

CALIFORNIA INDUSTRIAL HYGIENE COUNCIL

*Advancing public policy to improve the health and safety
of workers and the community.*

June 17, 2021

Via email: OSHSB@dir.ca.gov

Ms. Christina Shupe
Executive Director
Occupational Safety and Health Standards
Board
Sacramento, CA

Subject: Emergency Temporary Standard, California Code of Regulations, Title 8,
Sections 3205; 3205.1; 3205.2; 3205.3; and 3205.4, COVID-19 Prevention

Dear Ms. Shupe:

The California Industrial Hygiene Council (CIHC) appreciates the opportunity to comment on the COVID-19 Prevention emergency temporary standard, accent on the word temporary. We appreciate the challenges this issue has presented, and the hard work and countless hours from Board staff and DOSH staff on this issue. CIHC represents OHS professionals in CA and works to enhance their professional practice.

The proposed version of the COVID ETS that is being considered on June 17, 2021 is an improvement from the version that was adopted in November 2020, and we especially agree with including exceptions for those who are fully vaccinated and bringing the ETS in line with CDPH guidelines. We agree with N95s not being required. We thank the Division for providing FAQs to address how employers will determine fully vaccinated employees vs. those who are not, while maintaining confidentiality of an employee's health issues. This is actually an important FAQ whether we are talking about COVID-19 vaccinations or vaccinations for other infectious diseases, and having this information in place is a good step forward. There is precedence in the Bloodborne Pathogens standard on the employer knowing vaccinated vs. unvaccinated by use of the vaccination declination form for Hepatitis B. The main difference with these two regulations, however, is that for those unvaccinated for Hepatitis B, there are no required protective measures that would indicate vaccination status. Requiring use of face coverings for unvaccinated employees potentially presents unintended consequences for work environments.

The ETS language is convoluted and excessively wordy. It is difficult to follow and understand what the employer is required to do. It is also too prescriptive given the myriad of work environments to which it applies. CIHC is not suggesting a re-write of the ETS, but these comments need to be taken into consideration going forward on a permanent solution for protecting workers from infectious diseases.

Given the rapidly changing public health guidance and lifting of COVID-19 restrictions, CIHC encourages the following two actions:

First action, consider repealing the ETS, or establishing an expiration date for the near future. The lifting of COVID-19 restrictions in California due to the rapid decline in cases and high percentage of vaccinated individuals makes extending the period of time that the ETS is in effect unnecessary. At least, let the ETS expire as an emergency regulation after today's presumed readoption without any further action that would result in further date extensions.

Second action, move expeditiously with a path forward to permanently address worker protection in all industries from infectious diseases. This would be a more efficient use of valuable resources rather than attempts to fix protections and prevention measures for COVID-19 only. The path forward could include adding COVID-19 explicitly to the list of diseases covered by the Aerosol Transmissible Disease (ATD) regulation for those employers and work environments that are covered by the ATD regulation. Further, an action such as developing a mandatory appendix for the Injury and Illness Prevention Program regulation to apply to employers in work environments that are not covered by the ATD regulation could be an effective permanent solution. Such action would require these employers to address and plan for infectious disease protection. It should go without saying that any further permanent regulation needs to be concise and performance-oriented.

CIHC would look forward to further advisory committee participation to assist the Board and the Division with a path forward on this issue, and again we encourage expediting this approach.

Thank you for your time and consideration. Please contact me on behalf of the CIHC at (916) 712-4547 or kwa-sacramento@att.net.

Very truly yours,
California Industrial Hygiene Council

A handwritten signature in cursive script, reading "Pamela Murcell".

Pamela Murcell, MS, CIH
President, CIHC