

Cal/OSHA and COVID Checkpoint: Emergency Temporary Standard, Vaccines, and Lawsuit Defenses

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California Emergency Temporary Standard

- Applies broadly to employers, workers and workplaces
- Good faith grace period
- Principal Requirements
 - a. COVID Prevention Program
 - b. Communication
 - c. Identify & Correct
 - d. Distancing
 - e. Covering
 - f. Controls and PPE
 - g. Training
 - h. Testing & Exclusion

Employers Challenge ETS

- Plaintiffs
- Emphasis on pre-existing standards, regulations and guidance
- Administrative Procedure Act
- Occupational Safety & Health Act
- 14th Amendment Due Process
- California Constitution guarantee of property protection
- Declaratory Judgment & Injunction

AB 685

- Effective January 1 (Labor Code 6409.6)
- Written Notice to employees/unions
- Limited exception for testing and health care
- “Qualifying Individual”
- Public Health Notice

SB 1159

- WC laws amended
- COVID Presumptions (3 circumstances)
- Ability to present rebuttal evidence
- Sunsets January 1, 2023

VACCINES: LIGHT AT THE END OF THE TUNNEL?

- **Emergency Use Authorization (December 2020): Pfizer-BioNtech and Moderna**
- **May Employers Mandate Vaccination as a Condition of Employment?**
 - ❖ **OSHA Standard Interpretation (2009)**
 - ❖ **Employee's sincere concerns about side effects?**
- **Unionized employers: mandatory subject of bargaining**

Vaccines: Light at the End of the Tunnel? (cont.)

- **EEOC Guidance Issued December 2020**
 - ❖ Vaccination is not a “medical examination”
 - ❖ But, beware of disability-related inquiry
- **Reasonable accommodation for disability and religious objections**
 - ❖ ≠ Anti-Vaxxer
- **Nudge, Encourage, or Incentivize Employees to be Vaccinated?**

Pandemic-Related Litigation and Defenses

- **Layoffs**
 - ❖ **Discrimination**
 - ❖ **WARN Act**
- **FFCRA, COVID-19 Supplemental Paid Sick Leave, and Leave Administration**
- **Whistleblowing (OSHA and Labor Code section 6310 and 6311)**

Cal OSHA Recording & Reporting

- Log 300 Recording
- Confirmed diagnosis required?
- Work-related determination
- Time in quarantine
- When to report
- What if not work-related?
- Symptoms outside work

WC Exclusivity Exceptions

- Dual Capacity
- Fraudulent Concealment
- Employer Assault or Ratification
- Power Press
- Uninsured Employer

PREP Act

- Liability Protection for “Covered Persons”
- “Covered (Medical) Countermeasures”
- Four HHS Declarations and Four Amendments
- Expands “Qualified Persons”
- Pharmacist vaccine training
- Protection for taking no action?
- Whole-of-nation response

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Questions



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