

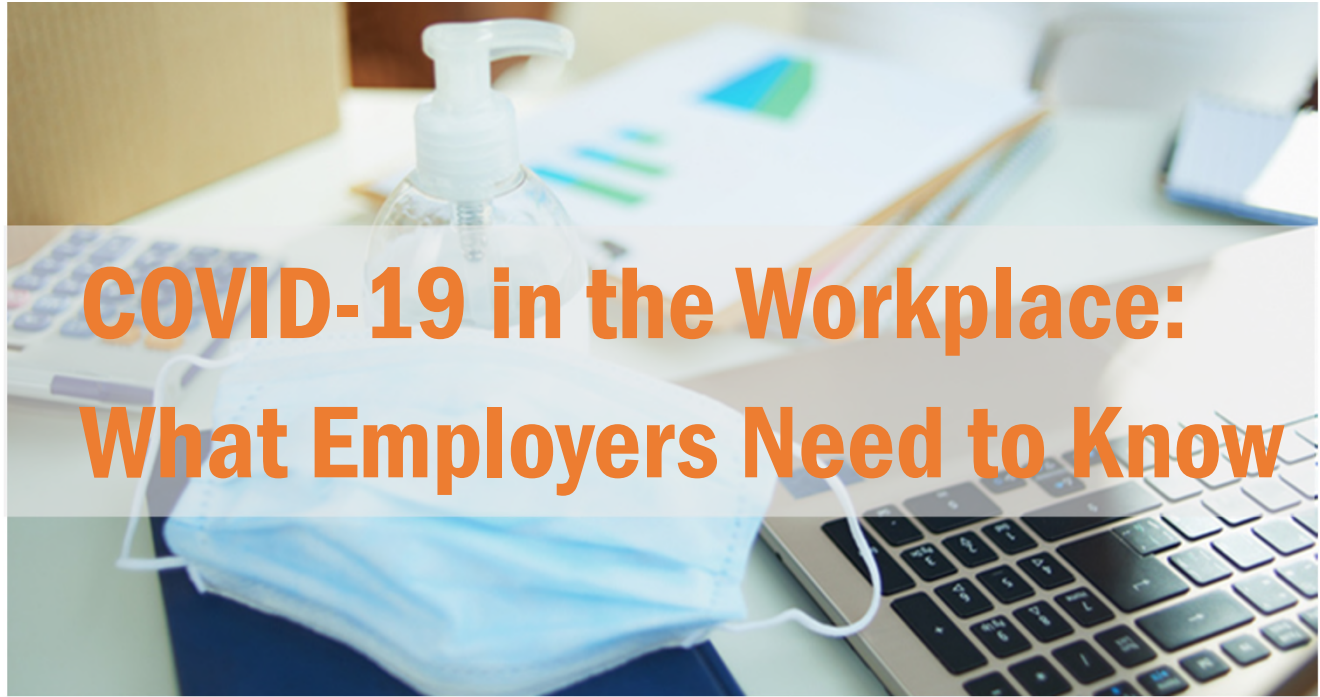


**Hirschfeld
Kraemer**

We work for employers



Because You're Different



COVID-19 in the Workplace: What Employers Need to Know

Thursday, February 18, 2021

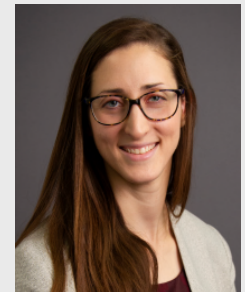
10:00am



Steve Hirschfeld



Michelle Freeman



Netta Rotstein

HIRSCHFELD KRAEMER LLP
SAN FRANCISCO | SANTA MONICA



Hirschfeld
Kraemer

We work for employers

How do I prepare my workplace to handle COVID-19?

Several laws and regulations to keep in mind, including, Cal/OSHA's ETS, Assembly Bill 685 (Labor Code §6409.6), and Senate Bill 1159 (Labor Code §3212.88)



Cal/OSHA Emergency Temporary Standards (“ETS”)

- Went into effect November 30, 2020
- Sets out rules and procedures for employers to comply with to limit the spread of COVID-19 in the workplace
- Does **not** apply to employees working remotely
- As of February 1, 2020, Cal/OSHA has begun to assess monetary penalties for violations of the ETS
- Even if an employer’s workforce is vaccinated, ETS must still be followed



Initial Steps to Take to Prepare for COVID-19 in the Workplace

- COVID-19 Prevention Plan
 - Template available at <https://www.dir.ca.gov/dosh/coronavirus/ETS.html>

- Identify, Evaluate, and Correct COVID-19 Hazards

- Employee Training



Hirschfeld
Kraemer

We work for employers

I have an employee who tested positive for COVID-19. What do I do now?

1. Secure the Workplace
2. Notify Employees
3. Report Externally & Document
4. Test and Investigate
5. Provide Applicable Benefits
6. Return to Work



Step 1: Secure the Workplace

- Remove COVID-19 case from the workplace
- Identify potential exposures (“contact tracing”) and remove them as well
- Notify employees about (and offer) free testing and applicable benefits
- Look for conditions that may have contributed to infection
- Clean!



Step 2: Notify Employees

What employees must be notified and when?

- Cal/OSHA ETS require notice within 24 hours to:
 - Employees who test positive due to exposure to COVID-19 in the workplace; and
 - Employees who were exposed to COVID-19 in the workplace
- A.B. 685 (Lab. Code § 6409.6) requires written notice within 24 hours to:
 - All employees at an exposed worksite



Step 2: Notify Employees

What must be included in the notice?

- Cal/OSHA ETS:
 - Identify benefits an employee may be entitled to;
 - Inform employees that their earnings, seniority, and all other rights and benefits, including former job status, will be continued until they return to work; and
 - For exposed employees, information about testing and why testing is required.
- A.B. 685:
 - Inform employee they “may have been exposed to COVID-19;”
 - Identify any benefits an employee may be entitled to;
 - Identify antiretaliation and antidiscrimination protections; and
 - Identify the company’s disinfection and safety plan



Step 3: Report Externally and Document

When Do I Report?

- Immediately upon learning of a serious illness or injury, or death due to COVID-19
- Within 48 hours of an outbreak
- Within 3 business days of an employee testing positive during an outbreak
- As otherwise required by local mandates or regulations

To who?

- OSHA and Cal/OSHA
- Local health department
- Workers' Compensation Claims Administrator
- Local health department



Step 3: Report Externally and Document

- Best practice: maintain written records of your investigation and employee notifications
- COVID-19 infections likely required to be recorded in Cal/OSHA and OSHA 300 log



Step 4: Test and Investigate

How often must employees be tested?

	Isolated Positives	COVID-19 Outbreak	Major COVID-19 Outbreak
When testing is required	1 or 2 positive cases within a 14-day period	3 or more positive cases within a 14-day period	20 or more positive cases within a 30-day period
Who must be tested	Employer must “offer” free testing to all exposed employees	All employees at the exposed workplace	All employees at the exposed workplace
How often testing must be performed	Once during employees’ working hours	Immediately, one week later, and one per week thereafter until 14 days without a positive test	Twice per week until 14 days without a positive test



Step 4: Test and Investigate

What type of investigation must be performed?

Isolated Positives	COVID-19 Outbreak	Major COVID-19 Outbreak
Investigate whether any workplace conditions could have contributed to the risk of COVID-19 exposure and what could have been done to reduce COVID-19 hazards	Immediately investigate possible workplace related factors that contributed to the outbreak Review of policies, procedures, and controls and implement changes as needed Investigation must be documented and updated every 30 days that the outbreak continues	Same as a COVID-19 Outbreak



Step 5: Provide Applicable Benefits

- Check for local (city or county) paid sick ordinance that may apply
- Benefits under ETS
 - Must continue paying employee (and other benefits)
 - May require other paid sick leave to be exhausted first
 - Exceptions: employee is unable to work or employer can demonstrate exposure is not work-related



Step 6: Return to Work

When can exposed employees return to work?

- Exposed employees cannot return to work until completion of a 14-day quarantine period



Step 6: Return to Work

When can COVID-19 positive employees return to work?

- COVID-19 positive employees with symptoms
 - At least 24 hours have passed without a fever of 100.4 or higher (without the use of fever-reducing medications);
 - COVID-19 symptoms have improved; and
 - At least 10 days have passed since symptoms first appeared.
- COVID-19 positive employees without symptoms
 - 10 days after first positive test
- **NOTE:** Cannot require an employee to test negative before returning to work



COVID-19 Vaccine: Can employers make it mandatory?

- **EEOC says “yes”:** EEOC advises that employers can require the COVID-19 vaccine, BUT...
 - **Reasonable accommodations required**
 - **Emergency Use Authorization status may lead to claims**
 - Wrongful termination claims
 - Retaliation claims under OSHA
- **Make it voluntary for now:** Employees who decline vaccine should sign a form stating they choose not to.
 - **Incentives:** Employer can incentivize receipt of a COVID-19 vaccine
- **Adverse reactions:** Likely covered by Workers’ Compensation



Hirschfeld Kraemer

Training

Counseling

Litigation

We work for employers. We work for you.

SAN FRANCISCO | SANTA MONICA



Steve Hirschfeld
sh@hkemploymentlaw.com
(415) 835-9011



Michelle Freeman
mfreeman@
hkemploymentlaw.com
(415) 835-9003



Netta Rotstein
nrotstein@
hkemploymentlaw.com
(310) 255-1807

hkemploymentlaw.com