

# CORONAVIRUS INFORMATION & UPDATES

June 30, 2020

## Top 7 Operational Challenges for Offices with Stage 3 Guidance from California

On March 19, 2020 California Governor Gavin Newsom issued a state-wide stay-at-home order in response to the COVID-19 pandemic.<sup>1</sup> Nearly two months later, on May 8, 2020, Governor Newsom unveiled a four stage “Resilience Roadmap” for the gradual reopening of businesses and public spaces.<sup>2</sup> As counties enter Stage 3 of the Resilience Roadmap, which phases in high-risk workplaces, as defined below, the COVID-19 pandemic raises new challenges for employers and their employees.

### Top Seven Operational Challenges for Offices Under Stage 3 Guidance from California<sup>3</sup>

1. Worksite Specific Plan. California guidance requires workplaces to establish a written, worksite-specific COVID-19 prevention plan at every office location, perform a comprehensive risk assessment of all work areas, and designate a person at each office to implement the plan. This workplace infection prevention coordinator should also be responsible for communicating with employees and managing COVID-related issues, including personal exemptions and identifying COVID-19 outbreaks in the workplace.
2. Employee Training. The California Department of Public Health (CDPH) industry guidance for office workspaces requires employers to educate their employees on how to limit the spread of COVID-19. Training topics should include self-screening at home, the importance of handwashing and physical distancing, and the proper use of face coverings. Employers should also inform their employees about the employer or government-sponsored leave benefits available, including sick leave rights under the Families First Coronavirus Response Act, workers’ compensation benefits, and the presumption of the work-relatedness of COVID-19 pursuant to the Governor’s Executive Order N-62-20.<sup>4</sup>
3. Employee Health Screenings. Under the California guidance, businesses must either provide temperature and/or symptom screenings for all employees at the beginning of their shift or require that their employees self-screen before arriving at work. Employers choosing the latter option should ensure that the screening was performed in the home and was conducted pursuant to the CDC guidelines. Any contractors, vendors, or other individuals entering the workplace should also be temperature screened.
4. Face Coverings. June 18, 2020 CDPH guidance mandated the use of cloth face coverings in “high-risk” situations. Such situations include: when inside any public space, when working in any space visited by the

<sup>1</sup> California Executive Order N-33-20 (March 19, 2020). Accessible at: <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf>.

<sup>2</sup> Governor Newsom Releases Updated Industry Guidance, *Office of Governor Gavin Newsom* (May 7, 2020). Accessible at: <https://www.gov.ca.gov/2020/05/07/governor-newsom-releases-updated-industry-guidance/>.

<sup>3</sup> California Department of Public Health, *COVID-19 Industry Guidance: Office Workspaces*, May 12, 2020. Accessible at: <https://covid19.ca.gov/pdf/guidance-office-workspaces.pdf>.

<sup>4</sup> California Executive Order N-62-20 (May 6, 2020). Accessible at: <https://www.gov.ca.gov/wp-content/uploads/2020/05/5.6.20-EO-N-62-20-text.pdf>. (Section 1 of the Executive Order states that “[a]ny COVID-19-related illness of an employee shall be presumed to arise out of and in the course of the employment for purposes of awarding workers’ compensation benefits” if certain requirements are satisfied, which are further enumerated in the Executive Order.)

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public, or while in any enclosed area with other people where maintaining appropriate physical distancing is not possible.<sup>5</sup> CDPH has defined “high-risk” broadly enough to encompass the majority of workspaces, so employers should ensure that these guidelines are followed in all areas, including office hallways, stairwells, common areas, parking facilities, and elevators. We recommend that employers provide face coverings for their employees. Employers should also be prepared to respond to employees who claim to fall within one of the enumerated exemptions to the face-covering rule (such as persons with hearing impairments or other medical conditions or disabilities) and should be prepared to enforce workplace rules around face coverings in a uniform manner.

5. Cleaning and Disinfecting Protocols. Under the California guidance, employers are expected to perform thorough cleaning on high traffic areas and frequently to disinfect commonly used surfaces, including doorknobs, toilets, and handwashing facilities. Employers must avoid the sharing of office equipment whenever possible and should disinfect between uses. Employers must also consider how to acquire and maintain adequate cleaning supplies and how to coordinate cleaning throughout the day in accordance with CDC guidance.
6. Physical Distancing Guidelines. California guidance requires employers to implement measures to ensure six-foot physical distancing. Employers should consider whether to erect physical partitions, redesign office spaces, or create floor markings or other visual cues. Meetings may need to take place virtually or in larger conference rooms to maintain safe distancing. Employers should also decide whether to implement modified work schedules, such as staggered start and end times or alternating days onsite.
7. Reporting Coronavirus Cases to Appropriate Government Authorities. California guidance requires employers to have a process in place to notify their local health department of a known or suspected COVID-19 outbreak or a confirmed laboratory case in the workplace. The process should comply with the specific instructions of the local health department in the jurisdiction where the workplace is located. The local health department where the COVID-19 positive employee resides should also be notified. Hospitalizations and deaths from COVID-19 should be reported to Cal/OSHA, even if work relatedness is uncertain.

The California guidance represents minimum expectations for businesses operating in Stage 3, and counties may impose additional, more stringent requirements on employers. Employers should evaluate whether employees can effectively continue to work remotely, and should allow them to do so where appropriate. It remains to be seen how the guidelines will be enforced and whether the operational costs of implementing the guidelines will be worth the benefits of bringing employees back to the office in all circumstances. Businesses should also consider how their liability and workers’ compensation insurance policies interact with any return to the workplace and whether failure to adhere to California and county guidance could lead to public relations issues in addition to any liability or enforcement consequences. Finally, the California guidance should also be read in connection with federal requirements and guidance, such as employers’ obligations under the Occupational Safety and Health Act general duty clause<sup>6</sup> and guidance promulgated by CDC.

<sup>5</sup> Guidance for the Use of Face Coverings, *California Department of Public Health* (June 18, 2020). Accessible at: [https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Guidance-for-Face-Coverings\\_06-18-2020.pdf](https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Guidance-for-Face-Coverings_06-18-2020.pdf).

<sup>6</sup> *Phasing-In: Use of COVID-19 Testing as a “Return to Work” Strategy*, Ropes & Gray (April 29, 2020). Accessible at <https://www.ropesgray.com/en/newsroom/alerts/2020/04/Phasing-In-Use-of-COVID-19-Testing-as-a-Return-to-Work-Strategy>.