

California's New COVID-19 Safety Regulations: What Employers Need for 2021

Presented by:

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Speakers



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Agenda – Best Hour Ever!

- What's happening now in January 2021
- Cal/OSHA COVID-19 Regulations - Deep Dive and analysis of recent FAQs
- Learn from the Experts
 - Application
 - Exposures
 - Exposed Workplace
 - Notices
 - Testing
 - Outbreaks
 - Notifications
- Checklists and Action Items



Here we are January 2021

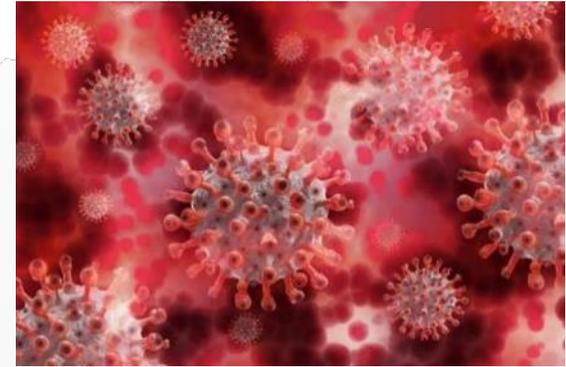
FAQs released January 8, 2021 and December Executive Order – what do they mean?

Are the Cal Chamber or Trade Groups pushing to have the regulations modified or changed?

What about the law suits that I heard about?

What is happening with enforcement?

Tell me what other employers are doing right now to try to comply?



FAQs – Friday January 8, 2021

40 days into the new Cal/OSHA COVID-19 Emergency Temporary Standard, updated FAQs issued – 68 Questions and Answers

<https://www.dir.ca.gov/dosh/coronavirus/COVID19FAQs.html>

Are FAQs persuasive authority?

Do these FAQs help or hurt some of our prior interpretations?



Do any of the FAQs address Executive Order N-84-20? YES!

- ✓ December 14, 2020
- ✓ Alignment with CDPH published updated COVID-19 Quarantine Guidelines which are based on CDC guidelines.

“The exclusion periods required in California Code of Regulations, Title 8, section 3205(c)(10) and the periods for which a worker shall not return to work specified in section 3205(c)(11) shall be suspended to the extent that they exceed the longer of - ...”



Executive Order N-84-20

“Applying Executive Order N-84-20 and current CDPH quarantine guidance, while a 14-day quarantine is recommended, an exposed employee who does not develop symptoms, may return to work after 10 days have passed since the date of law known COVID-19 exposure.”



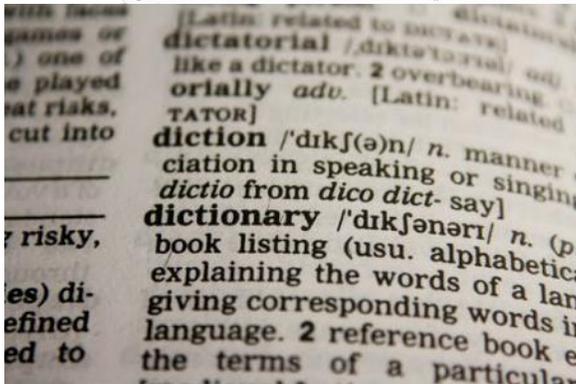
Title 8 CCR 3502 et seq

FAQs

Foundational Questions

Written Covid-19 Prevention Program

- Eleven Elements
- Availability: The written COVID-19 Prevention Program shall be made available at the workplace to employees, authorized employee representatives, and to representatives of the Division immediately upon request.
- Implement the Program: Document!



FAQ

Kevin: Can I make the CPP available on the company intranet where all employees have access in compliance with this regulation?



Foundational Question: Definitions



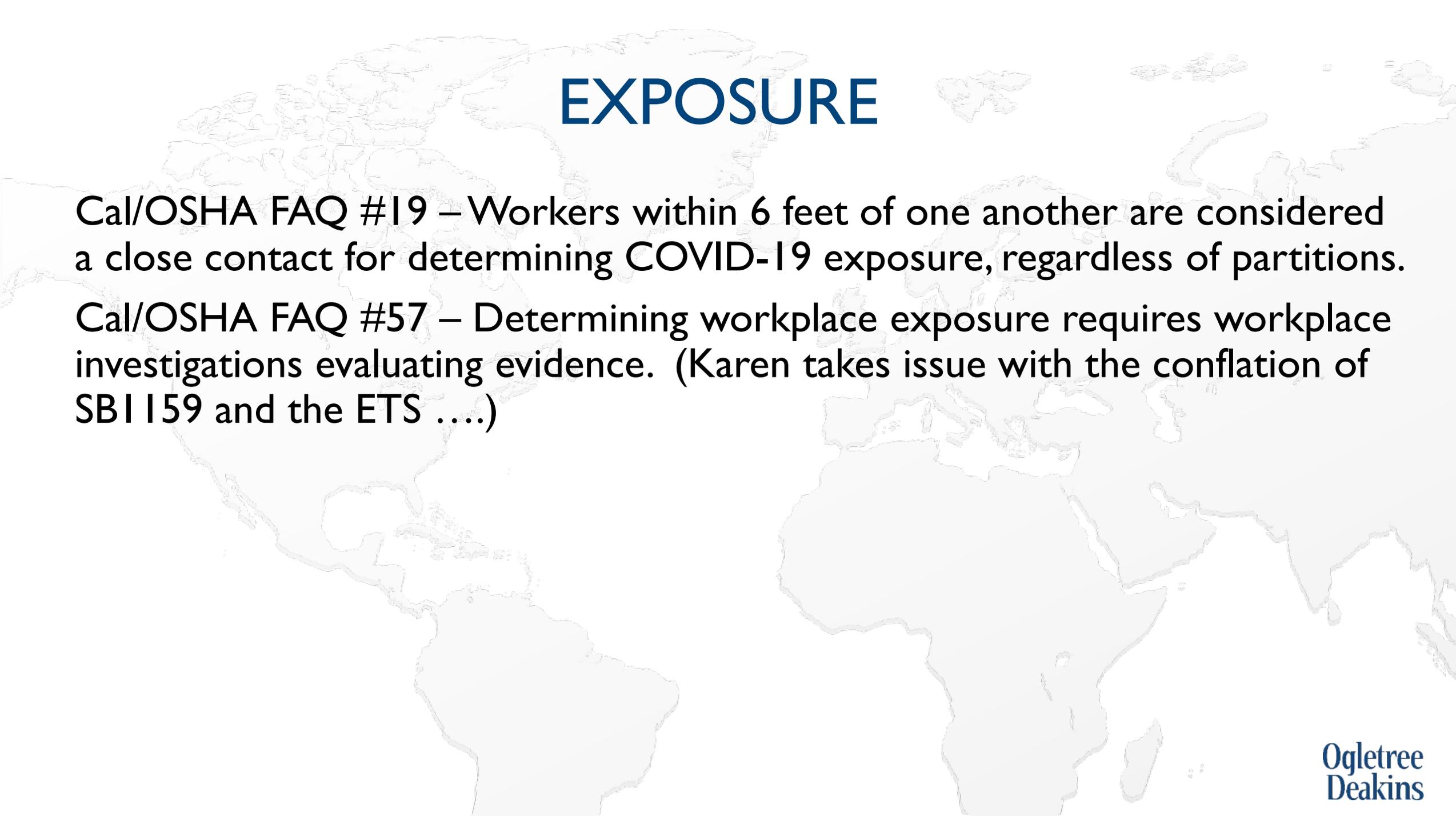
6-15-24

“COVID-19 exposure” means being within six feet of a COVID-19 case for a cumulative total of 15 minutes or greater in any 24-hour period within or overlapping with the “high-risk exposure period” defined by this section.

This definition applies regardless of the use of face coverings.

What about N-95s?

What about partitions?

A light gray world map is visible in the background of the slide, showing the outlines of continents and oceans.

EXPOSURE

Cal/OSHA FAQ #19 – Workers within 6 feet of one another are considered a close contact for determining COVID-19 exposure, regardless of partitions.

Cal/OSHA FAQ #57 – Determining workplace exposure requires workplace investigations evaluating evidence. (Karen takes issue with the conflation of SBI 159 and the ETS)

Foundational Question: Definitions



“Exposed workplace” means any work location, working area, or common area at work 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.



The exposed workplace does not include buildings or facilities not entered by a COVID-19 case.

FAQ – “Exposed Workplace”

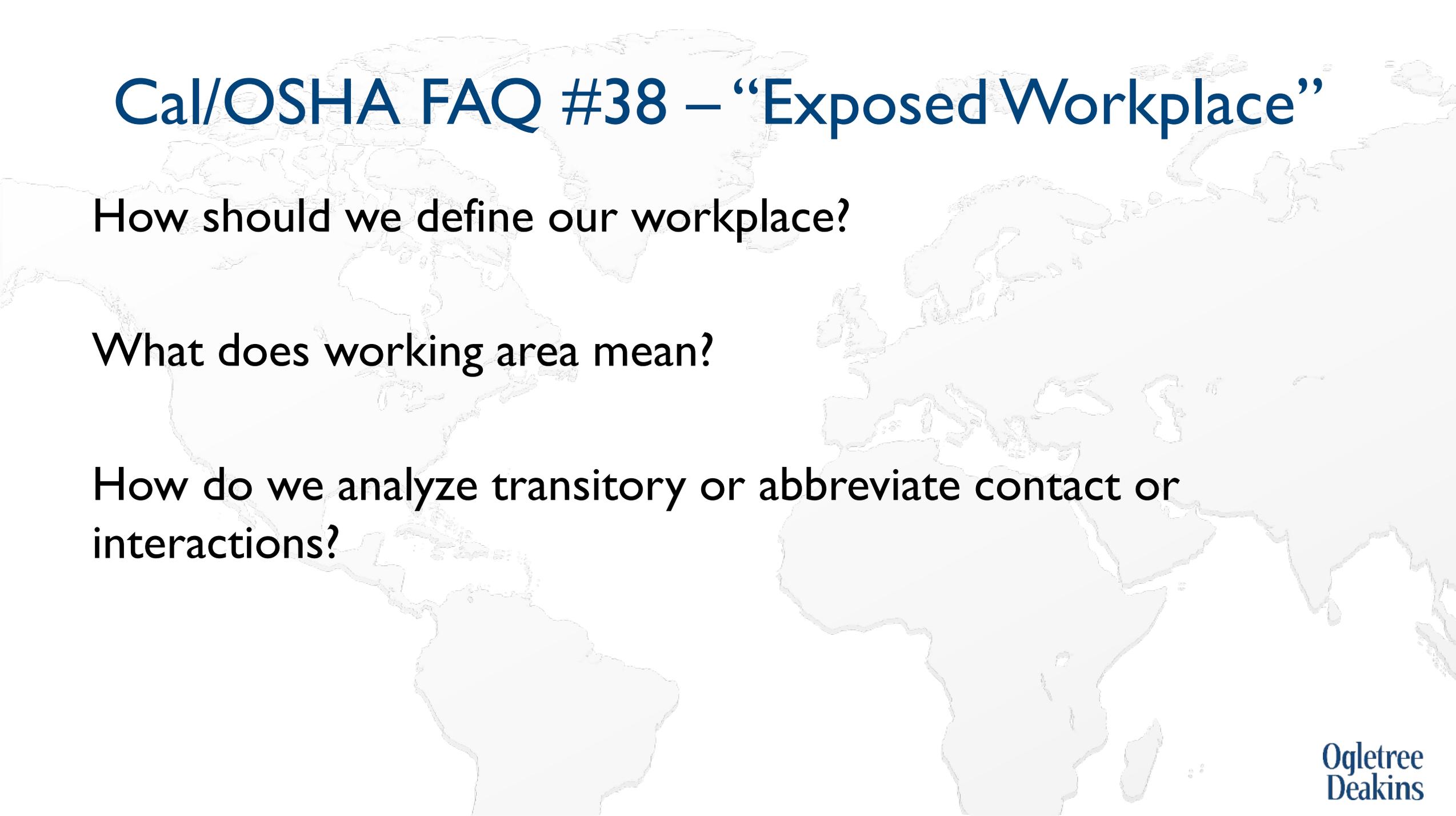
Cal/OSHA FAQ #39

Does the “exposed workplace” mean the entire workplace? Does this change after January 1, 2021 when AB 685 goes into effect?

Answer: No.

The “exposed workplace” includes only the areas of the building where the COVID-19 cases were present during the “high-risk exposure period.”

Remember: The contract is “OR”



Ca/OSHA FAQ #38 – “Exposed Workplace”

How should we define our workplace?

What does working area mean?

How do we analyze transitory or abbreviate contact or interactions?

Training

CPP has 8 topics to include in training.

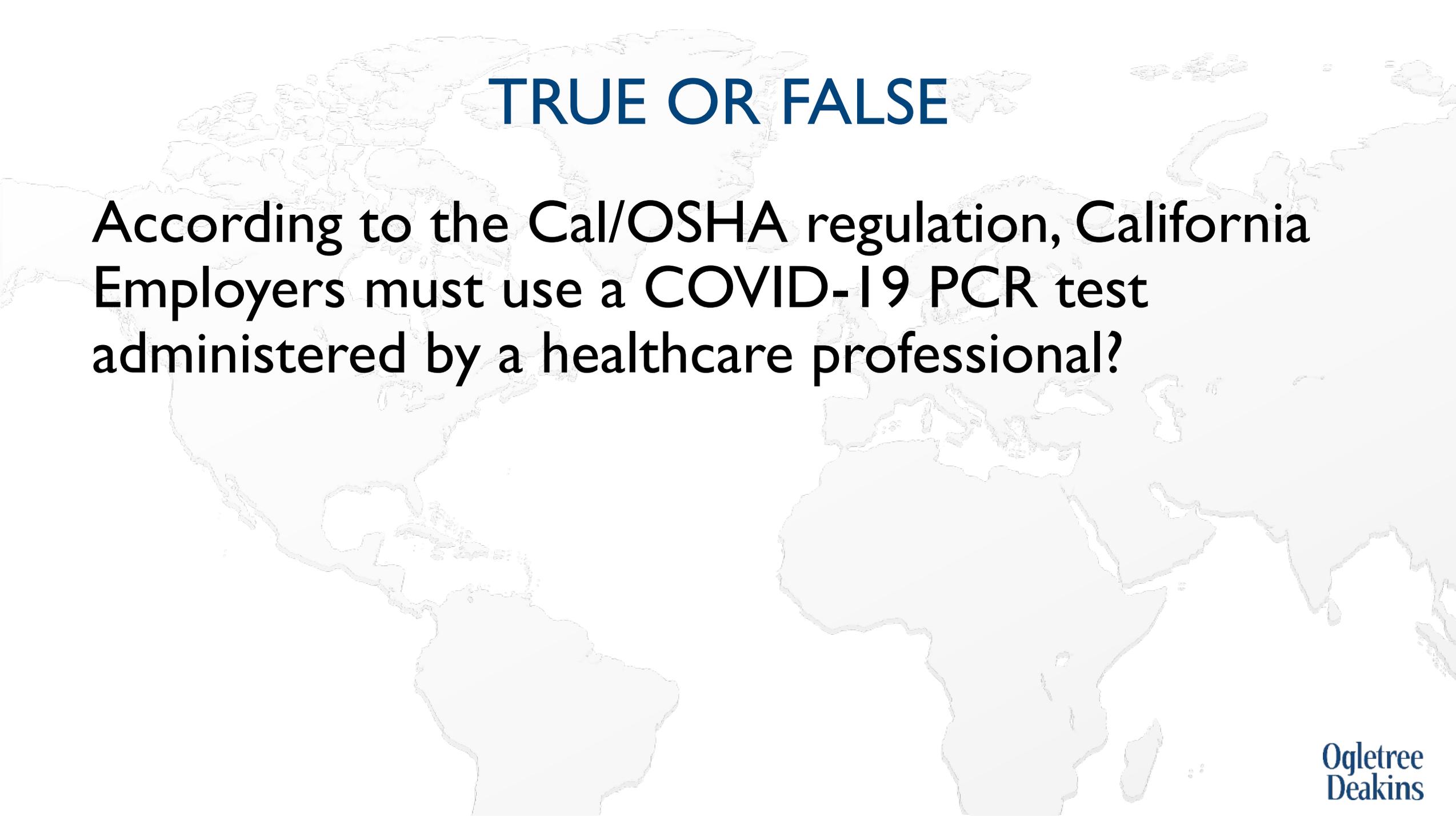
Kevin:

If we trained people in May or June, does that training count?

If we train people remotely with power points or in meetings, how do we record that training to comply with Cal/OSHA?

Has Cal/OSHA issued any training materials?



A light gray world map is visible in the background of the slide, showing the outlines of continents and oceans.

TRUE OR FALSE

According to the Cal/OSHA regulation, California Employers must use a COVID-19 PCR test administered by a healthcare professional?

Testing, Testing, 1, 2, 3 ... “Workplace Exposure”

After a 6-15-24:

Offer COVID-19 testing at no cost to employees during their working hours to all employees who had potential COVID-19 exposure in the workplace and provide them with the information on benefits described in subsections (c)(5)(B) and (c)(10)(C).

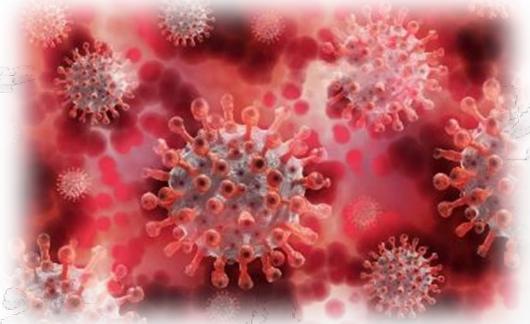


Testing, Testing, 1, 2, 3 ... “Outbreak”

The employer shall provide COVID-19 testing to all employees at the exposed workplace except for employees who were not present during the period of an outbreak identified by a local health department or the relevant 14-day period(s) under subsection (a), as applicable. COVID-19 testing shall be provided at no cost to employees during employees’ working hours.

..... Immediately upon being covered by this section, all employees in the exposed workplace shall be tested and then tested again one week later. Negative COVID-19 test results of employees with COVID-19 exposure shall not impact the duration of any quarantine period required by, or orders issued by, the local health department.

SCENARIO



Tommy works in the shipping and receiving department for Doohicky Manufacturing. That department is separated from other working areas, shipping and receiving employees have a separate entrance and separate restroom. Tommy reports that he has no symptoms but tested positive for COVID-19 on Wednesday December 9th.

Cynthia works in shipping and receiving but did not have any 6-15-24 contact with Tommy on Monday or Tuesday? Should Cynthia be offered a COVID-19 test? If 2 other workers in shipping and receiving also tested positive on Wednesday, should Cynthia be tested?

What do we do?

Karen: What are other employers doing for testing systems and processes to protect medical privacy?

- ✓ Public Resources – Cal/OSHA FAQs approve this method
- ✓ Healthcare Benefits based testing
- ✓ Pharmacies
- ✓ Mail in tests
- ✓ On site contractors for larger outbreaks or facilities

Password protection, database management, & confidentiality agreements w/ unions

Section 3205 COVID-19 Exposure Notice

WITHIN ONE BUSINESS DAY

- Provide notice that does not reveal personal identifying information
- Includes notification of authorized representatives
- Includes independent contractors and other employers at a worksite

Best Practices: Notices in writing. Keep records of notifications.

FAQ: AB 685 versus Cal/OSHA 3205(c)(3)(B)(3)

AB 685 - Notification

- January 1, 2021
- Potential Exposure – Vague
- One Business Day
- Written Notice
- Notify employees, subcontracted employees, exclusive representative
- Covid related benefits, anti-retaliation and anti-discrimination, and disinfection and safety plan

3205 - Notification

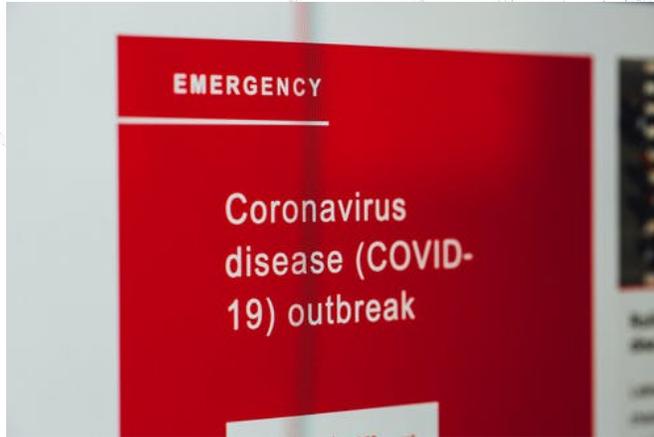
- November 30, 2020
- Potential Exposure – 6/15/24
- One Business Day
- Notice – no specific terms
- Notify employees, independent contractors, other employers, authorized representative
- Testing information
- Benefits / Earnings Info



OUTBREAKS!!!

Section 3205.1 and 3205.2

Outbreak



- Did Cal/OSHA use the same “outbreak” definition as SB 1159 (California Labor Code Section 3212.88(m)(4))? NO.
- Did Cal/OSHA use the same “outbreak” definition as AB 685 (California Labor Code Section 6409.6(b))? KIND OF ...

Outbreaks and Multiple COVID-19+

3205.1 – Outbreak

- Local health department says so OR 3+ in 14 days
- Testing shall* be provided
- Exclude workers from workplace
- Investigate the outbreak
- Make corrections
- Notification requirements to LHD

3205.2 – Major COVID-19 Outbreaks

- 20+ in 30 days
- Testing shall* be provided
- Exclude workers from workplace
- Investigate the outbreak
- Make corrections (including HVAC)
- Consider halting operations
- Notify LHD

Outbreak Testing and “Shall Be Tested”

COVID-19 EXPOSURES

- Shall be tested
- Testing shall be provided
- Exclude workers from workplace
- Return to work after 10 days
- Weekly testing thereafter – Until Zero Covid Positives

EMPLOYEES IN EXPOSED WORKPLACE

- Shall be tested
- Testing shall be provided
- Return to work awaiting test
- Evaluate the results
- Weekly testing thereafter – until Zero Covid Positives

SCENARIO – Kevin asks Karen

We are a smaller employer with one facility and 50 employees. Melanie came to work on Monday and bragged about attending “the biggest and best holiday party ever” on Saturday night.

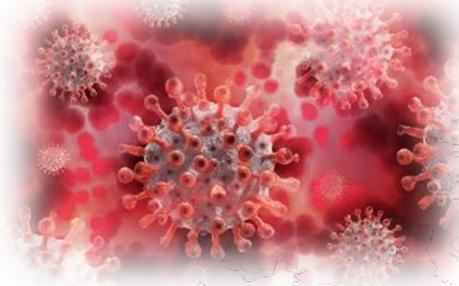
Can we ask her for more information?

Can we ask her to be tested?

Can we ask her to leave work?

Can we tell her she is an idiot?





SCENARIO – Karen asks Kevin

Gerald didn't show up for work on Monday December 7th. We contacted his family on Tuesday, and they say he has COVID and is in the hospital. They have no other information and are distraught as he has been taken by ambulance to a local hospital, and they are unable to talk to him.

What information should you gather? Any tasks or action items for you, the employer? Reporting? Recording?

NOTIFICATIONS

ETS 3205

- One business day
- Not necessarily in writing
- Workplace exposed workers
- Authorized Representative
- Independent Contractors and Other Employers
- Testing Information & Benefits Info

AB685

- One business day
- In writing
- To all employees at worksite
- Exclusive Representative
- Other Employers of Subcontractors
- Benefits Info, disinfection and safety plan, and anti-discrimination



Notices – What to do!

Kevin, can't we just combine the notices and throw all the information together and just put the notice on the employee bulletin board?

TOP IDEAS FROM CLIENTS THIS WEEK

Enhanced Screening – “Have you attended a seasonal gathering of more than 10 people? Have you travelled out of state, etc.”

Additional Signage – Reminding employees of their fellow workers and safety protocols

Zones – Blue zones, purple zones, yellow zones to define work areas

Closed Breakrooms & Lunch in Your Car

Reminders of one person in a bathroom at a time

Written agreements with temp agencies

Helpful Checklist – Top Priorities

- My written program is implemented
- Who owns these processes?
- Do you have a testing program or a way to have employees tested at no cost to the employee? – Sections 3205(c)(3)(B)(4), 3205.1, 3205.2
- Confirm medical privacy protections in place
- Notification process and documents ready to go
- Outbreak management process is in place with a responsible individual
- Attend tomorrow's webinar on leaves and return to work PLEASE!!!

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Thank you!



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The logo for Ogletree Deakins, featuring the company name in a white, serif font. The background of the entire slide is a dark blue gradient with a glowing, golden-yellow map of California, where the lights represent major cities and urban areas.

**Ogletree
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Karen and Kevin

Next 20 minutes - Questions

Upcoming Webinars

Employment Law and Benefits Update

DATE: 1/13/2021

Workers' Compensation Webinar Series

DATE: 2/24/2021