



## MEMBER ALERT

# Cal-OSHA Emergency COVID-19 Regulations Require Counting Students in Outbreaks

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As previously reported, California employers are required to comply with four different sets of new regulations regarding COVID-19 and the responsibility for addressing and reporting outbreaks of multiple COVID-19 positive cases in the workplace. These statutes, public health orders, and emergency safety regulations all define “outbreak” in slightly different language. The most stringent in defining outbreak is the Cal-OSHA emergency regulation (emergency temporary standard 3205 – referenced as “ETS 3205”).

The purpose of this Alert is to advise our Members that recent communication with two separate Cal-OSHA enforcement officials has confirmed that under ETS 3205, **students who had close contact in an exposed workplace must be counted in identifying and reporting outbreaks at a school site.**

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**Cal-OSHA ETS 3205**, effective 11/30/20, defines outbreak as:

- 3+ “COVID-19 cases” of individuals who were present and in close contact at any “exposed workplace” in a 14-day period (many of these terms are defined in the [regulations](#)).
- **It is use of the term “COVID-19 case” instead of “employee” (as is used in other regulations) in the context of identifying an outbreak that results in the requirement that students be counted as part of an outbreak, which must then be promptly reported to the county health department.**

Cal-OSHA is the agency tasked with enforcing these standards and issuing penalties for non-compliance. We have been in direct contact with two Cal-OSHA enforcement officials for ETS 3205, and both confirmed that students must be included in identifying and reporting outbreaks at a school site.

Based on these conversations, **we are advising NBSIA Members to comply with the most stringent outbreak standard**, which is the Cal-OSHA ETS 3205. **Districts and COEs should include students with positive COVID-19 tests as part of an outbreak**, and when a combination of 3+ employees and/or students who were in close contact at an exposed workplace test positive, report those cases to the county health department within 48 hours after learning of the outbreak.

### Department of Industrial Relations FAQs on ETS 3205:

**Q:** What is an “exposed workplace” and how should an employer determine which work areas are included?

**A:** An exposed workplace is a work location, working area, or common area used or accessed by a COVID-19 case during the high-risk period, *including bathrooms, walkways, hallways, aisles, break or eating areas, and waiting areas*. If, within 14 days, three COVID-19 cases share the same “exposed workplace,” then the Multiple COVID-19 Infections and COVID-19 Outbreaks standard (section 3205.1) applies, and additional testing will be required. When determining which areas constitute a single “exposed workplace” for purposes of enforcing testing requirements, Cal-OSHA does not expect employers to treat areas where masked workers momentarily pass through the same space without interacting or congregating as an “exposed workplace,” so they may focus on locations where transmission is more likely.

**Q:** Is the “three or more cases” outbreak requirement limited to employee cases, or do cases involving anyone that has been in the workplace count towards the requirement?

**A:** Any confirmed COVID-19 case who has been in the workplace during the high-risk exposure period counts towards the three-case threshold.

### **Exposed Workplace in Schools**

The broad definition of “exposed workplace” necessarily includes classrooms, library, food service area, or other area where both employees and students are present and in close contact **during the infectious period** and subsequently test positive for COVID-19 within a 14-day period.

### **Conclusion**

ETS 3205 went into effect on November 30<sup>th</sup>, so the requirement to include students in the count for outbreaks is effective on that date. It is a temporary standard in place for at least 180 days and longer if readopted.

We realize that this new temporary standard places an additional burden on our Members at a challenging time. We are here to support you. NBSIA is scheduling additional training with Patti Eyres, including Questions and Answers to all your COVID-19 exposure, outbreak, and notification questions.

In the meantime, if you have questions or need help with any aspect of these standards, please contact Patti through our hotline at 602-448-4051 or by email to [peyres@eyreslaw.com](mailto:peyres@eyreslaw.com).