12. The procedures the employer will use to communicate with other employers regarding exposure incidents, including procedures for providing or receiving notification to and from health care providers about the disease status of referred or transferred patients, in accordance with subsection (h). 13. The procedures the employer will use to ensure that there is an adequate supply of personal protective

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		<p>equipment and other equipment necessary to minimize employee exposure to ATPs, in normal operations and in foreseeable emergencies.</p> <p>14. The procedures the employer will use to provide initial and annual training in accordance with subsection (i) to employees in job categories identified in subsection (d)(2)(B).³</p> <p>15. The procedures the employer will use for recordkeeping, in accordance with subsection (j).</p> <p>16. An effective procedure for obtaining the active involvement of employees in reviewing and updating the exposure control plan with respect to the procedures performed in their respective work areas or departments in accordance with subsection (d)(3).</p> <p>17. Surge procedures. (See below)</p>

³ Employees who have occupational exposure. Occupational exposure is defined as: “Exposure from work activity or working conditions that is reasonably anticipated to create an elevated risk of contracting any disease caused by ATPs or ATPs-L if protective measures are not in place. In this context, “elevated” means higher than what is considered ordinary for employees having direct contact with the general public outside of the facilities, service categories and operations listed in subsection (a)(1) of this standard. Occupational exposure is presumed to exist to some extent in each of the facilities, services and operations listed in subsection (a)(1)(A) through (a)(1)(I). Whether a particular employee has occupational exposure depends on the tasks, activities, and environment of the employee, and therefore, some employees of a covered employer may have no occupational exposure. For example, occupational exposure typically does not exist where a hospital employee works only in an office environment separated from patient care facilities, or works only in other areas separate from those where the risk of ATD transmission, whether from patients or contaminated items, would be elevated without protective measures. It is the task of employers covered by this standard to identify those employees who have occupational exposure so that appropriate protective measures can be implemented to protect them as required. Employee activities that involve having contact with, or being within exposure range of cases or suspected cases of ATD, are always considered to cause occupational exposure. Similarly, employee activities that involve contact with, or routinely being within exposure range of, populations served by facilities identified in subsection (a)(1)(E) are considered to cause occupational exposure. Employees working in laboratory areas in which ATPs-L are handled or reasonably anticipated to be present are also considered to have occupational exposure.”

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Exposure Definition	<p>No carve out:</p> <p>“COVID-19 exposure” means being within six 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” defined by this section. This definition applies regardless of the use of face coverings.</p>	<p>Has carve outs:</p> <p>An event in which all of the following have occurred: (1) An employee has been exposed to an individual who is a case or suspected case of a reportable ATD, or to a work area or to equipment that is reasonably expected to contain ATPs associated with a reportable ATD; and (2) The exposure occurred without the benefit of applicable exposure controls required by this section, and (3) It reasonably appears from the circumstances of the exposure that transmission of disease is sufficiently likely to require medical evaluation.</p>
Outbreak	<p>Three or more COVID-19 cases in an exposed workplace within a 14-day period.</p> <ol style="list-style-type: none"> 1. Immediate and weekly COVID-19 testing to all employees at the exposed workplace except for employees who were not present during the period of an outbreak identified by a local health department or the relevant 14-day period(s) under subsection (a), as applicable. 2. COVID-19 testing shall be provided at no cost to employees during employees' working hours. 	N/A – see “Surge” below

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	<ol style="list-style-type: none"> 3. Until there are no new COVID-19 cases detected in a workplace for a 14-day period 4. Notifications to Health Dept. 	
Major Outbreak	<p>20 or more COVID-19 cases in an exposed workplace within a 30-day period</p> <ol style="list-style-type: none"> 1. Employers shall provide twice a week COVID-19 testing, or more frequently if recommended by the local health department, to all employees present at the exposed workplace during the relevant 30-day period(s) and who remain at the workplace. 2. until there are no new COVID-19 cases detected in a workplace for a 14-day period 3. Notification to local Health Dept. 	N/A – see “Surge” below
Surge Procedures	N/A	<p>“Surge. A rapid expansion beyond normal services to meet the increased demand for qualified personnel, medical care, equipment, and public health services in the event of an epidemic, public health emergency, or disaster.”</p> <p>Employers of employees who are designated to provide services in surge conditions, and employers of employees who are designated to provide services to persons who have been contaminated as the result of a release of a biological agent as described in subsection (a)(1)(B), shall include procedures for these activities in the plan. The plan shall include work practices,</p>

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		decontamination facilities, and appropriate personal protective equipment and respiratory protection for such events. The procedures shall include how respiratory and personal protective equipment will be stockpiled, accessed or procured, and how the facility or operation will interact with the local and regional emergency plan.
Notification Requirements	<p>Yes.</p> <p>Give 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:</p> <p>a. All employees who may have had COVID-19 exposure and their authorized representatives.</p> <p>b. Independent contractors and other employers present at the workplace during the high-risk exposure period.</p> <p>Employee notice should include the following information:</p> <ul style="list-style-type: none"> Information regarding COVID-19-related benefits to which the employee may be entitled under applicable federal, state, or local laws. This includes any benefits available under workers' 	<p>Yes.</p> <p>The procedures the employer will use to communicate with its employees and other employers regarding the suspected or confirmed infectious disease status of persons to whom employees are exposed in the course of their duties, in accordance with subsection (h).</p> <p>The procedures the employer will use to communicate with other employers regarding exposure incidents, including procedures for providing or receiving notification to and from health care providers about the disease status of referred or transferred patients, in accordance with subsection (h).</p>

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	<p>compensation law, the federal Families First Coronavirus Response Act, Labor Code sections 248.1 and 248.5, Labor Code sections 3212.86 through 3212.88, local governmental requirements, the employer's own leave policies, and leave guaranteed by contract.</p> <ul style="list-style-type: none"> • 	
Testing	<p>Yes</p> <p>Offer COVID-19 testing at no cost to employees during their working hours to all employees who had potential COVID-19 exposure in the workplace.</p>	No
Benefits	<p>Yes</p> <p>For employees excluded from work under subsection (c)(10) 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 benefits for this purpose and consider benefit payments from public</p>	No

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	sources in determining how to maintain earnings, rights and benefits, where permitted by law and when not covered by workers' compensation.	
Return to Work Criteria	<p>COVID-19 cases with COVID-19 symptoms shall not return to work until:</p> <ol style="list-style-type: none"> 1. At least 24 hours have passed since a fever of 100.4 or higher has resolved without the use of fever-reducing medications; 2. COVID-19 symptoms have improved; and 3. At least 10 days have passed since COVID-19 symptoms first appeared. <p>(B) 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.</p> <p>(C) A negative COVID-19 test shall not be required for an employee to return to work.</p> <p>(D) If an order to isolate or quarantine an employee is issued by a local or state health official, the employee shall not</p>	Not Specified

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	<p>return to work until the period of isolation or quarantine is completed or the order is lifted. If no period was specified, then the period shall be 10 days from the time the order to isolate was effective, or 14 days from the time the order to quarantine was effective.</p>	
Respiratory Protection	<p>Employers shall evaluate the need for respiratory protection in accordance with section 5144 when the physical distancing requirements in subsection (c)(6) are not feasible or are not maintained.</p> <p>Employers shall provide and ensure use of eye protection and respiratory protection in accordance with section 5144 when employees are exposed to procedures that may aerosolize potentially infectious material such as saliva or respiratory tract fluids.</p>	<p>Each employer who has any employee whose occupational exposure is based on entering any of the work settings or performing any of the tasks described [below] shall establish, implement and maintain an effective written respiratory protection program that meets the requirements of Section 5144 of these orders</p> <p>Required when the employee:</p> <ul style="list-style-type: none"> (A) Enters an Airborne Infection Isolation (All) room or area in use for All; (B) Is present during the performance of procedures or services for an Airborne Infectious Disease (AirID) case or suspected case; (C) Repairs, replaces, or maintains air systems or equipment that may contain or generate aerosolized pathogens; (D) Is working in an area occupied by an AirID case or suspected case, during decontamination procedures after the person has left the area and as required by subsection (e)(5)(D)9; (E) Is working in a residence where an AirID case or suspected case is known to be present; (F) Is present during the performance of aerosol generating procedures on cadavers that are suspected of, or confirmed as, being infected with aerosol transmissible pathogens;

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		(G) Is performing a task for which the Biosafety Plan or Exposure Control Plan requires the use of respirators; or (H) Transports an AirID case or suspected case within the facility or in an enclosed vehicle (e.g., van, car, ambulance or helicopter) when the patient is not masked.
Medical Evaluation	Yes, when using respirators under 5144.	Yes, when using respirators under 5144.
Fit Testing	Yes, when using respirators under 5144.	Yes, when using respirators under 5144.
Medical Services	Testing – see above.	Each employer who has any employee with occupational exposure shall provide the employee with medical services for tuberculosis and other ATDs, and infection with ATPs and ATPs-L, in accordance with applicable public health guidelines, for the type of work setting and disease. When an employer is also acting as the evaluating health care professional, the employer shall advise the employee following an exposure incident that the employee may refuse to consent to vaccination, post-exposure evaluation and follow-up from the employer-health care professional. When consent is refused, the employer immediately shall make available a confidential vaccination, medical evaluation or follow-up from a PLHCP other than the exposed employee's employer.
Training	Yes	Yes
Repeat Citation Considerations	By having separate CPP and ATD populations, the probability of a repeat citation may be reduced.	By combining the CPP and ATD populations, the probability of a repeat citation may be increased.