

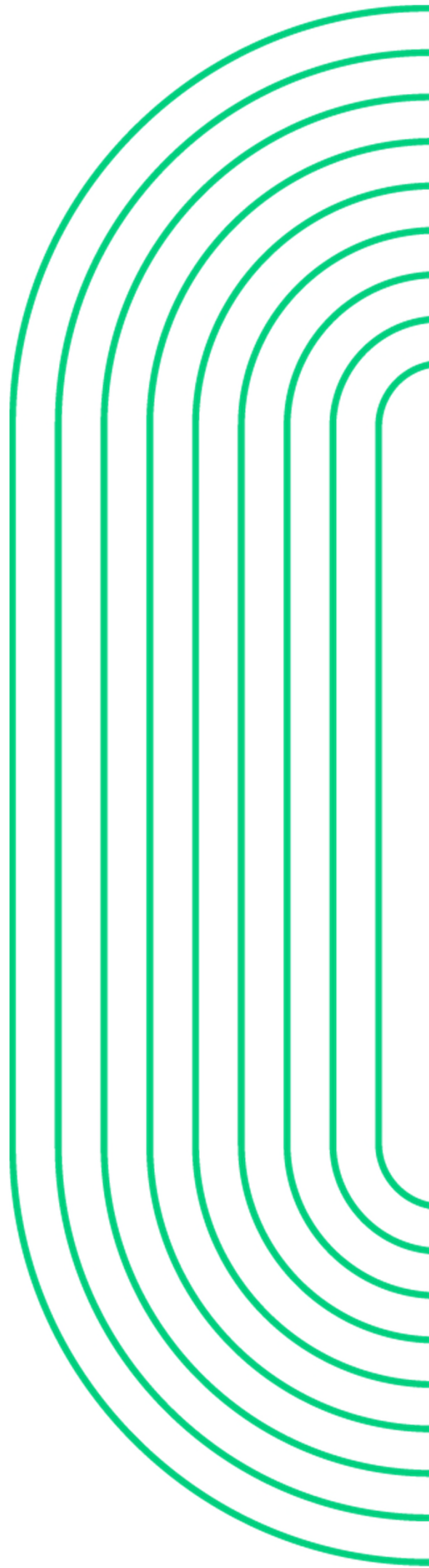
DAY 3: COVID-19 & THE LAW

2022 Updates and Vaccine Mandates

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Exposure Notification [AB 654]

- Modifies the employer's duty to notify workers of a potential COVID-19 exposure at the workplace.
- Clarifies several notice requirement provisions
- Expands the categories of employers who are exempt from COVID-19 outbreak reporting requirements.
- Delivery of renewable natural gas is a critical government functions that may not be materially interrupted by COVID-19 Cal/Osha rules.



Exposure Notification

WHO?

- Employees/Workers with **close contact** with a **qualifying individual** at the **worksite**.
- Close Contact –**within 6 ft** of a COVID-19 Case for 15 minutes or more in **any 24-hour period or** overlapping with the high-risk exposure period.
 - High-risk exposure period
 - (a) Developed Symptoms; **or**
 - (b) Positive but no symptoms
- Qualifying individual if: (1) lab confirmed positive COVID-19 case; or Positive COVID-19 diagnosis by a public health official; or (3) died due to COVID-19
- Worksite – same as qualified individual
- **In writing:** personal service/email/text in English and language understood by majority of workforce.



Exposure Notification

WHO?

- Local Public Health Agency if a COVID-19 **outbreak.**
 - Outbreak:
 - three probable or confirmed COVID-19 cases
 - Within a 14-day period
 - From 3 different households who are not identified as close contacts of one another.



Exposure Notification

WHAT?

- All Employees/Workers exposed to a qualifying individual
- Benefits available to exposed individual
 - E.g., Workers' Compensation, COVID19 related leave, company sick leave, etc. **AND** anti-retaliation **AND** anti-discrimination protections for employees.
- Cleaning and Disinfection Plans***:
 - What cleaning and disinfecting plan the employer is implementing per the guidelines of the federal CDC and Cal/OSHA .



Exposure Notification **WHEN?**

- Time: 48 hours or 1 business day, whichever is later.
- Exceptions: adult day health centers, community clinics and care facilities, certain residential care facilities and child day care facilities.
- **Sunsets:** January 1, 2023.



Enforcement Tools for Cal/OSHA [SB 606]

- Expands Cal/OSHA enforcement tools
 - Injunctions
 - subpoenas
 - temporary retraining orders against employers.
- Expands and modifies penalties for noncompliant employers, creating (2) new categories of Cal/OSHA violations
 - enterprise wide violation
 - egregious violation





SUBPOENA [Lab. Code § 6317.9]

- Failure to promptly provide information in response to a document request during an OSHA inspection.
- Failure to provide such information within a "reasonable" period of time.

Injunction/ Temporary Restraining Order

[Lab. Code §§ 6323, 6324]

- If CAL/Osha identifies grounds to issue a citation to an employer.
 - May also seek an immediate temporary restraining order.
- 

Rebuttable Presumption [Lab. Code § 6317]

- Enterprise Wide Violation :
 - (1) the employer has a non-compliant written policy or procedure; or
 - (2) Cal/OSHA “has evidence of a pattern or practice of the same violation or violations committed by that employer involving more than one of the employer’s worksites.
- Failure to rebut presumption? Possible enterprise-wide citation requiring enterprise-wide abatement.



Citations [Lab. Code § 6429]

- For enterprise wide violations:
 - Minimum \$8,908.00 for **each** willful violation
 - Maximum civil penalty of \$124,709.00 for **each** willful violation.
- Citation does not apply if based on an emergency adopted or amended rule within the last 30 days
 - 30-Day clock begins to run from the date of the vote of the standards board to adopt or amend the emergency regulation.



Egregious Violations

- Egregious if satisfies one of the following:
 1. Employer, **intentionally** through voluntary action or inaction, made **no reasonable effort to eliminate** the known violation;
 2. The violations resulted in **worker fatalities**, a worksite **catastrophe**, or a **large number of injuries** or illnesses;
 3. The violations resulted in persistently **high rates** of worker injuries or illnesses;
 4. The employer has an **extensive history** of prior Cal/OSHA violations;



Egregious Violations

5. The employer has **intentionally disregarded** their health and safety responsibilities;
 6. The employer's conduct, taken as a whole, amounts to **clear bad faith** in the performance of their duty to provide occupational safety to their employees; or
 7. The employer has committed a **large number of violations** to undermine the effectiveness of any safety and health program that might be in place.
- Determination of egregious violation remains in effect for **five years**.



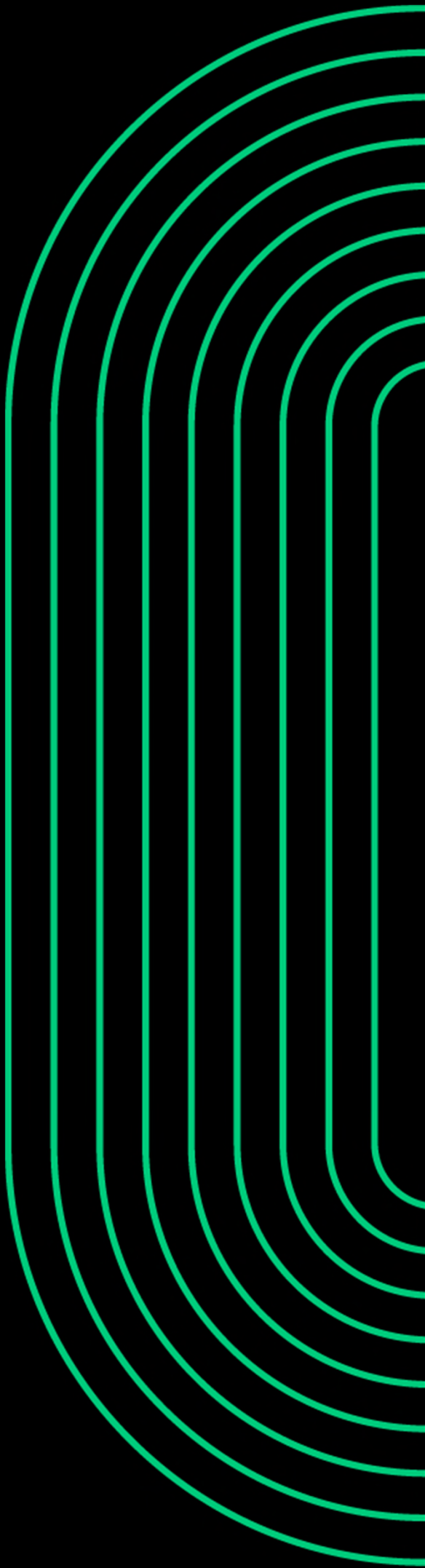
Hospitality Industry Right to Recall [SB 93]

WHO: Hospitality industry [Lab. Code § 2810.8]

WHAT: Qualified laid-off Workers must be recalled to their former position when available

WHEN: Within 5-days of position becoming available

DURATION: January 1, 2022 to December 31, 2024



WHO

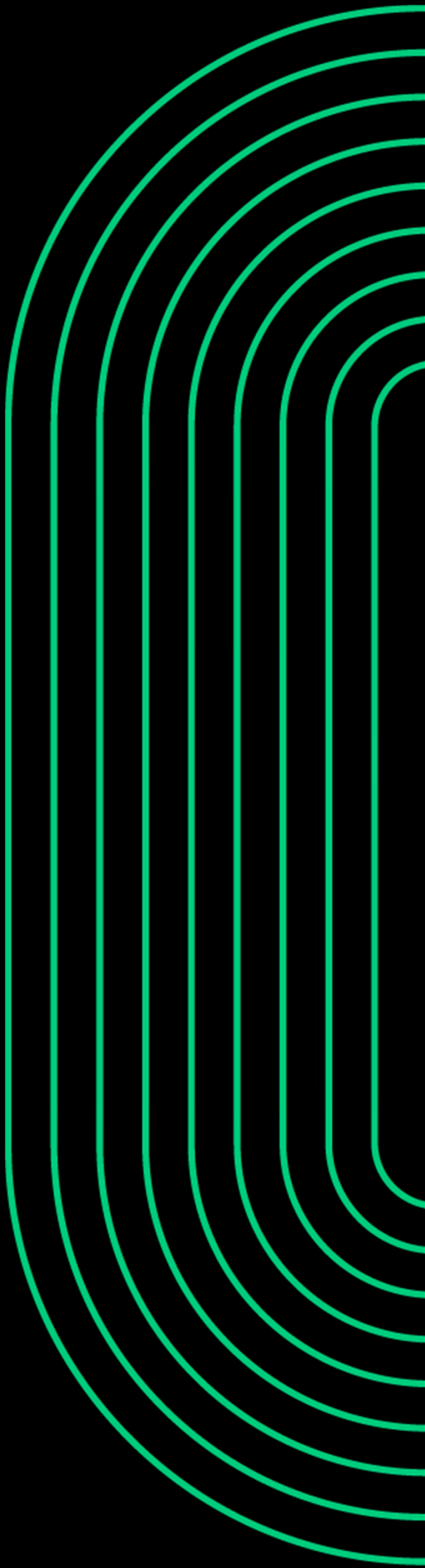
Laid-off Worker:

- Performed at least two hours of work for a covered employer;
- Worked for 6 months or more with the employer; and
- The most recent separation from the covered employer caused by a reason related to the COVID-19 pandemic (i.e., public health directive, government shutdown order, lack of business, reduction in work force, or other economic reason) and not for a disciplinary reason.
- **Qualified worker** if held the same or similar position for the employer before being laid off

WHAT

Notice to Laid-off Worker

- In writing to the last known address AND email address, text messages, and phone
 - Provide worker 5 business days to respond or decline offer
-

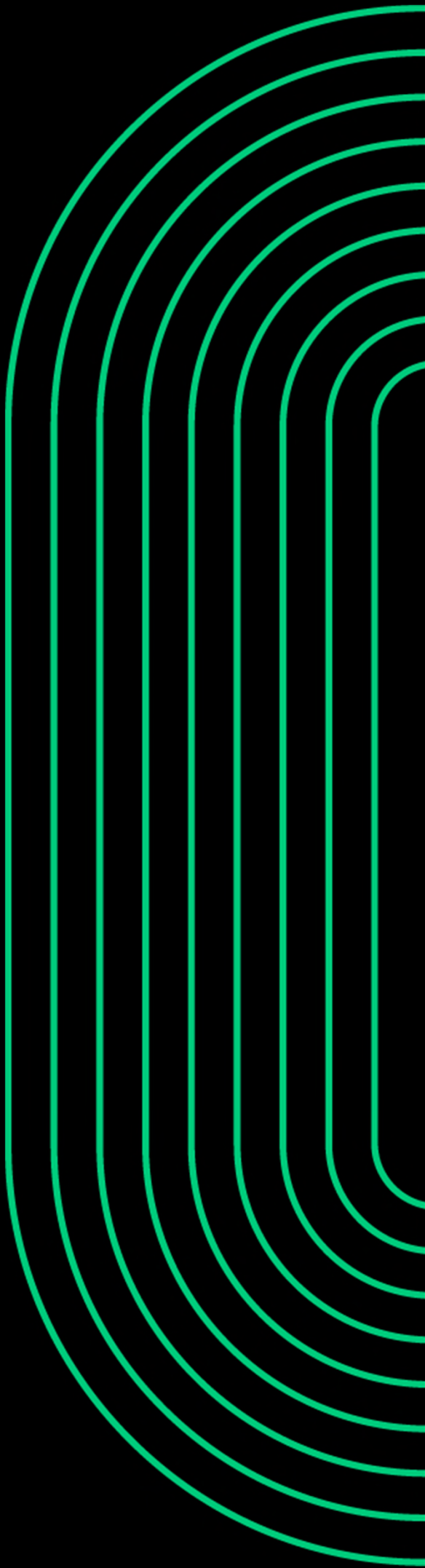


Failure to Recall Employee

- Must provide the laid-off employee a written notice within 30 days AND
- Includes all of the reasons not to recall the laid-off worker, including the length of service of those employees who were recalled and hired.
- Must maintain these records for **three years** from the date of the original layoff date.

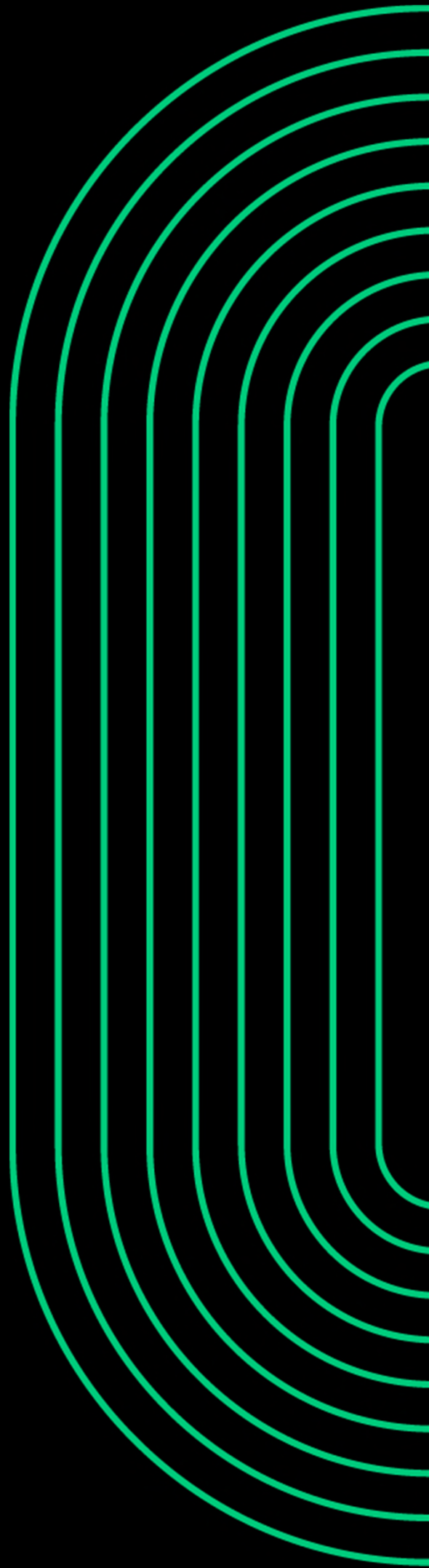
SB 93 applies to

- Ownership of the employer changed but the employees conducting the same or similar operations;
 - The form of the organization changed (e.g. LLC to Inc.);
 - Substantially all assets of the employer were acquired by another entity that conducts the same or similar operations using the substantially the same assets, and/or;
 - The employer relocates to a different location.
-



Penalties

- The DLSE is responsible for enforcing compliance
- A civil penalty of \$100 for each employee whose rights under these provisions are violated AND
- \$500 in liquidated damages per employee for each day the employee can prove their rights were violated up and until the violation is cured.; AND
- Laid-off employees may be awarded reinstatement, front or back pay during each day the violation continues and/or the value of benefits that would have been received.





COVID 19 SUPPLEMENTAL PAID SICK LEAVE

January 25th- Deal reached with California legislative leaders to reinstate Supplemental Paid Sick Leave.

- Retroactive to January 1, 2022 and sunsets on September 30, 2022
- Anticipated to apply to all employers with 26 or more employees
- Stay tuned for developments in this area.

Emergency Temporary Standards (ETS)

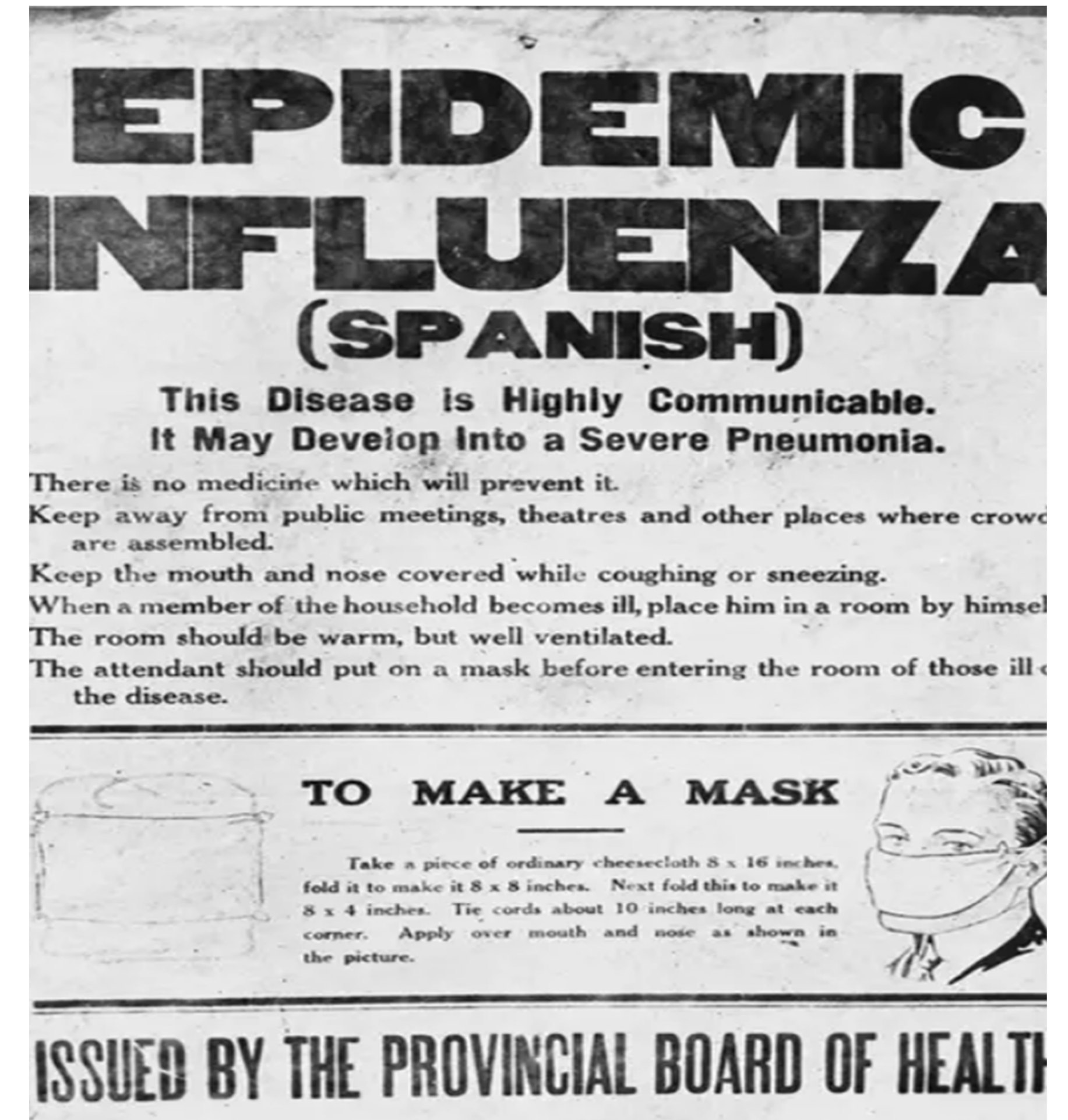
The ETS **revised** the definition of **COVID-19 test**, **Permissible face covering**, **fully vaccinated** and **worksite**.

COVID-19 Test

- Tests cannot be both self-administered and self-read unless observed by the employer or authorizes a telehealth proctor.

Permissible Face Covering

- Medical procedure mask
- A respirator worn voluntarily
- “Pass the light test”



Emergency Temporary Standards (ETS)... cont.

Revised the definition of **COVID-19 test**, **Permissible face covering**, **fully vaccinated** and **worksite**.

Fully Vaccinated

- Either the employee is two weeks past completion of a primary vaccine (with at least the minimum recommended interval between doses for a two-dose series); **OR**
- two weeks past a second dose of any combination of two doses of a vaccine, so long as the second dose was not received earlier than 17 days after the first dose.

Worksite

- Does not include locations where the worker worked by themselves without exposure to other employees, or
- worker's personal residence or alternative work location chosen by the worker when working remotely.



ETS Cont... **EMPLOYEE TESTING**

- **Inform** - All employees about how to obtain testing;
- **Offer** – Testing at not cost and during paid time

Currently, due to the rapidly evolving virus and breakthrough cases in the workplace, Cal/OSHA will require employers to offer testing to all employees, vaccinated or not, who had a workplace close contact.

The only exception for close-contact testing are employees who recovered from COVID-19 in the past 90 days **and are asymptomatic.

- **Outbreak:** - To all employees within an exposed group.
- **Confidentiality** - Ensure employee confidentiality .



ETS Cont... **EXCLUSION Requirements If Employee Tests Positive for COVID-19** [Isolation Requirement]

- **Apply to ALL employees** (Regardless of vaccine status or prior infection):
- Employee tests positive? **MUST** *be excluded from the workplace for min. 5 days.*
- Can return to work after 5 days if no symptoms **and** diagnostic test from day 5 or later is negative (Antigen test preferred).
- If the employee chooses not test, **and** has no or resolving symptoms, may return to work *after day 10.*
- If the employee has a fever, the employee must remain home until fever resolves
- If the employee has other symptoms **and** fever not resolving, employee must remain home until day 10 from positive test
- Employees **must wear a mask** around employees for at least 10 days since their positive test.

ETS Cont... **Employees Who Are EXPOSED to Someone with COVID-19** [Quarantine Required]

Apply to: Unvaccinated or Vaccinated and Booster Eligible but not yet received booster dose:

- Exposed Employees must:
 - Excluded from workplace for at least 5 days from close contact with a person who has COVID19.
 - Test on day 5: Quarantine can end on after day 5 if no symptoms **and** a negative test.
- If employee chooses not to test **and** no symptoms: may return to workplace after 10-days, provided no symptoms are present.
- Employee must wear a mask around others for 10 days after exposure.
- If the employee develops symptoms, they must exclude pending results of a subsequent test



ETS Continued... **Employees Who Are Exposed to Someone with COVID-19** [Quarantine Not Required]

Apply to: Boosted or Vaccinated but Not Booster Eligible:

- No quarantine necessary if test on day 5 **and** it is negative.
- Employee must wear a mask around others for 14* days after exposure
- If employee tests positive, must follow isolation recommendations
- If the employee develops symptoms, must exclude pending results of a subsequent test



ETS Cont... **EXCLUSION PAY**

An employee who was excluded from work because of a workplace COVID-19 exposure should receive exclusion pay if:

- 1) The employee was not assigned to telework during that time;
and
- 2) The employee did not receive Disability Payments or Workers' Compensation Temporary Disability Payments during the exclusion period.



ETS Cont... **EXCLUSION PAY**

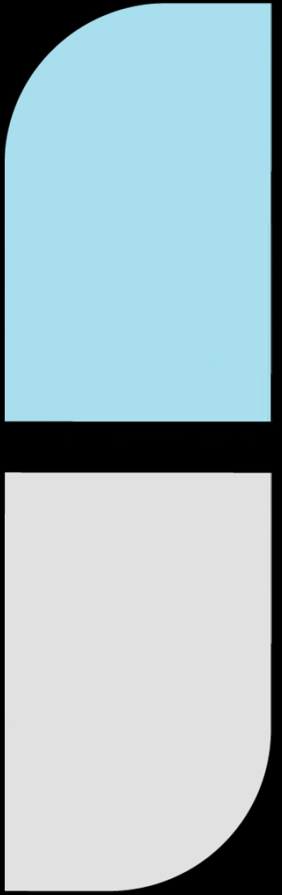
- Employers that provide a paid leave policy that is separate and in addition to the paid sick leave policy required by California's Paid Sick Leave law (Labor Code section 246) **may require** their employees to use that separate sick leave as permitted by law.
- An employer may require an employee to use any supplemental leave available to the employee under the 2021 COVID-19.



THANK YOU

Legal Disclaimer

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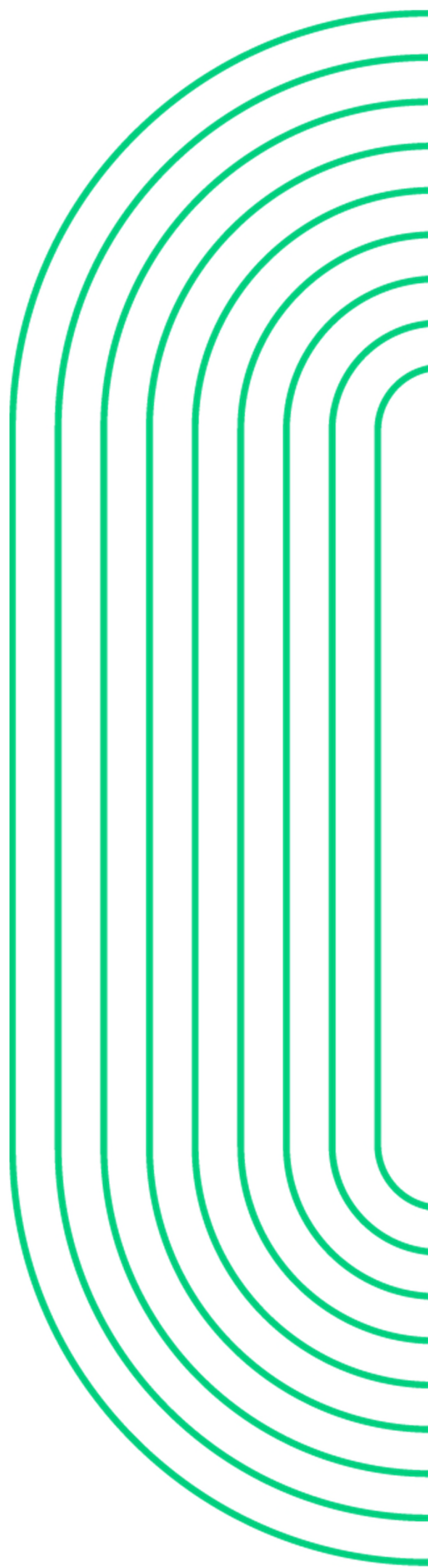
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Mandatory Vaccines


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January 26, 2022





Topics Covered in this Session


- Federal OSHA- Mandate and the Impact of the Supreme Court Ruling
 - California law on mandatory vaccines
 - Evaluating accommodation requests
- 





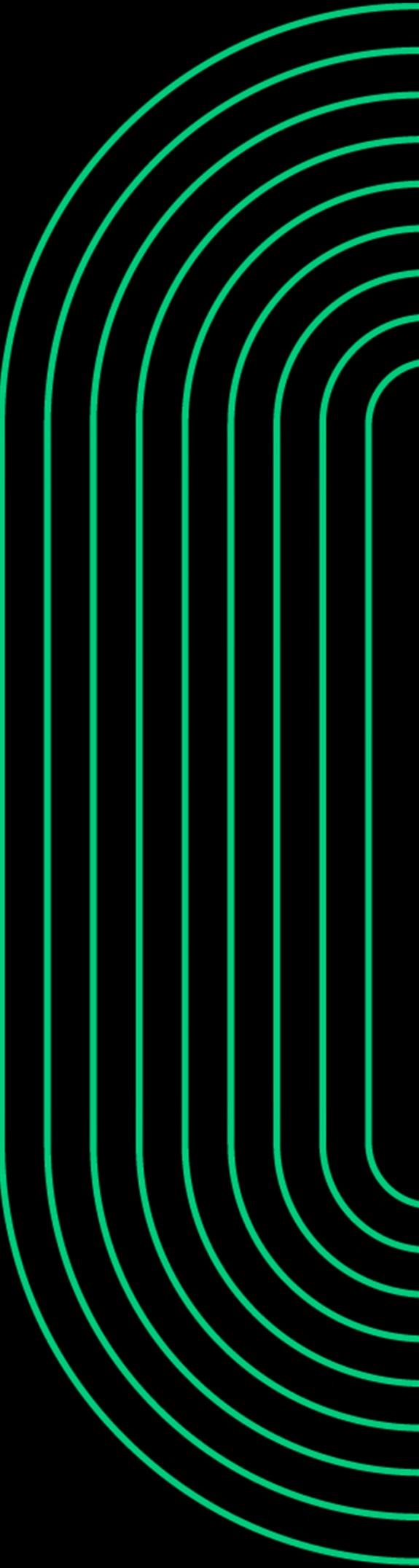
Polling Question

How would you describe your company's vaccination policy?

1. My company has a mandatory vaccination policy but allows testing as an alternative
 2. My company has a mandatory vaccination policy and does not allow testing as an alternative
 3. My company initially had a mandatory vaccination policy (with or without testing) but revoked it after the Supreme Court ruling
 4. My company has no vaccination requirements
 5. Other
- 



FEDERAL OSHA ETS AND THE SUPREME COURT



What was the OSHA Mandatory Vaccination ETS?

What did the ETS require?

- **Vaccination Policy:** The ETS required covered employers to develop, implement, and enforce a mandatory COVID-19 vaccination policy, with an exception for employers that instead establish, implement, and enforce a policy allowing employees who are not fully vaccinated to elect to undergo weekly COVID-19 testing and wear a face covering at the workplace.
- **Confirm Vaccination Status**
- **Provide Up to 4 Hours of Paid Leave for Each Dose**
- **Reasonable Paid Sick Leave to Recover**



What was the OSHA Mandatory Vaccination ETS?

Who was covered by the OSHA ETS?

- Employers with 100 or more employees
- Employers in states with their own state- OSHA entity, such as California, were not covered by the OSHA ETS – however California was required to create its own ETS that was “at least as effective.”





Legal Challenges Leading to the Supreme Court

September 9, 2021: Biden Announcement

November 4, 2021: ETS Released

November 6, 2021: Fifth Circuit Stay

November 16, 2021: Litigation Lottery

December 17, 2021: Sixth Circuit Reinstated ETS





U.S. Supreme Court Ruling on OSHA ETS

The Supreme Court has now held that, although Congress has given OSHA the power to regulate workplace dangers, it has not given the Agency the power to regulate public health more broadly.

The ETS is now stayed while the Sixth Circuit Court of Appeals continues its review on the enforceability of the ETS.





U.S. Supreme Court Ruling on Healthcare Mandate

Upheld in 5-4 vote.

A vaccine mandate is “necessary to promote and protect patient health and safety” in the face of the ongoing pandemic.




Take-Aways Following the Supreme Court Ruling

- *“Occupational” vs. “Everyday” Hazards*
- *Spending power vs. police powers*



OSHA: U.S. Secretary of Labor Marty Walsh Statement

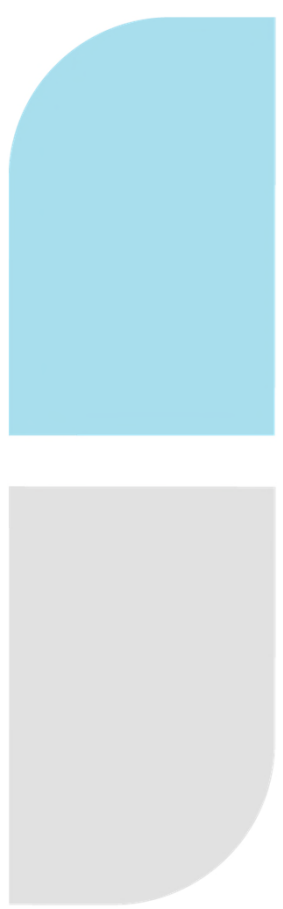
“I am disappointed in the court’s decision, which is a major setback to the health and safety of workers across the country. OSHA stands by the Vaccination and Testing Emergency Temporary Standard as the best way to protect the nation’s workforce from a deadly virus that is infecting more than 750,000 Americans each day and has taken the lives of nearly a million Americans.”





OSHA: U.S. Secretary of Labor Marty Walsh Statement

“OSHA promulgated the ETS under clear authority established by Congress to protect workers facing grave danger in the workplace, and COVID is without doubt such a danger. The emergency temporary standard is based on science and data that show the effectiveness of vaccines against the spread of coronavirus and the grave danger faced by unvaccinated workers. The commonsense standards established in the ETS remain critical, especially during the current surge, where unvaccinated people are 15-20 times more likely to die from COVID-19 than vaccinated people. OSHA will be evaluating all options to ensure workers are protected from this deadly virus.”






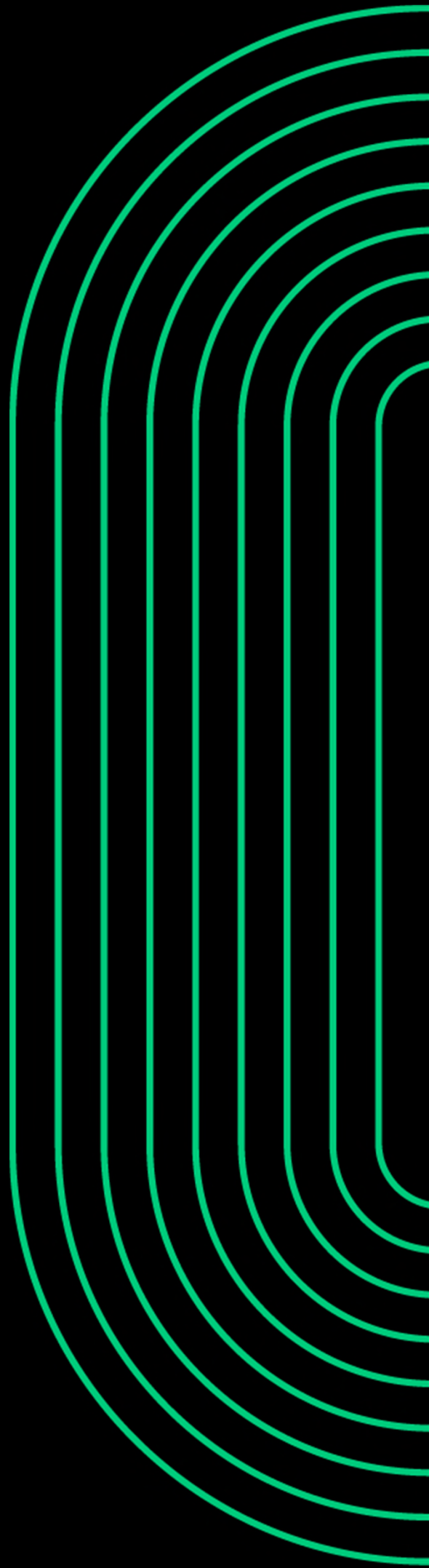
OSHA: U.S. Secretary of Labor Marty Walsh Statement

“We urge all employers to require workers to get vaccinated or tested weekly to most effectively fight this deadly virus in the workplace. Employers are responsible for the safety of their workers on the job, and OSHA has comprehensive COVID-19 guidance to help them uphold their obligation.

“Regardless of the ultimate outcome of these proceedings, OSHA will do everything in its existing authority to hold businesses accountable for protecting workers...”




CALIFORNIA LAWS ON EMPLOYER MANDATORY VACCINATIONS





California Laws

1. California Health Care Facilities Order
 2. California Adult Care Facilities and Direct Care Workers Order
 3. Local Orders with Vaccine Mandates
- 



California Health Care Facilities Mandate

Who does it apply to?

- General Acute Care Hospitals
- Skilled Nursing Facilities (including Subacute Facilities)
- Intermediate Care Facilities
- Acute Psychiatric Hospitals
- Adult Day Health Care Centers
- Program of All-Inclusive Care for the Elderly (PACE) and PACE Centers
- Ambulatory Surgery Centers
- Chemical Dependency Recovery Hospitals
- Clinics & Doctor Offices (including behavioral health, surgical)
- Congregate Living Health Facilities
- Dialysis Centers
- Hospice Facilities
- Pediatric Day Health and Respite Care Facilities
- Residential Substance Use Treatment and Mental Health Treatment Facilities






California Health Care Facilities Mandate

What is required?

Covered workers must have their first dose of a one-dose regimen or their second dose of a two-dose regimen by September 30, 2021

The order was updated on December 22, 2021:

Covered workers currently eligible for booster doses must receive their booster dose by no later than February 1, 2022. Workers not yet eligible for boosters must be in compliance no later than 15 days after the recommended timeframe above for receiving the booster dose.



California Health Care Facilities Mandate

Workers may be exempt from the vaccination requirements only upon providing the operator of the facility a declination form, signed by the individual, stating either of the following:


- 1) the worker is declining vaccination based on Religious Beliefs, or
- 2) the worker is excused from receiving any COVID-19 vaccine due to Qualifying Medical Reasons.





California Health Care Facilities Mandate

To be eligible for a Qualified Medical Reasons exemption the worker must also provide to their employer a written statement signed by a physician, nurse practitioner, or other licensed medical professional practicing under the license of a physician stating that the individual qualifies for the exemption (but the statement should not describe the underlying medical condition or disability) and indicating the probable duration of the worker's inability to receive the vaccine (or if the duration is unknown or permanent, so indicate).



California Health Care Facilities Mandate

If a covered operator of a facility deems a worker to have met the requirements of an exemption OR deems a booster-eligible worker to have not yet received their booster dose, the worker must meet the following requirements when entering or working in such facility:

1. Test 2x weekly with a qualifying PCR or Antigen test
2. Wear a surgical mask at all times in the facility





California Adult Care and In-Home Direct Service Workers

Required to have first dose by November 30, 2021.


Required to have booster by February 1, 2022





Santa Clara Order

Order Covers:


- skilled nursing facilities, long-term care facilities, adult day care facilities, and memory care facilities;
 - healthcare delivery facilities (such as hospitals, clinics, medical offices, dialysis centers, etc.) where patient care is provided, as well as medical first responders;
 - jails and other correctional facilities;
 - congregate shelters; and
 - dental offices
- 





Santa Clara Order

Deadlines:

1. If fully vaccinated as of December 29, 2021, then must be boosted by January 24, 2022
 2. If not fully vaccinated as of December 29, 2021, then must receive first dose by March 21, 2022
- 





Santa Clara Order

“[P]ersonnel who are not compliant with the vaccination requirements of this Order cannot work in Higher-Risk Settings, as of the dates provided in subsections (a) and (b), ***regardless of whether they have a pending exemption request or an approved exemption.***”


A waiver may only be requested upon certification that the entity cannot adequately staff its operations in the absence of the waiver.





San Francisco Vaccine Mandate Order

Covered settings:

- (1) personnel working in designated high-risk settings—meaning general acute care hospitals, skilled nursing facilities, intermediate care facilities, residential care facilities for the elderly, homeless shelters, and jails
 - (2) personnel working in other higher-risk settings—including adult care facilities, adult day programs, dental offices, home health care workers, and pharmacists, and
 - (3) personnel who visit higher-risk settings as part of the work, such as paramedics, emergency medical technicians, police officers, and lawyers who visit people in the jails
- 






Los Angeles Vaccine Mandate Order

Los Angeles has an order which applies to the following:

All paid and unpaid employees, contractors, students, and volunteers who work in indoor or other settings where:

- 1) care is provided to patients,
 - 2) patients have access for any purpose, leading to direct patient contact, or
 - 3) home care or daily living assistance is provided to residents.
- 



Los Angeles Vaccine Mandate Order

This includes, but is not limited to


- Nurses
- nursing assistants
- medical assistants
- physicians, dental assistants
- Dentists
- Technicians
- Therapists
- Phlebotomists
- Pharmacists
- Emergency medical technicians (EMTs)
- EMT—paramedics, prehospital care personnel
- affiliated home care aides
- registered home care aides
- independent home care aides
- home health aides
- students and trainees
- contractual staff not employed by the health care facility, and persons not directly involved in patient care, but who could be exposed to germs that can be spread in the health care setting





Los Angeles Vaccine Mandate Order

The requirements apply to anyone on the prior screen, ***including those with a remote or hybrid work agreement***, since employees who work remotely may need to visit a facility location from time to time. Universal vaccination helps ensure a safer environment for everyone.





Los Angeles Vaccine Mandate Order

Deadlines:

Vaccinated by November 30, 2021

If eligible, boosted by February 1, 2022

If the employee satisfies an exemption: (1) twice weekly testing and (2) wear masks at all times





None of these mandates apply to my business- does this mean I cannot mandate vaccines at work?

- NO. Employers can chose to require its employee be vaccinated against COVID-19.
- California DFEH Guidance

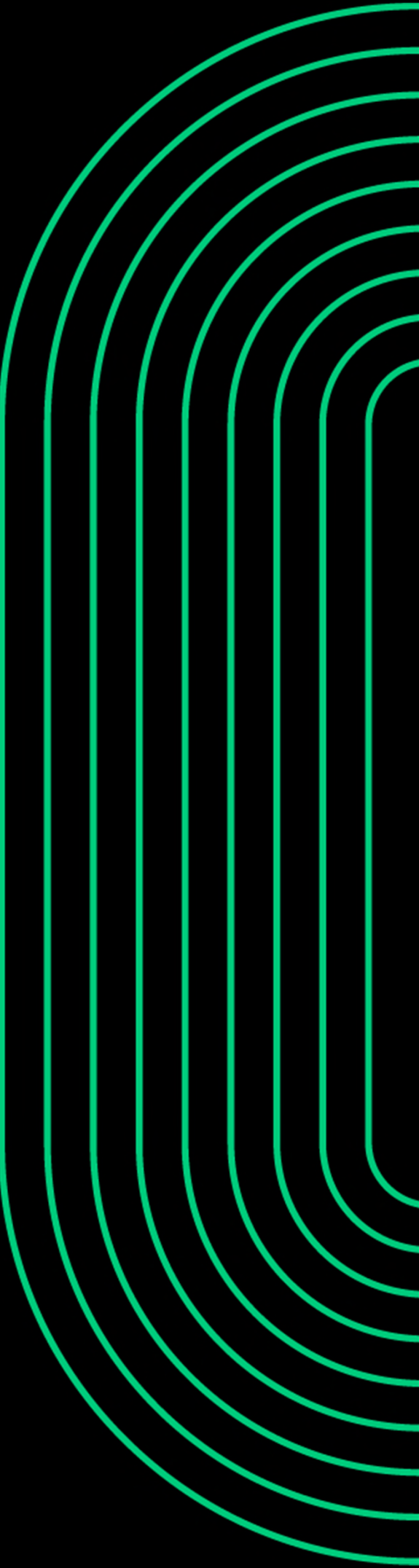
VACCINATION

■ May an employer require its employees to be vaccinated against COVID-19?

Short Answer: Under the FEHA, an employer may require employees to receive an FDA-approved vaccination against COVID-19 infection so long as the employer does not discriminate against or harass employees or job applicants on the basis of a protected characteristic, provides reasonable accommodations related to disability or sincerely-held religious beliefs or practices, and does not retaliate against anyone for engaging in protected activity (such as requesting a reasonable accommodation).



EVALUATING ACCOMMODATION REQUESTS



Accommodations

What accommodations must an employer evaluate?

How does the employer evaluate the accommodation requests?



Religious Accommodations

- What types of religious accommodation requests are employers receiving?
- How do you evaluate the religious accommodation request?





Medical Accommodation Request

- What types of medical accommodation requests are we seeing?
- How does an employer evaluate a medical accommodation request?





Employer Elected Mandatory Vaccination Policy

Most Common Questions:

1. Do California employers need to pay for an employee's COVID test?
2. Does a California employer need to pay an employee for the time it takes them to test?



California Compensation Requirements for Testing – DIR Weighs In

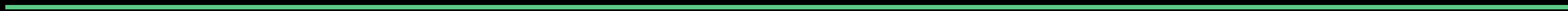
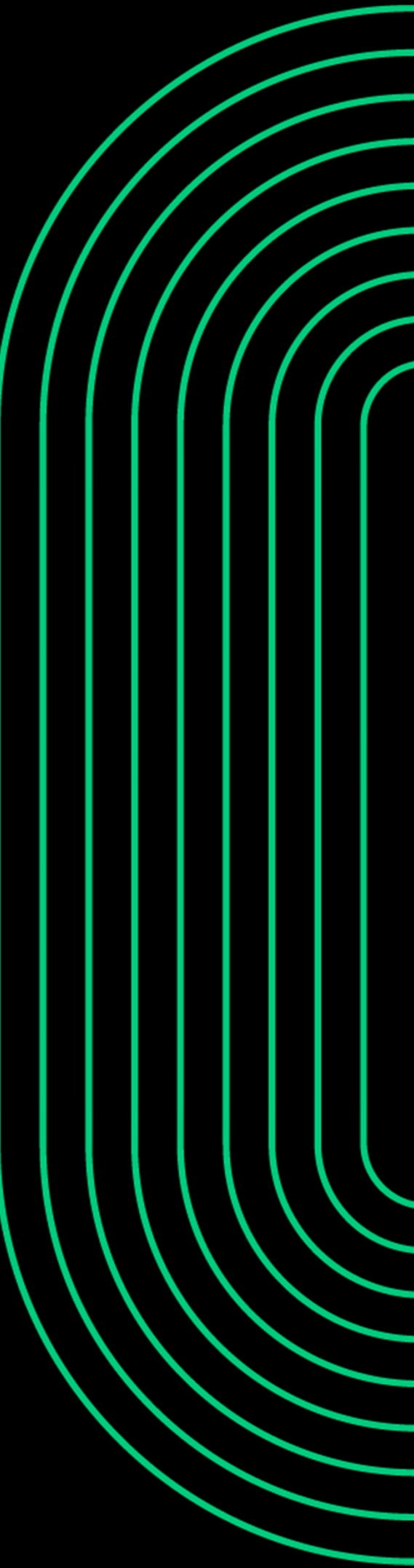
2. Is my employer required to compensate me for the cost of a COVID-19 test or for the cost, if any, of getting a COVID-19 vaccination?

Yes, if an employer expressly requires an employee to obtain a COVID-19 test or a vaccination, or if the employee obtains the test or vaccination as a direct consequence of the employee's discharge of the employee's duties (i.e., the test or vaccination is effectively required for a job), the employer must pay for the costs of the test or vaccination as it is a reimbursement for necessary business expenses. If the employer requires a test or vaccination and there is no designated testing site, workers should ask which location(s) or vendor(s) are acceptable to the employer to avoid disputes over cost.

If the testing or vaccination is performed at a location other than the employee's ordinary worksite, the employee may also be entitled to reimbursement for necessary expenses incurred to travel to and from the testing or vaccination location.



Questions?





Thank You

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