



November 17, 2020

OSH Standards Board  
2520 Venture Oaks Way, Suite 350  
Sacramento, CA 95833  
By email: [OSHSB@dir.ca.gov](mailto:OSHSB@dir.ca.gov)

Dear Standards Board:

We urge immediate adoption of the proposed Covid-19 Prevention Emergency Temporary Standard (ETS). California needs an enforceable Cal/OSHA standard which both employers and workers can rely upon. California won't bring community spread of Covid-19 under control without stemming transmission in the workplace. The future of our state economy depends on it, as does the health of workers and their families.

Worksafe is a California statewide non-profit organization focused on ensuring the occupational safety and health (OSH) rights of vulnerable workers through policy advocacy, capacity and coalition building, and impact litigation. We engage and convene worker advocates, legal aid organizations, academic institutions, and government agencies to prevent workplace injury, illness, and death by bringing justice to the workplace. We achieve this by focusing our efforts on the low-income, immigrant, and workers of color who are disproportionately burdened by exposure to workplace hazards.

**Overall we feel this is a strong standard that hits the right points in setting a common set of enforceable expectations.**

Cal/OSHA's draft emergency standard is appropriate to the emergency we are in, notwithstanding that the proposed rule was drafted in record time. It is based on sound public health principles and the current knowledge on Covid transmission and prevention. It is framed around existing requirements on employers, such as the Injury and Illness Prevention Program. It is consistent with the more detailed guidance documents and health orders that have been issued by Cal/OSHA and local and state Departments of Public Health, and with recent state legislation (re: disclosure). The proposal gives these guidance documents support with a more enforceable standard.

We support that the proposal blends a 'performance' standard with some more specific direction on controls necessary to Covid prevention (e.g. physical distance, face covering, case identification and response).

The standard will finally allow easier identification of "clusters" of Covid cases in specific worksites, by requiring employers to report 3+ cases to the local Health Department, and the CDPH to publish that information on the CDPH website. We need CDPH to move quickly to gather and post this information.

This proposal is not perfect. There are some critically-important specifics we will look to see changed or clarified during the post-adoption Advisory Committee. For instance, workers have almost no specific rights to object when employers make inadequate plans to comply. Workers also do not have a specific way to object when

employers fail to carry out their written plans — a problem we have seen repeatedly since the beginning of the pandemic. And lastly, workers have no way to help design the critical training programs that inform workers of their rights and the employers’ obligations — so workers will have to depend on supervisors for accurate information about social distancing, PPE and medical requirements. For all these problems, workers’ only remedy is to file a complaint with DOSH, and we know that DOSH is overwhelmed with complaints. While DOSH will have an easier time enforcing this clear set of requirements than before, workers with rights on the job can do much more to help prevent the spread of the disease, and show reluctant employers that workers are not going to tolerate backsliding.

But California’s proposed ETS is strong and can be a model for federal action in this emergency. In particular, the proposal would lead the way on disclosure to workers of known exposures, on required employer response (including pay protection for workers sent to quarantine), and in addressing specific issues of employer provided housing and transportation that affect primarily essential workers in agriculture.

### **Covid rates surging again**

To successfully limit transmission in our communities, we must end Covid transmission at work. This Emergency Temporary Standard will help get there. A vaccine appears to be coming in the future, but until we have enough vaccine doses available to inoculate a vast proportion of the working population, we need to continue with non-pharmaceutical measures to prevent continued spread, illness, hospitalizations and deaths.

### **Context: This is not the ‘usual’ rulemaking process. This is an emergency.**

The ‘usual’ rulemaking process takes years to adopt a standard, even in the fastest of them. The ETS process is for situations where the usual, lengthy, public input process will not enact a rule in time. This process is for temporary measures intended to address an emergency. No one thinks the government should always run by Executive Order; public policy should primarily be made through legislation and the usual rulemaking process. However, we are not in normal times and — in an effort to save lives — the Standards Board determined it needs to enact stronger protections for workers through the emergency rulemaking process.

### **The public health practices we see and endorse in this proposal include:**

- Require hazard identification and evaluation and plans to correct the hazards
- Investigation and response to Covid cases in the workplace, including exclusion of infected and exposed people from interaction with others until they meet safe-return criteria, and notification of exposed workers.
- Worker training and instruction, including info on Covid-related benefits
- Ensure physical distancing can be maintained through changes in the workplace and how work is done; burden on employer to demonstrate is not possible
- Ensuring use of face coverings by all; must be provided by employer, clean, and undamaged
- Ensure natural or mechanical ventilation to maximize fresh air and filtration of recirculated air
- Limit use of shared equipment, tools and materials
- Cleaning and disinfection of areas, tools, equipment
- Hand washing
- Respiratory protection (N95 or better) and other PPE if needed
- Reporting and recordkeeping

We are pleased to see some challenging situations addressed directly: employer-provided housing, employer-provided transportation, and responding to worksite outbreaks.

**Summary:**

There are some specifics we might have said could be changed or clarified, but overall we feel this is a strong standard, based on the best Covid and OSH knowledge, that hits the right points in setting a common set of enforceable expectations.

Health authorities, labor unions, and others can help prevent worksite spread during an outbreak to other workers or into the community by ensuring that employers in outbreak locations respond to worker demands for protection instead of punishing workers who speak out.

There is much work needed to make an ETS into successful protections on the job. We urge Cal/OSHA and CA Dept of Public Health to continue their extensive outreach to all corners of the state to inform employers of the standard and offer them education, information and assistance to comply. This is especially important for smaller employers with less resources to stay abreast of new requirements and ways to comply.

Thank you for your attention to this urgent matter.

Sincerely,



Stephen Knight  
Executive Director