California Worker Safety Regulators Approve Covid-19 Rule

- Expected to take effect by December
- Mandatory masks, medical leave, testing

By Bruce Rolfsen | November 19, 2020 10:07PM ET

California’s Occupational Safety and Health Standards Board has approved an emergency Covid-19 rule that likely will take effect in the most populous U.S. state next month.

The approval, by a 6-0 vote Thursday, came six months after worker advocates petitioned the board and the California Division of Occupational Safety and Health, commonly called Cal/OSHA, to enact virus-specific protections for the state’s approximately 19 million workers.

The rule’s core requirement is that employers must implement an effective Covid-19 prevention program. Those measures can be merged into the employer’s existing injury and illness prevention program, according to the terms of the measure.

Cal/OSHA chief Doug Parker called the rule “aggressive,” “achievable,” and needed to prevent infections.

“Covid represents the most significant hazard that we hope we’ll ever have to address,” Parker said.

The next step toward the rule’s implementation is review by the California Office of Administrative Law to ensure the measure meets requirements for an emergency regulation and the approval process was legal. The office has up to 10 days to complete its review.

The rule officially takes effect when it’s filed with the Secretary of State’s office. The temporary rule is scheduled to stay in effect for 180 days. After that, the measure can be renewed every 90 days until the state decides the emergency has ended or a permanent rule is enacted.

The approval came the same day Gov. Gavin Newsom reinstated evening curfews in areas with high infection rates.

“It’s only going to get worse,” Board Chair David Thomas said about the virus’s spread. “We’ve got to lead at some point. Sitting on this and waiting isn’t going to help.”
Business Objections

The board heard from dozens of witnesses via video conference before the vote.

Robert Moutrie, policy advocate for the California Chamber of Commerce, said employers are concerned about the feasibility and clarity of the rule. “It has a lot of confusing and conflicting provisions,” Moutrie said.

Requirements for employers to determine whether workers are infected could put employers in violation of medical privacy regulations, Moutrie said. He also questioned whether the California Division of Occupational Safety and Health had the authority to set pay and time-off requirements for workers possibly exposed to the virus.

Moutrie and other employer representatives also said businesses should be given at least 30 days to prepare for complying with the rule.

Parker said Cal/OSHA’s rule enforcement will take into account that some employers will need more than 10 days to prepare for and comply with the rule. Employers making “good faith” efforts to comply could be allowed additional time.

The Cal/OSHA chief said he expects an advisory committee will be created to address problems with the rule that arise after compliance and enforcement begin.

Numerous workers testified about crowded break rooms in stores and factories where social distancing guidelines weren’t followed. A clothing store employee said she was required to sanitize dressing rooms after every use, but didn’t have adequate equipment to protect herself.

“A lot of employers really do not do what they need to,” said Mitch Steiger, legislative advocate for the California Labor Federation.

Outbreak = Testing

Employers’ Covid-19 programs must include provisions that match the rule’s mandates including wearing masks, social distancing, free virus testing, regular cleaning, evaluating building ventilation, and medical leave for employees who are or may be infected with the virus.

While the rule doesn’t reference guidance from the federal Centers for Disease Control and Prevention, the standard incorporates many CDC recommendations.

Employees will be required to wear masks when indoors and outdoors if working within 6 feet of another person.

Workplaces that have an outbreak of virus cases must take additional precautions, the rule says. If a site has three cases within 14 days, free testing must be offered to workers and continue at least once a week until no new cases are found for at least two weeks.
If a workplace has a major outbreak—defined as 20 more instances within 30 days—the employer must offer free tests to workers at least twice a week until the site goes 14 days without a new virus case, install hospital-grade air filters if the ventilation system can handle the air flow, and determine the workplace factors that contributed to the outbreak.

California is the fourth state with its own worker safety agency to enact a Covid-19 rule. Virginia, Oregon, and Michigan earlier approved emergency regulations. Other states such as New Jersey and Nevada have used executive orders to set workplace virus protection mandates.

Trump administration leaders of the U.S. Department of Labor and the federal Occupational Safety and Health Administration have repeatedly said they don’t believe a federal virus rule is needed. Instead, they have argued that enforcement actions can be pursued under existing rules and laws.

President-elect Joe Biden has said enacting a nationwide Covid-19 worker protection rule is a high priority.