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## **Cal/OSHA Emergency Temporary Standards** **Fact Sheet**

### **Background**

Effective November 30, the California Occupational Safety and Health Standards Board (Board) approved an unprecedented and sweeping set of [emergency temporary standards](#) (ETS) to address COVID-19 exposure risks in California workplaces. These regulations will remain in effect at least through October 1, 2021.

From the earliest days of the pandemic, farming operations have proactively adopted a host of best practices to mitigate the spread of COVID-19 in the workplace, including expanded employee training, social distancing, enhanced hygiene and sanitation practices, and the use of Personal Protective Equipment.

### **Infeasibility of Emergency Temporary Standards**

#### *1. Shifts Burden of COVID-19 Testing to Employer*

- Where there has been as few as one COVID-19 case in the workplace, the employer must offer free testing to all employees who have potential COVID-19 exposure.
- The ETS also imposes additional and substantial testing, investigation, correction and notification requirements when there is an “outbreak” in the workplace.

#### *2. Imposes Impractical Workplace Exclusion and Paid Time Off Requirements*

- The ETS requires employers to remove workers “exposed” to a COVID-19 case for 10 days, whether that contact took place indoors or outdoors, whether the individuals were wearing personal protective equipment, and regardless of the results of a COVID-19 test. This contradicts CDC guidance for isolating critical infrastructure workers and defies common sense.
- Employers must continue to pay “exposed” workers indefinitely as this paid time off requirement is not limited to one potential COVID-19 workplace exposure or to a set number of hours of paid leave.

#### *3. Sets Forth Dubious Return to Work Criteria*

- The ETS does not require a negative COVID-19 test for an employee to return to work.
- Employers cannot mandate that COVID-19 cases take a test before resuming work.

#### 4. *Imposes Unworkable Employer-Provided Housing and Transportation Requirements*

- The ETS contains very specific requirements for employers to ensure social distancing can be done in homes and vehicles and does not recognize the efficacy of already-implemented engineering/injury controls; the regulations also expressly prohibit bunkbeds.
- The practical effect of the ETS is to substantially reduce and eliminate vitally needed housing during a statewide housing crisis.

#### Legal Issues with the Emergency Temporary Standards

The merits of the lawsuit are based on four key principles:

##### 1. *No Authority*

- The ETS requirements are not limited to work-related COVID-19 cases or exposures, so employers must address non-work-related COVID-19 exposures and assume the role traditionally undertaken by medical or public health officials.
- The Board fails to articulate any statutory authority for, in effect, usurping the mandates of other state and federal agencies.

##### 2. *No Emergency*

- To enact “emergency” regulations without the usual due process safeguards, the Board was required to explain, with particularity, the causal link between the proposed rules and the emergency situation to be addressed.
- These findings are either absent or so generic as to be meaningless, notwithstanding that the Board had nine months after the declaration of the State of Emergency to enact these standards.

##### 3. *No Necessity*

- The Board failed to provide findings, supported by data, that the ETS is necessary to significantly reduce the danger of COVID-19 workplace exposure, including an explanation for why it believes existing state and local laws and federal guidance from the CDC and OSHA are inadequate to address the risk. Cal/OSHA staff insisted to the Board that the ETS was not necessary for COVID-19 safety enforcement purposes.

##### 4. *No Escape*

- The ETS essentially “deputizes” employers, against their will and at pain of significant statutory penalties and enforcement proceedings, to police conduct having little or no relation to job safety.
- At the same time, the ETS fails to provide employers with some administrative mechanism to avoid or mitigate the most dangerous financial risks to their businesses before the regulations cause irreparable damage.