

CALIFORNIA INDUSTRIAL HYGIENE COUNCIL

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

September 15, 2022
Via email: OSHSB@dir.ca.gov

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

Subject: Comments on Proposed Language for Non-Emergency COVID-19 Prevention Regulations

Dear Ms. Shupe:

The California Industrial Hygiene Council (CIHC) appreciates the opportunity to comment on proposed language for non-emergency COVID-19 Prevention regulations (8 CCR 3205 et seq). 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 Occupational Health and Safety Professionals in California and works to enhance their professional practice.

General Comments:

CIHC appreciates the proposed approach to address COVID-19 as a work environment hazard through the employer's Injury and Illness Prevention Program. We support the sunset clause; specifically, two years after the effective date.

In regard to 3205(b)(1), definition of close contact:

"Close contact means being sharing the same indoor space as a COVID-19 case for a cumulative total of 15 minutes or more over a 24-hour period during the COVID-19 case's infectious period, as defined by this section, regardless of the use of face coverings, unless close contact is defined by regulation or order of the California Department of Public Health (CDPH). If so, the CDPH definition shall apply."

There is a typo in the first line – it needs to read “being in” or “sharing”, not “being sharing” as currently written. The “close contact” definition based on “sharing the same indoor space” is qualitative not quantitative. Without quantifiable criteria to define “shared indoor space”, close contact is not enforceable. As written, sharing indoor space is overly broad, which could have unintended consequences by capturing “close contacts” who in fact were not exposed to a COVID-19 infectious case. Because COVID-19 is a respiratory disease, simply sharing indoor space is not the issue. The issue is sharing air space in close enough proximity and for a long enough period of time to a person with active infection that someone has then been exposed to the virus.

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In regard to 3205(c)(1):

“An employee is potentially exposed to COVID-19 hazards when near other persons, whether or not the employee is performing an assigned work task. **The employer shall treat all persons as potentially infectious, regardless of symptoms, vaccination status, or negative COVID-19 test results.** COVID-19 shall be considered a hazard specific to an employee’s job assignments and job duties if those assignments and/or duties bring the employee near other persons.”

CIHC’s concern is that these statements imply all persons are potentially infectious at all times, meaning that even if someone does not have symptoms, has been fully vaccinated, and/or has negative COVID-19 test results, they are still infectious. Applying the “potentially infectious” statement to what the employer is required to do relevant to “close contact” with a COVID-19 case, the employer would essentially have to have all or almost all employees quarantined. These statements imply that there is no end to “infectious period” despite the definition of infectious period included in subsection 3203(b).

If an employer has to “treat all persons as potentially infectious regardless of symptoms, vaccination status, or negative COVID-19 test results” **and** comply with the COVID-19 regulation requirements, they would shut their doors and everyone would be at home! The regulation requires that if an employee is a COVID-19 case and/or has been exposed (close contact), they can't be at work and have to isolate or quarantine.

CIHC is disappointed that additional COVID-19 Advisory Committee meetings were not convened to allow stakeholder participation to assist the Board and the Division with the path forward and proposed language for the non-emergency regulation.

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



Pamela Murcell, MS, CIH
President, CIHC