

MAJOR REGULATIONS STANDARDIZED REGULATORY IMPACT ASSESSMENT SUMMARY

DF-131 (NEW 11/13)

STANDARDIZED REGULATORY IMPACT ASSESSMENT SUMMARY

Agency (Department) Name Department of Industrial Relations	Contact Person Danielle Lucido	Mailing Address 1515 Clay Street, Suite 1901 Oakland, CA 94612
Email Address DLucido@dir.ca.gov	Telephone Number 925-286-7000	

1. Statement of the need for the proposed major regulation.

Workers exposed to COVID-19 are at risk of mild to severe illness or death. COVID-19 is widespread throughout California and is transmitted from person to person primarily through an airborne route. Close proximity of persons and long hours spent indoors result in certain workplaces across industrial sectors constituting the highest COVID-19 risk settings in California. Workers typically have little or no ability to control COVID-19 risk factors and prevention measures in the workplace such as universal masking, isolation, and air quality.

2. The categories of individuals and business enterprises who will be impacted by the proposed major regulation and the amount of the economic impact on each such category.

Most businesses and their employees in California in a wide range of industries will be affected by the proposed regulation. Only the following California businesses and their employees are not covered by this proposal and would not be affected:

- Facilities and services where employees are covered by title 8 section 5199 Aerosol Transmissible Diseases. These facilities and services are: healthcare, medical transport, certain police services, certain public health services, correctional and detention facilities, homeless shelters, drug treatment programs, certain death services, and certain laboratories.
- Employees that work remotely from home or a location of the employee's choosing not under control of the employer or employees who do have not contact with other persons.
- Businesses not within the jurisdiction of Cal/OSHA pursuant to Labor Code Division 5. Part 1. Chapter 1 (sections 6300 – 6332) including business without employees and businesses where health and safety jurisdiction is vested by law in, and actively exercised by another state or federal agency.

The proposed regulation will be in effect from January 1, 2023 through January 1, 2025, and then repealed except for certain record retention requirements.

Direct costs to businesses and governmental entities are estimated as follows on an undiscounted basis:

- All businesses: \$489 million to \$1.4 billion in 2023 and \$198 million to \$1.3 billion in 2024.
- Small businesses only: \$280 to \$850 million in 2023 and \$120 to \$780 million in 2024.
- State government: \$16.1 to \$49.5 million in 2023 and \$7.9 to \$48.5 million in 2024
- Local government: \$43.4 to \$145.9 million in 2023 and \$22.4 to \$144.5 million in 2024.

Direct costs to individuals (employees of businesses and governmental entities affected by the proposal) in lost wages and benefits resulting from exclusion requirements in the proposed regulation are \$53.8 to \$215 million in 2023 and \$26.9 to \$215 million in 2024.

Direct annual benefits (in avoided loss of worker productivity and avoided illnesses and death) are estimated to be \$10.5 to \$41.2 billion in 2023 and \$5.8 to \$39.7 billion in 2024.

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3. Description of all costs and all benefits due to the proposed regulatory change (calculated on an annual basis from estimated date of filing with the Secretary of State through 12 months after the estimated date the proposed major regulation will be fully implemented as estimated by the agency).

Establishments affected by the proposed regulation will incur costs and benefits resulting from the following requirements:

- Review applicable COVID-19 guidance and orders from the California Department of Public Health (CDPH).
- Investigate COVID-19 cases in the workplace.
- Implement protective measures for employee COVID-19 cases that includes excluding COVID-19 cases from the workplace and ensuring use of face coverings by COVID-19 cases.
- Implement protective measures for employees after close contact that includes excluding of certain close contacts, ensuring use of face coverings by close contacts, and testing of close contacts.
- Notify employees who had close contact.
- Provide respirators to employees who request them for voluntary use.
- Evaluate ventilation and air filtration and make improvements when necessary.
- Keep records of employee COVID-19 cases.
- Implement protective measures when there is a COVID-19 outbreak in the workplace that include testing, excluding certain employees that do not test, requiring face coverings, reviewing COVID-19 prevention policies and procedures, and improving air filtration.
- Implement protective measures when there is a major COVID-19 outbreak in the workplace that include increasing testing frequency, excluding employees that do not test, reporting the major outbreak, providing respirators to employees, and distancing persons where feasible.
- Implement protective measures in employer provided housing that include cohorting residents, improving ventilation and air filtration, providing face coverings, and testing residents.
- Implement protective measures in employer provided transportation that includes cohorting vehicle occupants

Individuals affected by the proposed regulation (employees of affected establishments) will incur costs and benefits resulting from the following requirements:

- Being excluded from the workplace when testing positive for COVID-19 and in limited cases after close contact.

See box 2 above for the cost and benefits of the requirements of this proposal and box 4 below for a summary.

4. Description of the 12-month period in which the agency estimates the economic impact of the proposed major regulation will exceed \$50 million.

The proposed regulation will exceed \$50 million in costs and benefits for both calendar year 2023 and 2024, the years in which all its provisions are in effect. The total costs and benefits by year are as follows:

Summary of Benefits and Costs of the Proposed Regulation by Year, Using a 3 Percent Discount Rate

	Primary Estimate			High-end Estimate		
	Direct Benefits (\$ Billions)	Direct Costs (\$ Billions)	Net Benefits (\$ Billions)	Direct Benefits (\$ Billions)	Direct Costs (\$ Billions)	Net Benefits (\$ Billions)
2023	\$10.5	\$0.54	\$10.0	\$41.2	\$1.63	\$39.5
2024	\$5.8 to \$10.2	\$0.22 to \$0.41	\$5.6 to \$9.8	\$22.7 to \$40.0	\$0.75 to \$1.47	\$22.0 to \$38.5
NPV Total	\$16.3 to \$20.7	\$0.76 to \$0.95	\$15.6 to \$19.8	\$63.9 to \$81.1	\$2.38 to \$3.10	\$61.5 to \$78.0
Annualized	\$8.3 to \$10.5	\$0.39 to \$0.48	\$7.9 to \$10.0	\$32.4 to \$41.2	\$1.21 to \$1.57	\$31.2 to \$39.6

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5. Description of the agency's baseline:

From January 26, 2020 to April 19, 2022, there have been 8,550,657 cases of COVID-19 and 89,054 COVID-19 deaths in California. Cases and deaths are expected to decline in 2023 and 2024.

There are approximately 1.6 million establishments and approximately 17 million employees in California likely impacted by the proposed regulation. Of these, approximately 98 percent of establishments are private, 0.8 percent are state government, and 1.2 percent are local government. 86.7 percent of employees are in the private sector, 3.2 percent are state government employees, and 10.2 percent are local government employees.

Under existing title 8 section 3203, employers in California are already required to have a written and effective Injury and Illness Prevention Program that requires a system for ensuring employees comply with safe and healthy work practices; a system for communicating with employees on matters relating to occupational safety and health; procedures for identifying and evaluating workplace hazards; a procedure to investigate occupational illness; methods for correcting unhealthy conditions; and training and instruction. All of these requirements already apply to the hazard of COVID-19 in the workplace.

There is currently no federal regulation to prevent COVID-19 in workplaces.

6. For each alternative that the agency considered (including those provided by the public or another governmental agency), please describe:

- a. All costs and all benefits of the alternative
- b. The reason for rejecting alternative

Alternative 1 (require employers to comply with COVID-19 State Public Health Officer Orders) costs and benefits cannot be estimated. Alternative 1 was rejected because State Public Health Officer Orders are generally directed to the public and do not always address or are applicable to occupational environments and hazards. Occupational risks to COVID-19 can drastically exceed the risk to the general public. In addition, most workers do not have an option or ability to avoid high risk occupational settings whereas the general public normally does have the option to avoid high risk settings. Alternative 1 was rejected because it was insufficiently protective of worker safety and health.

Alternative 2 (requirements regarding vaccination or testing and face covering for employers with more than 100 employees) would cost \$302 million in 2023. Costs cannot be estimated for 2024. Alternative 2 benefits for 2023 are estimated at \$2.79 billion in 2023. Benefits cannot be estimated for 2024. Alternative #2 was rejected for the following reasons:

- It would cost significantly more per entity than the proposed regulation.
- It would cost nearly as much as the proposed regulation but provide much lower benefits.
- Potentially large costs could be incurred in connection with severance from the workforce.
- California already enjoys a relatively high rate of vaccination
- Significant political and social opposition to this alternative is expected.

7. A description of the methods by which the agency sought public input. (Please include documentation of that public outreach).

Cal/OSHA staff conducted extensive public outreach on COVID-19 regulatory proposals and alternatives. Public outreach included the following:

- July 13, 2021: Public Meeting of the DIR Occupational Safety and Health Standards Board (Standards Board) COVID stakeholder subcommittee via video conference. The Standards Board staff presented information on workplace COVID outbreak data. The public provided input on alternatives to existing regulatory proposals including looking at other state laws, using workers compensation data to develop future proposals, requirements that will encourage vaccination, requiring employers provide N95 respirators to vulnerable workers, including criteria to trigger greater worker protections, establishing a process and timeline for rescinding the COVID-19 specific regulations, and making the regulation flexible so that it can change when public health guidance changes.
- July 20, 2021: Public Standards Board COVID stakeholder subcommittee meeting via video conference. The Standards Board staff presented information on COVID-19 worker protection statutes and regulations in other states including Oregon, North Carolina, Washington State, Illinois, Michigan, Nevada, Virginia, and New Jersey.

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The Cal/OSHA Medical Unit presented information on metrics that could be considered in deciding when to reduce requirements in COVID-19 regulations and the pros and cons of each data including the daily rate of verified new COVID-19 cases, the percentage of the working-age population that is vaccinated, the number of reported workplace outbreaks, the R Effective Value, and Workers' Compensation data. The public provided input on alternatives including removing COVID-19 specific regulations and amending 3203 (IIPP) to address COVID, changing section 5199 ATD Standard, and a permanent infectious disease regulation that would cover many respiratory diseases and not just COVID.

- August 13, 2021: Public Standards Board COVID stakeholder subcommittee meeting via video conference. The Cal/OSHA Medical Unit and the Cal/OSHA Research and Standards Unit presented on the latest scientific evidence on COVID-19 and trends for vaccination, case rates, deaths, and hospitalizations. CDPH Occupational Health Branch presented on workplace outbreak data, time trends, high COVID rate industries, and data limitations. The public provided input on possible changes to the COVID-19 specific regulations or future alternatives: exclude non-vaccinated employees from paid isolation and quarantine benefits, metrics for additional protections, criteria for rescinding COVID-19 specific regulations, and making COVID-19 regulations more flexible when public health guidelines change.
- August 27, 2021: Public Standards Board COVID stakeholder subcommittee meeting via video conference. The Standards Board staff presented information from CDC, federal OSHA, and other states on prevention of COVID-19 transmission. Cal/OSHA presented and information on current U.S. and California COVID-19 statistics. The public provided input on alternatives to COVID-19 specific regulations such as alternatives based on what other states have implemented that are simpler and more performance oriented or using the Injury and Illness Program instead of a prescriptive regulation.
- September 9, 2021: Public Standards Board COVID stakeholder subcommittee meeting via video conference. The Standards Board staff presented an update on actions taken by other states to prevent or minimize workplace COVID-19 transmission. The public provided input on using the Injury and Illness Prevention Program as an alternative to COVID-19 specific regulations. Cal/OSHA presented on the following:
 - a) how public input during the subcommittee process would help in developing regulatory language for the regular COVID-19 regulatory proposal,
 - b) Appeals Board decisions on using the Injury and Illness Prevention Program to enforce COVID-19 protections.
 - c) COVID-19 Cal/OSHA Enforcement statistics
 - d) Using a tiered approach using community transmission rates in a future version of the COVID-19 regulation as an alternative; previously proposed during stakeholder input.
 - e) Using a risk-based approach in a future version of the COVID-19 regulation as an alternative; previously proposed during stakeholder input.
 - f) Other alternatives to prescriptive COVID-19 regulations proposed during stakeholder input
- September 23, 2021: Cal/OSHA convened a Public Advisory Committee Meeting via video conference to discuss proposal for non-emergency (regular) COVID regulation. Stakeholders and public were asked to provide alternatives on 1) criteria to terminate the regulation, 2) how to incentivize vaccination, 3) use of the Injury and Illness Prevention Program, and 4) prescriptive requirements. The public provided input on how the non-emergency regulation should be different and simpler than the ETS and possible regulatory alternatives including a performance-based regulation.
- October 19, 2021: Public web posting and mass email of proposal for 2nd re-adoption of COVID-19 emergency regulations and request for comments. Written comments from the public were received and reviewed by Cal/OSHA.
- October 21, 2021. Public Standards Board Meeting via video conference. The public provided input on the COVID-19 emergency regulations and the non-emergency COVID-19 prevention regulatory proposal. Public input on the non-emergency COVID-19 proposal included: reinstatement of exclusion pay, reinstatement of prescriptive protections, alternatives to make the proposal more flexible to enable it to track changing public

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health recommendations, alternatives to better incentivize vaccination, and enforcement of existing Injury and Illness Prevention Program requirements as an alternative to a COVID-19 regulation.

- November 18, 2021. Public Standards Board Meeting via video conference. The public provided input on the COVID-19 emergency regulations and the non-emergency COVID-19 prevention regulatory proposal. Public input on the non-emergency COVID-19 proposal included: reinstatement of exclusion pay, changes to the outbreak and major outbreak sections, alternatives that simplify the regulatory language, alternatives that would delegate authority for workplace COVID-19 prevention measures to CDPH, an alternative of using the existing Injury and Illness Prevention Program in lieu of COVID-19 prevention regulations.
- December 16, 2021. Public Standards Board Meeting via video conference. The public provided input on the COVID-19 emergency regulations and non-emergency COVID-19 prevention regulatory proposal. Public input on the non-emergency COVID-19 proposal included: reinstatement of exclusion pay, increased flexibility in the regulatory language, enforcement of existing Injury and Illness Prevention Program requirements as an alternative to a COVID-19 regulation, and alternatives to better incentivize vaccination.
- February 17, 2022. The public provided input on the COVID-19 emergency regulations and alternatives to the non-emergency COVID-19 prevention regulatory proposal.
- March 17, 2022. Public Standards Board Meeting via video conference. The public provided input on the COVID-19 emergency regulations and alternatives to the non-emergency COVID-19 prevention regulatory proposal.
- April 21, 2022. Public Standards Board Meeting via video conference. The public provided input on the COVID-19 emergency regulations and the non-emergency COVID-19 prevention regulatory proposal. Public input on the non-emergency COVID-19 proposal included: alternatives that would delegate authority for workplace COVID-19 prevention measures to CDPH and an alternative of using the existing Injury and Illness Prevention Program in lieu of COVID-19 prevention regulations.

Information and documentation of Cal/OSHA COVID-19 Advisory Meetings is at:

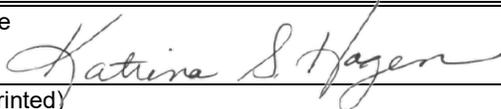
<https://www.dir.ca.gov/dosh/doshreg/covid-19-emergency-standards/>. In addition to public meetings and web postings, mass emails went out to everyone on the Cal/OSHA email listserv.

Information and documentation of Standards Board COVID-19 subcommittee and subcommittee meetings is at: <https://www.dir.ca.gov/oshsb/mtgsch2021.html> and <https://www.dir.ca.gov/oshsb/mtgsch.html>.

8. A description of the economic impact method and approach (including the underlying assumptions the agency used and the rationale and basis for those assumptions).

To model the number of COVID-19 cases, hospitalizations, and fatalities within the population of employees covered by the proposed regulation, DIR relied on projections provided by CDPH. Direct costs were calculated by multiplying the number of affected establishments by the average compliance costs based on various manufacturer list prices and assumptions about lost productivity and lost wages due to the proposed regulation, such as requirements for testing and exclusion of COVID-19 cases and close contacts, that would reduce hours worked. Direct benefits were calculated by multiplying the number of affected employees by estimates of average productivity losses and lost wages. Direct benefits were also monetized based on measures of employee willingness-to-pay for small risk reductions in the probability of a mild, severe, critical, or fatal COVID-19 infection based on the relevant public health and economic literature. Economy-wide impacts were estimated using IMPLAN's 2018 model year data for the California economy.

Agency Signature



Date

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Katrina S. Hagen