



California
LABOR
Federation



California School
Employees Association



A Union of Educators &
Classified Professionals



California
Nurses
Association



September 13, 2022

Chief Jeff Killip
Division of Occupational Safety and Health
1515 Clay Street, Suite 1901
Oakland, CA 94612

Chairman Dave Thomas
Chair, Occupational Safety and Health
Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

Submitted via email to rs@dir.ca.gov

RE: **Proposed Update to California's COVID-19 Emergency Temporary Standard**

Dear DOSH Chief Killip and OSHSB Chair Thomas:

The signed organizations write regarding the proposed semi-permanent version of California's COVID-19 Prevention Standard. Specifically, the plan to delete exclusion pay—while *requiring* employers to exclude COVID-19 cases—would spike case numbers and fatalities during what remains a very deadly stage of the pandemic. We are, frankly, stunned that this idea is under serious consideration and strongly urge Cal/OSHA and the OSHSB to return exclusion pay to the standard. We also would like to raise concerns with various other changes offered by this new version.

The original ETS was adopted in 2020 to protect workers from COVID-19 exposure and slow community spread of the virus, and on both counts, this first version was a major success. Countless lives were saved as a result of the standard's training, testing, exclusion pay, administrative controls and other measures, and we applaud the work of both DOSH and the OSHSB in getting this landmark standard in place so quickly.

The update that took effect June 17th, 2021, however, ignored the Delta variant's rise and took a major step back. By effectively removing face coverings from most workers, by eliminating partitions and physical distancing, and by placing unrealistic faith in the ability of widely available vaccines to end the pandemic, what appeared at first to be a bad idea was immediately confirmed as a catastrophic one: the California Workers' Compensation Institute estimates that COVID-19-related workers' compensation claim rates spiked 480% in the month of July, as compared to June¹. While we are not

blaming the June 17th update for all of these cases and deaths, eviscerating the ETS doubtlessly played a significant role.

Rather than learning from this disastrous mistake, the new proposal doubles down and deletes exclusion pay from the standard. As proposed on July 29th, 2022, this version not only eliminates this key component but preserves the employer requirement to “exclude” any “COVID-19 case”. This means that anyone testing positive or ordered to quarantine would be ordered to stay home, but employers would not be required to pay that worker anything.

The end result of this deeply concerning proposal would be to force workers without adequate sick leave to lose their jobs or go home without pay for days or weeks. As most cannot absorb such a devastating loss of income, many would have to avoid this outcome by avoiding testing, and thus, contagious workers would have to quietly stay on the job, infecting other employees and members of the public. Workers would fall ill, others would die, and the pandemic would worsen.

Further, this change would create a deeply concerning precedent that workers can be sent home, without pay, as punishment for contracting a work-related illness through no fault of their own. Workers’ compensation temporary disability benefits will not apply in most cases and, even if applicable, typically take too long to be of much help to COVID-infected workers. Exclusion pay has been a lifeline to so many; this proposal cuts workers off on January 1st and will absolutely worsen a likely winter surge.

Deleting exclusion pay would also ignore the brutal reality of long COVID faced by millions of California workers. This condition, now estimated to affect 20-50% of those infected with the virusⁱⁱ, can mean chronic fatigue, crippling brain fog, severe respiratory distress, and countless other symptoms. Anxiety, fear and ever deepening depression are also very common among those suffering from long COVID. It is now estimated that 2.4% of the U.S. full time workforce is now unable to work as a direct result of this conditionⁱⁱⁱ.

Evidence also suggests that working through COVID can raise the risk of long COVID^{iv}. Given that eliminating exclusion pay will leave many Californians with no option other than working while sick, their risk of winding up with this horrible disease will rise. More workers will lose their ability to provide for their families, or enjoy time with their children, or visit outdoor locations they love, or engage in any number of activities that bring joy to their lives. For those affected individuals, their overall quality of life will decline sharply. For the state of California, the mass disabling event created by long COVID will worsen.

The two-year readoption should also retain the requirement to notify employees and their representatives of COVID-19 cases and close contacts, and employers should continue to be required to report worksite outbreaks to local health departments. These measures, included in AB 685 (Reyes, 2020) and clarified by AB 654 (Reyes, 2021) are slated to expire on 1/1/2023— long before COVID-19 will cease to dominate life in California. Rather than risk these incredibly helpful provisions going away before the pandemic does, we should take this opportunity to make these protections permanent. Finally, the definition of “outbreak” should match the California Department of Public Health (CDPH) definition. In the original adoption of the ETS, the definition aligned with that established by CDPH, in that three or more cases at a worksite qualified. However, in the June 2021 re-adoption of the ETS, the definition was significantly limited to three or more “employee” COVID-19 cases. In some settings, such as schools, this would drastically limit the value of this section and absolutely risk countless workers’ lives.

COVID-19 is just as transmissible and deadly regardless of who it is contracted from; limiting the definition to only consider certain cases would ignore the science and hide many outbreaks from this critically important section. The Standards Board should revert to the original definition of outbreak, consistent with CDPH, which simply stated that 3 or more cases constitutes a worksite outbreak, whether the cases are technically employees.

We strongly reject this proposal's problematic elements, but particularly the exclusion pay deletion. We strongly reject the idea that workers should be forced out of work when sick; we also question the legality of doing so. We fervently oppose encouraging sick workers to avoid testing, keep working and hope for the best. We implore those behind this proposal to learn from our past mistakes and reconsider this ill-advised change. We also urge the Division and OSHSB to consider other points raised by this letter and use the final adoption to enact a stronger, more protective regulation.

Thank you for the opportunity to comment on this proposal, and we again strongly recommend that the OSHSB and Cal/OSHA return exclusion pay to the proposed COVID-19 Prevention Standard.

Sincerely,

California Labor Federation, AFL-CIO
California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Federation of Teachers
California Nurses Association
California School Employees Association
California Teamsters Public Affairs Council
Engineers & Scientists of California, IFPTE, Local 20
SEIU California State Council
UNITE HERE
United Nurses Association of California/Union of Health Care Professionals
Utility Workers Union of America

Cc: Christy Bouma, Legislative Secretary, Office of the Governor
Natalie Palugyai, Secretary, Labor & Workforce Development Agency
Assemblyman Ash Kalra, Chair, Assembly Labor & Employment Committee
Senator Dave Cortese, Chair, Senate Labor, Public Employment & Retirement Committee
Assemblywoman Wendy Carrillo, Chair, Assembly Budget Subcommittee #4
Senator Maria Elena Durazo, Chair, Senate Budget & Finance Subcommittee #4
Cesar Diaz, President pro Tempore Toni Atkins' Office
George Wiley, Speaker Anthony Rendon's Office

SM: OPEIU 29 AFL CIO

ⁱ https://www.cwci.org/press_release.html?id=847

ⁱⁱ <https://www.statnews.com/2022/07/06/understanding-long-covid-estimates/#:~:text=That%2020%25%20figure%2C%20from%20a,seriously%20affecting%20their%20daily%20life>

ⁱⁱⁱ <https://www.latimes.com/california/story/2022-07-07/working-through-covid-sleep-rest-infection-test-positive>

^{iv} <https://www.latimes.com/california/story/2022-07-07/working-through-covid-sleep-rest-infection-test-positive>