



May 20, 2020

Occupational Safety and Health Standards Board  
1017 L Street, PMB #254  
Sacramento, CA 95814-3805  
Attention: Executive Officer, Christina Shupe  
By email:

Re: **Petition for an emergency temporary standard** to protect workers from Covid-19  
**Petition for a permanent standard** to protect workers from infectious diseases  
including novel pathogens

Dear Members of the OSH Standards Board:

**On behalf of all workers not currently protected by the Aerosolized Transmissible Disease (ATD) standard, 8 CCR 5199**, and in consultation with labor and community organizations throughout California, this petition for two standards is submitted by the Labor & Employment Committee of National Lawyers Guild and Worksafe. We are seeking regulatory protection for those currently working as "essential" workers; those who are working although not deemed essential workers; those working because they must work to support their families; those working because if they refuse unsafe work they will suffer retaliation – permanently lose their jobs and may not be eligible for unemployment insurance; and those who will fearfully be returning to work as the economy opens up.

Since 1937 the National Lawyers Guild has provided legal support to movements for social change, principally on a volunteer basis. The Labor & Employment Committee (L&EC) focuses on struggles for economic and social justice. In the 1930s the Guild focused on workers' rights supporting New Deal legislation to assist working people and the unemployed; in the 1950s the Guild defended labor leaders and others attacked for their progressive political views. Then and now, the Guild L&EC actively supports progressive labor and employment law struggles. The L&EC is comprised of close to 1,000 labor and employment attorneys across the country.

Worksafe is California's only statewide nonprofit focused on ensuring the occupational safety and health (OSH) rights of vulnerable workers through policy advocacy, capacity and coalition building, and impact litigation. We are a leader in engaging and convening 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 bear a disproportionate burden of exposure to workplace hazards.

**With respect to the request for an emergency temporary standard** to protect employees in any facility, service category, or operation who may be exposed to SARS-CoV-2 [Covid-19], and who are not within the scope of 8 CCR 5199 or 5199.1, time is of the essence. An emergency temporary standard is necessary for the immediate protection of the public peace, health, or safety within the meaning of Article IV of the California Constitution and as such, must be issued as soon as possible and take immediate effect. Such will protect the lives not only of employees who in the course of their employment may be exposed to Covid-19, a deadly infectious pathogen, but also protect the lives of their families and those in the communities in which they live.

**Without specific occupational health and safety measures** to protect essential workers, to protect workers currently working but not necessarily deemed essential workers, and to protect those who will in the future return to work to revitalize the economy of the State of California, **Californians will die unnecessarily.**

**With respect to the request for a permanent standard** to protect workers from infectious diseases including novel pathogens, this petition is submitted pursuant to Labor Code Section 142.2. Petitioners also reference Labor Code Section 142.3(c) which requires standards to include specific warnings to ensure that employees are apprised of all hazards to which they are exposed. It also requires suitable protective equipment and procedures necessary to control those hazards. Medical monitoring is also prescribed where appropriate.

**With respect to the request for both the emergency regulation to protect workers from Covid-19 and the permanent regulation to protect workers from infectious diseases,** Labor Code Section 144.6 requires that in promulgating standards dealing with toxic materials or harmful physical agents, which petitioners contend applies to Covid-19 and infectious diseases:

*the board shall adopt that standard which most adequately assures, to the extent feasible, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to a hazard regulated by such standard for the period of his working life. Development of standards under this section shall be based upon research, demonstrations,*

*experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the reasonableness of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired.*

We respectfully ask the Board to consider the enclosed draft of an emergency temporary standard as guidance. We understand that the Board will apply its expertise in developing the emergency temporary standard and this is offered simply as a compilation of best practices that have been developed by a number of different worker representatives. We hope this draft will be of assistance in moving forward with the temporary standard with all deliberate speed given the ongoing pandemic conditions impacting the state's workers, employers, and economy.

The Covid-19 pandemic is not going away anytime soon. And other novel pathogens may threaten this state and the world in the future. As more and more workers are brought back, their lives and livelihoods are pitted against each other. In order to protect the lives and health of workers and their families, in the face of this public health emergency, clarity is required.

The draft we share is a hybrid of a performance-based and specification-based standard. The performance-based dictates of 8 CCR 3203 combined with a small number of more specific standards have not been adequate. Lives are being lost and will continue to be lost without consistent rules as a starting point for our state's workplaces that allow employers some flexibility with respect to individual needs in their places of employment.

In brief, the proposed regulation is divided into subsections that parallel the framework of the Injury and Illness Prevention Program (8 CCR 3203), and add specifics that are helpful:

- a. Requires minimizing the risk of transmission of Covid-19 to employees from other employees or from the public. Requires:
  1. Identification of a competent employer representative to develop and administer a written Compliance Action Plan to protect employees (sets timelines and requires employer to share with workers / unions)
  2. Procedures to identify and evaluate Covid-19 workplace hazards
  3. Procedures to control the hazard (engineering controls, work practices, PPE, etc.)
  4. Identification of job categories, tasks, procedures where employees exposed
  5. Procedures to respond to three categories of employees
    - A. Employee who has been diagnosed with Covid-19
    - B. Employee who has symptoms of Covid-19

- C. Employee who has been exposed to a person who has been diagnosed with Covid-19
  - b. Job Hazard Analysis to identify modes of transmission and adopt and implement feasible preventive measures to minimize transmission risk, including but not limited to:
    - 1. Specific measures to assure social distancing
    - 2. Ventilation systems to reduce airborne exposure to Covid-19
    - 3. Personal hygiene and workplace maintenance measures to reduce exposure to Covid-19
    - 4. PPE, including appropriate respirators with appropriate training and fit testing
  - c. Employee training
  - d. Recordkeeping per 8 CCR 3203(b)

Thank you in advance for your prompt attention to our request for an emergency temporary standard, and for a timely response to our request for a permanent standard to protect workers from infectious disease including novel pathogens. We look forward to continuing to work with the Board on this matter in order to protect the health and safety of all Californians during the Covid-19 pandemic and in anticipation of future pandemics.

Sincerely,

/s

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## **DRAFT of Emergency Temporary Standard to Protect Workers from Covid-19**

(a) Every employer shall minimize the risk of transmission of Covid-19 during work among employees who may be exposed to other employees or the public with Covid-19 or who may expose other employees. The procedures shall include the following elements:

(1) Identification of a person or persons as a “competent person” with authority and responsibility for the establishment, implementation and maintenance of effective written infection control procedures to control the risk of transmission of Covid-19, to wit, a **Compliance Action Plan**. The **Compliance Action Plan** shall be prepared or updated within 10 business days of any new state or local law, regulation or order, including any guidance document issued by DOSH or CDPH. A competent person shall have the authority to perform this function and shall be knowledgeable in infection control principles as they apply specifically to the facility, service or operation. When a competent person is not on site, there shall be a designated competent site representative with full authority to act on his or her behalf. The name, position, and contact information for the competent person and any competent site representative shall be posted at the site of each work operation covered by this subsection. The written **Compliance Action Plan** shall be made available for inspection and copying by any employee or employee representative within five business days of a written request, at no cost to the employee or representative.

(2) Procedures for identifying and evaluating workplace hazards that may expose any employee to Covid-19. Procedures shall include, but not be limited to, scheduled periodic inspections to identify and evaluate hazards.

(3) Methods and/or procedures for controlling employee exposure and correcting unsafe or unhealthy conditions. These shall include engineering controls, work practices and procedures, and personal protective equipment [PPE], including respiratory protection, as required by Title 8 California Code of Regulations.

(4) Procedures to respond to:

(A) an employee report that he or she has been diagnosed by a physician with Covid-19. Such procedures shall include, but not be limited to:

(i) immediately sending employee home or instructing the employee who is already at home to stay home, until a medical provider authorized return to work;

(ii) implementing work policies that do not penalize workers for missing work as a result of being diagnosed by a physician with Covid-19;

(iii) written notice within 24 hours to all employees who may have been exposed to the employee with a physician confirmed diagnosis of Covid-19. Employees to be notified shall include those who may have worked during the same shift or on an adjacent shift in the same or adjacent work areas of, or may have shared equipment with, the diagnosed employee. Employees to be notified shall also include individuals who may have been close contacts: to wit, have been within 6 feet of the diagnosed employee for more than 10 minutes during the period when the employee was potentially contagious, which is from 48 hours before symptoms first appeared, or from the date of their positive lab test if they did not have symptoms.

(iv) filing a report with the Division of Occupational Safety and Health by telephone, email, or via a specified online mechanism, within one business day of the

employer obtaining knowledge of the diagnosis, whether or not it is work-related as defined in 8 CCR 14300.5. Each report of diagnosis shall indicate the social security number of the diagnosed employee.

(v) filing a report or amended report with the Division of Occupational Safety and Health by telephone, email, or via a specified online mechanism, immediately upon the employer obtaining knowledge of the hospitalization or death of an employee, whether or not it is work-related as defined in 8 CCR 14300.5. Each report of hospitalization or death shall indicate the social security number of the diagnosed employee.

(vi) filing a report with the local county, and where applicable city, health authorities, within one business day of the employer obtaining knowledge of the diagnosis. Each report of diagnosis shall indicate the social security number of the diagnosed employee; the employer name and address, EIN, and Contractors' State License Board number if applicable; the diagnosed employee's work assignments, actual work locations and job sites, and actual work periods beginning two weeks prior to the date of the physician's diagnosis; and

(vii) procedures immediately to close and deep clean all areas, surfaces and equipment that may have been in contact with the diagnosed employee.

(B) an employee report of symptoms of Covid-19. Such procedures shall include, but not be limited to:

(i) encouraging sick workers to go or stay home by implementing work policies that do not penalize workers for missing work; and

(ii) immediately sending employees with acute respiratory illness symptoms home or to medical care.

(C) an employee report that he or she has been exposed to a person who has been diagnosed by a physician with Covid-19 or has learned from his or her employer pursuant to subsection (A) that he or she has been exposed to an employee who has been diagnosed by a physician with Covid-19. Such procedures shall include, but not be limited to,

(i) immediately sending such employee to home quarantine, and

(ii) implementing work policies that do not penalize workers for missing work as a result of being quarantined.

(b) Employers shall conduct a Job Hazard Analysis to identify any potential modes of Covid-19 transmissions and adopt and implement feasible preventive measures to eliminate or minimize the risk of transmission. The competent person shall provide a written list of these measures to each employee. These measures shall include, but not be limited to, the following:

(1) Identification in writing of the job categories, tasks or procedures in which employees may have occupational exposure to Covid-19.

(2) Implementing measures to assure social distancing including but not limited to:

(A) changing work stations, work area arrangements, and work flow or pace of work to ensure physical distancing of 6 feet, at a minimum, at all times:

(i) among employees at all work stations,

(ii) among employees in all other work areas,

- (iii) among employees in areas not utilized for work such as areas for breaks and meals, and
    - (iv) between employees and the public, including but not limited to:
      - (a) use of barriers between employees and the public;
      - (b) limiting the number of the public in the facility, marking distances in areas where the public may congregate;
      - (c) ensuring that where employees interact with customers at less than 6 feet, employees are provided with access to N-95 respirators (or filtering facepieces) and face shields;
    - (B) ensuring seating in areas where employees may take a break or eat meals face forward so that employees are not facing each other;
    - (C) ensuring limits are set for employees to occupy common areas such as locker or break rooms, dining facilities, training or conference rooms, so that all present can maintain a social distance of 6 feet;
    - (D) scheduling shifts and breaks to assure distancing in non-work areas;
  - (3) Installing ventilation systems designed to reduce employee exposure to the airborne virus;
  - (4) Implementing measures to assure personal hygiene including but not limited to:
    - (A) providing hand sanitizer that is at least 60% alcohol in multiple locations,
    - (B) providing time and materials and accessible locations for regular hand washing,
    - (C) adjusting operating procedures such as pace of work to assure that work assignments and requirements do not interfere with hygiene measures;
  - (5) Immediate cleaning of all shared materials before another employee handles that material, and regularly scheduled frequent cleaning and disinfection of areas and surfaces that may become contaminated and pose an infection risk to employees, including but not limited to:
    - (A) work areas accessible surfaces, vehicles, equipment and tools,
    - (B) shared non-work areas where employees congregate, including but not limited to: break, lunch, locker and rest rooms,
    - (C) high-touch surfaces throughout the workplace including but not limited to: doorknobs, stair railings, access keypads, light switches, shared items such as common water sources, microwaves, etc.,
  - (6) implementing other procedures to minimize the likelihood the public may contaminate workers, such as providing employees with personal protective equipment, including but not limited to:
    - (A) hand protection so employees do not handle items already handled by the public;
    - (B) requiring members of the public to cover their nose and mouth with face coverings while in the facility to minimize the transmission of airborne pathogens to employees.
- (c) Employers shall provide employees with the tools, operating equipment and PPE necessary to comply fully with public health orders, regulations and laws. These shall be provided by the employer to employees at no cost. PPE shall be assessed and certified as required by 8 CCR 3380.f.1 and f.2 for the hazard of exposure to Covid-19 risk, and employees shall be trained on the proper use of PPE required for potential exposure to Covid-19. Employees who provide their own PPE that meets or exceeds the PPE required by the Division shall not suffer any adverse action by the employer. All employees who are directed by their employer to wear compliant PPE shall be provided with a medical evaluation to assure

compliance with 5144.e. Employee respiratory protection designed to protect employees exposed to airborne pathogen hazards shall comply with 8 CCR 5144, including but not limited to subsections 5144.a.2, b, c, d, e, h, k, l and m, including filtering facepieces as defined in 5144.b.

(d) Employers shall train employees regarding and assure compliance with the **Compliance Action Plan**, and provide each employee with a copy of the Plan and the full list of compliance measures which apply to the employee's specific operations, jobs and tasks, including the names of and how to contact persons responsible for implementation of the plan. Training shall occur upon initial assignment, when site conditions change, and when hazards are newly introduced or newly recognized. Training shall be appropriate in content and vocabulary for the educational level, literacy, and language of employees.

(e) In addition to any specific recordkeeping or reporting requirements set forth in this regulation or state and local laws, regulations and orders, employers shall maintain records of the **Compliance Action Plan** according to the recordkeeping requirements in 8 CCR 3203 (b).