

Cal/OSHA Rescinds June 3 Revisions to Emergency Temporary Standards

June 11, 2021

[Please see updated guidance in our alert from June 21](#) □

On June 3, 2021, as described in a [previous Cooley alert](#), the California Division of Occupational Safety and Health Standards Board adopted revisions to its [emergency temporary standards](#) (ETS), which govern workplace safety requirements for California employers with respect to COVID-19. But in an emergency board meeting held June 9, the Cal/OSHA board voted unanimously to *rescind* the June 3 ETS revisions, pending further updates to the ETS to be discussed at the board's June 17 meeting. This alert is intended to provide California employers with a quick summary of the ETS history, what the current rules are for workplace safety requirements and what employers should expect next.

How we got here

Cal/OSHA passed the ETS in November 2020. The ETS weren't updated until the June 3 revisions, which were criticized for not aligning with guidance from the US Centers for Disease Control and Prevention (CDC) regarding the use of face coverings by fully vaccinated and unvaccinated individuals. Specifically, on May 13, [the CDC had announced](#) that fully vaccinated people no longer needed to wear masks in many indoor and outdoor settings, except where required by federal, state or local law (including local business and workplace guidance). Yet Cal/OSHA's June 3 revisions to the ETS still required employees to wear face coverings in indoor workplaces, except if everyone in the room was fully vaccinated.

Cal/OSHA's revisions left many questions unanswered, including how employers could determine whether all employees in a particular room were fully vaccinated, given that an employee's vaccination status is considered confidential medical information under California law.

In reaction to Cal/OSHA's June 3 revisions, the California Department of Public Health (CDPH) [sent a letter](#) on June 7 to Cal/OSHA explaining that it planned to update its guidance on face coverings, effective June 15, to mirror the CDC's guidance. Two days later, the CDPH [published its updated guidance](#), which states that as of June 15:

- Fully vaccinated individuals don't need to wear masks indoors or outdoors, except for in the following settings, where masks are required for everyone, regardless of vaccination status:
 - On public transportation or in transportation hubs
 - Indoors in K-12 schools, childcare or other youth settings (although this may also change, pending updates from the CDC)
 - In healthcare settings, correctional facilities, detention centers, homeless or emergency shelters, and cooling centers
- Unvaccinated individuals must wear masks in indoor public settings and businesses
- Businesses have three options in settings where masks are only required for unvaccinated individuals:
 - They can provide information to all patrons, guests and attendees regarding vaccination requirements and allow vaccinated individuals to self-attest as to compliance

- They can implement vaccine verification to determine whether individuals are required to wear a mask
- They can require all patrons to wear a mask
- No person can be prevented from wearing a mask as a condition of participation in an activity or entry into a business

The CDPH guidance makes clear that **employers are separately subject to the Cal/OSHA ETS with respect to face-covering requirements for employees in the workplace.**

In response to the new CDPH guidance, the Cal/OSHA board held an emergency meeting on June 9 to discuss whether to rescind its June 3 revisions. The board unanimously voted to rescind the revisions, which means that **the November 2020 version of the ETS – which requires face coverings for all employees, regardless of vaccination status – is again in effect.**

Cal/OSHA is planning further revisions to the ETS and will consider whether to align the ETS with CDPH and CDC guidance on face coverings. A proposed revised version of the ETS will be presented by Cal/OSHA to the board at its June 17 meeting; if approved by the board, the earliest date these revisions would take effect is June 28.

Current rules for California employers

California employers must comply with all federal, state and local COVID-19 orders, including federal guidance from the CDC, state guidance from the CDPH and Cal/OSHA, and county-based health orders. With workplace requirements coming from various sources, employers must follow the most restrictive rules.

Because the November 2020 version of Cal/OSHA's ETS are again in effect, this means that even if the CDC, CDPH and counties allow for looser restrictions on use of face coverings by fully vaccinated individuals, **California employers must continue to mandate face coverings for all employees, regardless of vaccination status, until Cal/OSHA updates the ETS.**

What to expect next

Employers should continue to monitor for updates from Cal/OSHA. Given the rescission of the June 3 revisions, employers no longer have to comply with any of the other changes highlighted in [our previous alert](#), but should expect that many of the other changes not related to face coverings will likely be carried forward into the new revisions to the ETS. It is also unclear whether the N-95 respirator requirement from the June 3 revisions will reappear in the next set of revisions.

We will send out another Cooley alert if Cal/OSHA changes its ETS during or after its June 17 meeting. If you have any questions about the ETS or have any other employment questions or issues related to the ETS, please reach out to a member of the Cooley employment team.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. This content may be considered **Attorney Advertising** and is subject to our [legal notices](#).

Key Contacts

Selin Akkan Palo Alto	sakkan@cooley.com +1 650 843 5076
Ann Bevitt London	abevitt@cooley.com +44 (0) 20 7556 4264
Wendy Brenner Palo Alto	brennerwj@cooley.com +1 650 843 5371
Leslie Cancel San Francisco	lcancel@cooley.com +1 415 693 2175
Helennane Connolly Reston	hconnolly@cooley.com +1 703 456 8685
Joshua Mates San Francisco	jmates@cooley.com +1 415 693 2084
Gerard O'Shea New York	goshea@cooley.com +1 212 479 6704
Miriam Petrillo Chicago	mpetrillo@cooley.com +1 312 881 6612
Ryan Vann Chicago	rhvann@cooley.com +1 312 881 6640
Summer Wynn San Diego	swynn@cooley.com +1 858 550 6030

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.

