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**Spring is in the air... (among other things). Take the time now to review and update your Cal/OSHA IIPP as California returns to work.**

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Good morning.

With the prospect that some of you will be re-opening medical offices or going into a medical office to resume face-to-face encounters with patients and staff, I want to pass along the attached blog from Carothers, DiSante & Freudenberger, LLC., one of the top employment law firms in California. They defend employers in employee legal disputes. Part of their work is to be a source for and expert in, how to avoid those lawsuits. This blog is an excellent example of how they accomplish that responsibility.

This makes for a good read and serves as a heads up to us all whether we are employees, owners, in private practice or part of large organizations.

The key takeaway is that the issues and risks presenting themselves over the coming weeks and months will often go hidden or glossed over. CD&F offer some words to the wise.

Take care, be well

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## Spring is in the air... (among other things). Take the time now to review and update your Cal/OSHA IIPP as California returns to work.

Topics: [COVID-19](#)

By: [Thomas B. Song](#), [Dan M. Forman](#)

As California prepares to return to work, the ease of transmittal of COVID-19 cannot be disputed in the community and the workplace. Compounding this problem is that the CDC recognized that asymptomatic and even pre-symptomatic individuals can transmit the virus to others. In other words, people who do not show any symptoms can spread COVID-19. Add to this the very real potential for employees to become seriously ill and/or die from the disease, and it's easy to see how COVID-19 has become one of the stealthiest potential workplace hazards in recent times.

With that in mind, employers are challenged as to how to update their Injury and Illness Prevention Program ("IIPPs"), typically associated with "routine" or common hazards in the workplace, such as physical guards against injury, fall protection, or eliminating exposure to harmful gases or chemicals.

However, an employer's IIPP should be flexible, and is governed by what is known in the OSHA-world as a "*performance standard*." The performance standard allows employers to create and tailor their IIPPs as necessary to effectively guard against hazards in each particular place of employment. Therefore, it would behoove employers to use this time to update, train, and guard against the risk of

COVID-19 in their workplace. Not only will this educate and protect your workforce creating higher morale, but should Cal/OSHA “come-a-knocking” after a complaint or COVID-19 exposure – you will be much better positioned to respond in confidence that your IIPP adequately addresses the hazard of COVID-19.

### **IIPP Introduction**

California law requires every company doing business in California to have a written and effective IIPP. (*Labor Code § 6401.7 and 8 CCR § 3203.*)

An IIPP must include the mandatory elements required under the IIPP regulation. However, it is the actual implementation of the IIPP that Cal/OSHA frequently scrutinizes when they are on the scene. Without successful implementation, employers open themselves up to citations, no matter how thorough their written IIPPs.

### **Required Training Under the IIPP**

The most basic and fundamental part of a company’s IIPP is its training program. As applies to COVID-19, section 3203(a)(7) requires training:

- (E) Whenever the employer is made aware of a **new or previously unrecognized hazard**; and,
- (F) For supervisors to familiarize themselves with the safety and health hazards to which employees under their immediate direction and control **may be exposed**.

[Cal/OSHA currently recommends](#) that training, at a minimum, be provided on the following topics regarding COVID-19:

- Cough and sneeze etiquette
- Hand hygiene
- Avoiding close contact with sick persons
- Avoiding touching eyes, nose, and mouth with unwashed hands
- Avoiding sharing personal items with co-workers (i.e. dishes, cups, utensils, towels)
- Providing tissues, no-touch disposal trash cans and hand sanitizer for use by employees

Cal/OSHA issued guidance to the agriculture and grocery store communities, recommending that physical distancing procedures be implemented to guard against the spread of COVID-19. Therefore, while Cal/OSHA does not currently mandate physical distancing, given the CDC’s recommendations about physical distancing and Cal/OSHA’s directive to the agriculture and grocery sectors, a prudent employer will provide training as to physical distancing, too. Click [here](#) for Cal/OSHA Grocery Store guidance and [here](#) for Cal/OSHA’s Agriculture guidance.

As your workplace operations may dictate, employees should be trained on topics such as respirator protection or the [use of face masks or facial coverings \(i.e., non-respirators\)](#), [as recommended by the CDC](#) when social distancing is difficult to maintain in the workplace.

Importantly, don’t be the employer that forgets to document its training. While the requirement to maintain training records is contained under a separate section of the IIPP regulation – section 3203(b)(2) – the Cal/OSHA Appeals Board has held that a failure to maintain training records can be used as evidence that the training (*itself*) did not actually occur to support a finding that an employer did not have an effective IIPP under section 3203(a)(7). Like many of California’s employment laws, putting the burden on the employer to affirmatively prove compliance with the laws and easing Cal/OSHA’s burden to prove a violation that *actual training* did not occur, will allow Cal/OSHA to use lack of documentation as affirmative evidence to prove a violation of the training mandate. Fair or not, keeping track of the name of the instructor, date, topic, and person receiving training, is a small burden compared to trying to explain at a hearing who and what was trained on and justifying why no records were maintained.

## **Hazard Assessment Under the IIPP**

An IIPP must also include procedures “**for identifying and evaluating workplace hazards** including scheduled periodic inspections to identify unsafe conditions and work practices.” While there remains a lack of guidance or Board decisions, COVID-19 will likely be found to fall under subsection (C), which states that, “Inspections shall be made to identify and evaluate hazards: Whenever the employer is made aware of a **new or previously unrecognized hazard. 8 CCR 3203(a)(4)(C).**”

To comply with this standard, employers typically include the inspection requirements in their written IIPP, and then perform periodic physical inspections of the workplace. For instance, a manufacturing supervisor could inspect machines before the start of a shift, to ensure that guarding was in place for all pinch point hazards. Or a construction foreman could periodically inspect the job site to ensure that all guardrails and floor-hole coverings were in place. However, these common visual, periodic inspections of the workplace surely will not be seen as passing muster when “identifying and evaluating” the new risk of COVID-19 in the workplace.

Instead, employers should proactively take steps to protect against (i.e., “identify”) the risk of COVID-19 in the workplace, including procedures such as (1) requiring employees to report to their supervisors when sick and to stay home, especially when symptoms such as persistent cough, shortness of breath, and fever are present; (2) requiring employees who travel to COVID-19 hotspots or were exposed to someone with COVID-19 to immediately report their exposure and self-quarantine in accordance with CDC recommendations, and (3) encourage employees to work remotely, when possible. Additionally, by establishing strict social distancing and hygiene protocols at work, such as the use of hand sanitizers, tissues, lined-waste disposal, readily available soap and washing facilities, cleaning of commonly used areas and equipment, and PPE if necessary (especially for those at a higher risk of serious illness or death due to age or underlying medical conditions), also helps establish that the company is actively engaged in identifying and evaluating, and protecting against the risk of COVID-19 in the workplace.

Additionally, an employer might elect to perform inspections at random times throughout the day to supervise adherence to social distancing policies, whether soap, water, and hand sanitizers, etc. are readily available. If common areas are frequently used by employees (i.e., copier rooms, tool sheds, bathrooms, foyers, etc.) companies should consider cleaning and disinfecting frequently touched areas, using the [methods and disinfectants recommended by the CDC](#). Of course, at no time should employees be dissuaded or pressured not to report such symptoms associated with COVID-19, for the participation of all employees is necessary in order to have an effective hazard assessment program.

### **Key Takeaways**

All California employers must have an IIPP to protect against workplace hazards. Given the spread of COVID-19 among the community and in various workplaces, employers should take the time to update their IIPPs, and educate their workforce on COVID-19 disease prevention and control measures.

Remember, the IIPP regulation is a *performance standard*, and some leeway is provided and indeed essential in order for employers to devise practical and yet effective programs to address the potential threat of COVID-19.

Don't assume that your employees have been trained just because the disease is being covered by the media. Follow the guidelines of the CDC, and remember, if you don't *document* the training given to your employees, you will face an uphill battle convincing Cal/OSHA that the training you paid for and conducted was otherwise provided.

