

Edging up

Short takes on emerging industry issues – legislation impacting employer requirements related to COVID-19 and updates on state PFL and PFML programs

COVID-19 prevention plan requirements for California employers

MALCOLM DODGE

vice president, risk services, Sedgwick

LAURA OSLUND

senior risk services consultant, Sedgwick

The California Occupational Safety and Standards Board released [emergency temporary standards](#) pertaining to COVID-19 prevention that went into effect on November, 30, 2020. Among the standards is a rule that requires employers to establish, implement and maintain a COVID-19 prevention program.

This rule (sections 3205–3205.4 of the California Code of Regulations) defines who is considered a “COVID-19 case” and what is considered a “COVID-19 exposure,” an “exposed workplace” and a “high-risk exposure period.” A “COVID-19 case” is the same as a qualifying individual defined in [California Assembly Bill 685](#), which took effect on January 1, 2021.

A COVID-19 prevention program can be incorporated into an employer’s current injury and illness prevention program. The components of the program must include:

- A communication strategy that applies to COVID-19 reporting, accommodations, access to testing and hazards
- The identification of hazards to include the participation of employees and their authorized representatives in identifying and evaluating hazards, screening, policies and procedures in order to respond effectively and immediately to identified hazards, places where risks may be greater such as congregate settings, maximizing air flow, possible industry specific hazards, assessing whether additional controls are needed, and ongoing inspections to identify possible unhealthy behaviors, work practices, work procedures and to ensure compliance
- Investigating and responding to COVID-19 cases in the workplace to include illness history, determining which other employees may have had a COVID-19 exposure

and what, if any, workplace conditions that may have contributed to the COVID-19 risks and what could be done to minimize those risks; personal identifying information shall be kept confidential as well as relevant medical records

- Training and instruction on the policies and procedures, benefits, how COVID-19 is spread, methods of physical distancing and the medical reasons for doing so, frequent handwashing, proper use of face coverings, and the importance of not coming to work when employees have COVID-19 symptoms
- The employer’s plan to accomplish physical distancing
- Specifics on face coverings, when they are required, exceptions to face covering requirements, directions to non-employees who are on the premises, and how to manage circumstances where employees may have a medical or mental health condition or disability that precludes them from wearing a face covering

- Other engineering, administrative controls and personal protective equipment (PPE) including the use of cleanable solid partitions when physical distancing is not an option, the implementation of cleaning and disinfection procedures, prohibiting the sharing of PPE, evaluating handwashing facilities and allowing time for frequent handwashing as well as the use of hand sanitizer, and the use of respirators and eye protection to minimize COVID-19 risks
- Reporting, recordkeeping and access including the report of cases to the local health department when required by law, reporting to the Division serious illnesses or deaths, the steps taken to implement the COVID-19 prevention program, making available the written COVID-19 prevention program to employees, their authorized representatives and Division representatives, and tracking all COVID-19 cases (notice, testing and reporting criteria exist and

are defined in 3205–3205.2 and vary depending on the number of cases occurring over specified periods of time)

- Setting guidelines for exclusion from and subsequent return to work for COVID-19 cases; return to work criteria include several factors but proof of a negative COVID-19 case is not one of them; these factors include:
 - 24 hours have passed since a fever of 100.4 occurred and the resolution of the fever has happened without the need for fever reducing medication
 - The symptoms have improved and at least 10 days have passed since the symptoms first appeared
 - Employees ordered to isolate or quarantine by a local or state health official must, when no period has been specified, isolate for 10 days or quarantine for 14 days

We are here to help

Sedgwick offers consultative review services to help employers develop or enhance COVID-19 prevention programs to ensure compliance. Our expert team can review your programs to make sure they cover all the required components. We can assist employers by:

- Helping build or enhance injury and illness prevention programs to cover the new COVID-19 prevention rules
- Providing consultative guidance on how the rules can be implemented (e.g., social distancing, investigations)
- Assuring documentation requirements are being met
- Offering guidance on how to address hazards when cases are reported; this may include a review of notice requirements; notice content would be driven by the available benefits for each employer
- Assuring that any transportation or housing policies and procedures meet the requirements



Virginia establishes COVID-19 requirements for employers

MALCOLM DODGE

vice president, risk services, Sedgwick

LAURA OSLUND

senior risk services consultant, Sedgwick

On January 27, 2021, Virginia Governor Ralph Northam signed [Standard 16VAC25-220](#) into law as a final, permanent standard. Its purpose is to establish requirements for every place of employment in the Commonwealth of Virginia and within the jurisdiction of the Virginia Occupational Safety and Health (VOSH) program to control, prevent, and mitigate the spread of COVID-19 to and among employees and employers.

The standard also became effective on January 27, 2021 and it modifies content and replaces the temporary status that was initiated in July 2020. Should this standard conflict with an existing VOSH rule,

regulation or standard, the more stringent requirement from an occupational safety and health hazard prevention standpoint shall apply. Higher education institutions that have received certification from the State Council of Higher Education for Virginia are excluded.

On March 26, 2021, the standard's elements below became effective:

- The written infectious disease preparedness response plan requirements in section 16VAC25-220-70
- Training requirements in section 16VAC25-220-80

The following information includes details about the standard and actions employers need to take in key areas to remain in compliance.

Exposure assessment

- Assess the workplace for hazards and job tasks that can potentially expose employees; classify hazards and job tasks according to the exposure risk levels of very high, high, medium and lower

Physical distancing

- Use verbal announcements, signage or visual cues to promote distancing
- Limit access and occupancy; clearly post a policy at building and room entrances and enforce
- Establish access controls for work areas; common areas in particular will require cleaning and disinfecting between uses
- Implement flexible work options, including physical distancing of six feet between coworkers and other persons, when feasible
- Workers must isolate and shall not be permitted to return to work until at least 10 days after COVID-19 symptoms first appear; in cases of severe illness, replication-competent virus or a severely immunocompromised employee, additional days and a consult with the Virginia Department of Health (VDH) and/or VOSH may be required

COVID-19 testing

- Tests *cannot* be required by an employer unless the employer's health insurance covers the entire cost

Notification of exposure

- When a person was present at the place of employment within two days prior to symptom onset (or a positive test if asymptomatic) until 10 days after onset (or positive test), employers shall notify:
 - Their own employees within 24 hours of discovering an exposure
 - Employers whose employees were present in the workplace within 24 hours
 - Building and facility owners within 24 hours; advise whether there are one or more cases and the floor(s) or work area(s) that have been compromised
 - VDH within 24 hours of discovery when two or more of their own employees present in the workplace test positive within a 14-day period; (refer to section 16VAC25-220-40(B)(7)(d) for more details)
 - Virginia Department of Labor and Industry (DOLI) within 24 hours when three or more of their own employees present in the workplace test positive within a 14-day period

Vehicle occupancy

- Apply the safety hierarchy of controls to prevent employee exposures

Sanitation and disinfecting

- Provide supplies to employees and require their immediate use to clean and disinfect surfaces after use or non-employee interactions
- For exposures, wait 24 hours to clean and disinfect, where feasible, after known or suspected infection
- Perform cleaning and disinfection at least once per shift, or no less than every 12 hours if there are multiple shifts
- Clean and disinfect shared tools, equipment, workspaces and vehicles prior to transferring from one employee to another
- Provide employees with handwashing facilities and hand sanitizer where feasible. Provide mobile crews hand sanitizer for the duration of work

Face coverings

- Use of face coverings for contact inside six feet of persons *is not an acceptable* administrative or work

practice control to achieve minimal occupational contact

- Face shields along with face coverings with vents are not an acceptable face covering unless adhering to criteria in the standard
- Religious waivers require requests to and consultation from the DOLI
- Refer to section 16VAC25-220-10 of the standard for provisions related to personal protective equipment not being readily available commercially

Employers whose employees engage in job tasks classified as very high, high, medium or lower risk must comply with additional requirements. Information specific to the exposure risk levels may be found in [the standard](#) under sections 16VAC25-220-50 through 16VAC25-220-80.

The standard's expiration is contingent upon the expiration of the governor's COVID-19 public emergency declaration and the results of a review to be conducted thereafter.

Massachusetts enacts emergency regulation for paid family leave

BRYON BASS
senior vice president, workforce absence, Sedgwick

BRIDGET CASWELL
director of national technical compliance – absence management, Sedgwick

In December 2020, Massachusetts adopted an [emergency regulation](#) regarding qualifying events for using paid family leave. Under the emergency regulation, births, adoptions and foster care placements that occurred during the 2020 calendar year can be treated as a qualifying event for family leave. Thus, a covered employee may take this leave, referred to as family bonding leave, during 2021 for a birth, adoption or foster care placement that occurred during 2020. The employee must complete the family bonding

leave during the first 12 months after the child's birth, adoption or foster care placement. Also, the family bonding leave must be completed during the 2021 calendar year.

In addition, the emergency regulation includes a special provision regarding the use of family bonding leave by an employee of an acute care hospital, in order to prevent under-manning during the COVID-19 pandemic. An "acute care hospital" is defined as a hospital licensed under Massachusetts general law, as well as the teaching hospital of the University of Massachusetts Medical School. An employee who was eligible for family bonding leave during the 2020 calendar year may request a period of family leave that extends beyond the 12-month period. The regulation also states that the leave applies to all acute care hospital employers, regardless of whether the employer provides leave benefits through

contributions to the Family and Employment Security Trust Fund or through an approved private plan.

The Department of Family and Medical Leave may also enact provisions to assist other classes of covered individuals, business entities and employers regarding family bonding leave. The Department has the authority to enact such provisions when it prevents disruption of business operations that are a risk to the public health, or if it is contrary to the public interest. Sedgwick will continue to monitor the implementation of Massachusetts Paid Family and Medical Leave and make appropriate changes to our processes.

Washington adopts emergency PFML rule

BRYON BASS
senior vice president, workforce absence, Sedgwick

BRIDGET CASWELL
director of national technical compliance – absence management, Sedgwick

Earlier this year, Washington adopted an [emergency rule](#) to clarify, for purposes of the state's paid family and medical leave (PFML) program, what service is considered localized as it relates to which employees need to be reported to the Employment Security Department based on their temporary work location due to the COVID-19 pandemic.

On May 29, 2021, this emergency rule will expire. Once the pandemic restrictions are lifted, employees who are considered localized may not continue to be considered localized if the reassignment of their physical work location becomes permanent.

Key considerations for employers:

- An employee's service is localized in Washington if, prior to March 23, 2020, an employee's service was considered localized in Washington, the employer requirements or the state's restrictions due to COVID-19 resulted in the employee temporarily working from a location that was not Washington, the employee's residence or domicile was

out of state prior to March 23, 2020; and the employer and employee intend for the employee to perform work exclusively, or mostly in Washington, once the COVID-19 restrictions are lifted.

- Employers must comply with all responsibilities and employee rights guaranteed under the Paid Family and Medical Leave Law, and must submit amended reports and pay premiums for the affected quarters if applicable. Employers that acted on the advice of the Department and did not previously report these employees are not required to amend reports.

For more regulatory updates and helpful resources, see [Sedgwick's COVID-19 update center](#).

RESOURCES

[Virginia DOLI COVID-19 Standard 16VAC25-220](#)

[Cal/OSHA emergency temporary standards on COVID-19 infection prevention](#)

[Cal/OSHA COVID-19 guidance and resources](#)

[California Assembly Bill 685](#)

[Massachusetts PFL emergency regulation](#)

[Washington PFML emergency rule](#)

[Sedgwick's COVID-19 update center](#)

