



# COVID-19 & the Workplace

DALY CITY COLMA CHAMBER OF COMMERCE

JUNE 24, 2021

# Where to look for current information and updates:

Cal OSHA

Department of  
Fair  
Employment  
and Housing

Division of  
Labor  
Standards  
Enforcement



Barbara L. Harris Chiang  
Attorney, SV Employment  
Law Firm PC

- ▶ Barbara Harris Chiang is an attorney in the San Mateo office of SV Employment Law Firm PC and is licensed to practice law in both California and Missouri.
- ▶ Her practice focuses in all areas of employment litigation, including wrongful termination, breach of contract, discrimination, harassment, retaliation, the Americans with Disabilities Act, reductions in force, wage and hour issues, privacy rights, trade issues, and all matters related to COVID-19 and employees in the workplace
- ▶ Barbara has expertise in representing employers before the EEOC, CA Department of Fair Employment and Housing, CA Labor Commissioner, U.S. Department of Labor, National Labor Relations Board and various courts, on all areas of employment law.

# Cal OSHA

Emergency Standards Adopted by Cal OSHA Board that went into effect on June 17, 2021, covers three main areas of concern for employers:

- ▶ **Face Coverings**
- ▶ **Social Distancing**
- ▶ **Respirators**
- ▶ **Documentation of Vaccine Status**

# WHICH EMPLOYEES MUST WEAR A MASK?

- ▶ Fully vaccinated employees do not need to wear face coverings at work
  - ▶ Except in certain settings:
    - ▶ Public transportation
    - ▶ Schools, childcare, youth settings
    - ▶ Healthcare settings, long term care
    - ▶ Correctional and detention centers, shelters (homeless/emergency/cooling)
- ▶ Unvaccinated employees (vaccinated) are required to wear a face covering indoors and in vehicles
  - ▶ Exceptions for unvaccinated employees
    - ▶ Alone in a room or vehicle
    - ▶ When eating and drinking
    - ▶ When an accommodation is required
    - ▶ When job duties make a face covering infeasible or create a hazard

When is an  
employee  
considered  
fully  
vaccinated?

Once an employer has documented  
employee received, at least 14 days prior:

- ▶ Either the second dose of a two-dose  
COVID-19 vaccine series
- ▶ Or a single-dose COVID-19 vaccine.

# SOCIAL DISTANCING

- ▶ In general, social distancing and barrier requirements have been removed regardless of vaccination status with the following exceptions:
  - ▶ ▶ OK to continue physical distancing and barriers, at employer discretion
  - ▶ ▶ Must continue assessing workplace hazards and implementing controls to prevent transmission of disease
  - ▶ ▶ Must make a determination if physical distancing necessary when outbreak of 3 or more employees in an exposed group,
  - ▶ ▶ Must enforce physical distancing and barriers if there is a major outbreak (20 or more employees in an exposed group, regardless of vaccination status)

# RESPIRATORS

- ▶ Employers must provide respirators (N95s)
  - ▶ **Unvaccinated employees**
    - ▶ working indoors with others
    - ▶ ▶ or in a vehicle and who requests one, and
  - ▶ **Vaccinated employees**
    - ▶ ▶ For voluntary use if there is a major outbreak

**Respirators must be the right size, and the employee must receive basic instruction on how to get a good “seal,” or fit**



# RULES FOR PROVIDING RESPIRATORS

1

Stock respirators and offer them to employees

2

Ask employees if they want a respirator purchased for them

3

Keep sufficient supply for reasonably foreseeable requests

4

Employees may buy respirators, with approval, and be reimbursed

5

Major Outbreak: immediately offer to all employees

6

Upon request provide **ASAP** to unvaccinated employees

# Why do employers have to provide respirators?

- ▶ Cal/OSHA is requiring voluntary respirators because California is phasing out physical distancing, because a well-fitting respirator reduces the risk of infection better than physical distancing alone, and because respirators are readily available.

# What does an employer have to do to document vaccination status?

No specific method of documentation is required

- ▶ Acceptable Options
  - ▶ Employees provide proof (i.e. vaccine card, image of vaccine card, health care document showing vaccination status)
  - ▶ Employees self-attest

What if an employee refuses to disclose vaccination status or employer does not want to ask?

- ▶ Any employee not providing, or refusing to provide, proof of vaccination (with documentation or self-attestation) must be treated as unvaccinated.

What does an employer do with information regarding employee vaccination status?

- ▶ Any information provided regarding vaccination status must be kept in a secure location, with limited access only for those who must have access
- ▶ Treat vaccination information the same as any medical information

Is an employer obligated to cover cost of vaccination if required for work?

Employer must pay for the costs of vaccine like any business-related expense

If employee must travel off site for vaccine, reimburse travel to and from the testing or vaccination location and any associated costs

# Does an employer have to reasonably accommodate employees with disabilities and sincerely held religious beliefs?

## FEHA REQUIRES:

- ❖ Reasonable accommodations for employees with known disabilities and sincerely-held religious beliefs
- ❖ Engaging in the Interactive Process

## FEHA PROHIBITS:

- ❖ Retaliation
- Employers may NOT retaliate against employees requesting accommodation



Barbara L. Harris Chiang  
SV Employment Law  
Firm PC

[bchiang@svelf.com](mailto:bchiang@svelf.com)

BOREL FINANCIAL CENTER

160 BOVET ROAD, SUITE 401

SAN MATEO, CA 94402

650 265-0222 OFFICE

650 265-0221 DIRECT