



December 13, 2021

The Honorable David Thomas, Chair  
Occupational Safety and Health Standards Board  
1017 L Street, PMB #254  
Sacramento, CA 95814-3805

Attention: Executive Officer, Christina Shupe By email: [CShupe@dir.ca.gov](mailto:CShupe@dir.ca.gov) and [OSHSB@dir.ca.gov](mailto:OSHSB@dir.ca.gov)

Re: Readoption of Emergency Temporary Standard for COVID-19 Prevention

Dear Chair Thomas:

The undersigned organizations represent a broad array of employers in California's agricultural industry. These employers include orchards, dairies, vineyards, ranches, food processing and packing facilities, and many more. Our members diligently to protect their employees from workplace exposure to COVID-19, and we appreciate your recognition of those efforts.

We associate ourselves with the comment letter sent on December 13 by the California Chamber of Commerce. Additionally, we submit this letter to express our concerns with the proposed readoption of the Emergency Temporary Standard (ETS) for COVID-19 Prevention. We continue to believe the ETS is unnecessary and contrary to a reasoned and informed response to the pandemic. This is in part for two primary reasons:

1. The ETS, and any other regulation that sets rigid standards, is inflexible and unable to keep up with science, data, and other new information. One need look only at how the ETS applies to vaccinated employees. The initial ETS had no recognition whatsoever of vaccines. In the first readoption of the ETS, various requirements were changed relative to vaccinated workers. In this proposed second readoption, those requirements are changing yet again.

Without regard to the policies proposed by those changes, the second readoption of the ETS is indicative of how the ETS continues to adjust slowly to a pandemic that demands we all pivot quickly and adjust.

2. The ETS is simply not needed to enforce workplace standards relative to COVID-19 prevention. The Injury and Illness Prevention Program (IIPP) and other existing regulatory requirements already empower Cal/OSHA to take enforcement actions against employers who are not acting responsibly to create a safe workplace relative to COVID-19.

In fact, Cal/OSHA continues to issue COVID-19-related citations based on violations of regulations other than the ETS. Therefore, one must ask, what is the purpose of the ETS?

Since the ETS is unable to respond to changes in the pandemic and is largely duplicative of other regulatory requirements, it only creates confusion among the regulated community and, therefore, should not be readopted.

Notwithstanding the issues raised about the ineffectiveness of the ETS, we fully understand the Board likely intends to approve the second readoption. Please be aware though that the proposed changes lack clarity and create confusion. This needs to be corrected. Below are three specific examples:

1. Relative to provisions addressing “exclusion of COVID-19 cases and employees who had a close contact,” the existing ETS largely exempts fully vaccinated employees who have no symptoms. The second readoption of the ETS keeps that exemption in place, but only if those employees “wear a face covering and maintain six feet of distance from others at the workplace.” This applies even if the vaccinated employees work outdoors, test negative, and have no symptoms. We are concerned this new language implies an employee may refuse to wear a face covering. In which case, those employees must be excluded from work.

Furthermore, in many workplace settings, six feet of distance will not be practicable. This is especially true in some manufacturing and food processing workplaces, and as a result, this new requirement could lead to reduced production and, in some cases, stopping production.

*Consequently, we ask, at a minimum, this be clarified to provide that an employee who refuses to wear a face covering when required by the employer shall not be compensated for periods of exclusion from work under this provision. Absent that clarification, employers will be required to reward employees who act irresponsibly in refusing to wear a face covering.*

*Additionally, the return to physical distancing for fully vaccinated employees, showing no symptoms, without even the possibility of testing out of this requirement, is unnecessary, burdensome, and should be reconsidered. Please remove the requirement to maintain six feet of distance from others at the workplace for vaccinated employees who have no symptoms.*

2. Relative to requirements for “Investigating and responding to COVID-19 cases in the workplace,” the second readoption of the ETS expands notice requirements to include employees, independent contractors and employers who were “on the premises at the same at the worksite as the COVID-19 case during the high-risk exposure period.” This begs the question: What does “on the premises” mean and what is the purpose of adding this new language? Does this include all indoor and outdoor areas within the property lines? Does this include all areas that may include a different workplace? As “worksite” is defined in the ETS, what does “on the premises” add to that definition?

*Absent a clear definition of “on the premises” we ask that “on the premises” be deleted.*

3. The proposed definition of face covering now includes “fabrics that do not let light pass through when held up to a light source.” A strict reading of this new requirement means that almost all cloth face coverings purchased from retail outlets would be out of compliance with the ETS. Keep in mind that the regulation makes no reference to the level of lumens from the light source.

Nor does the regulation include a recognition that the lowest level of light may pass through even tightly woven fabrics. Additionally, the regulation does not address the level of ambient light when testing whether light can pass through the fabric.

Furthermore, if the primary goal is to encourage the use of face coverings in the workplace, Cal/OSHA and this Board should not put in place additional burdens, complications, and confusion around use of face coverings.

*Consequently, we ask the Board to strike the language "(i.e., fabrics that do not let light pass through when held up to a light source)" from the definition of "face covering."*

The COVID-19 pandemic continues to evolve and create challenges on a global scale. Our members' primary task will always be to ensure employee health and safety, and as such, it is vital that the Board create workable, understandable, and effective regulatory protections. Consequently, we respectfully ask the Board chair and members to address our concerns before taking final action on the second readoption of the ETS.

*To be clear about our request: During the Board's hearing this week, before taking final action on the second readoption, please use your existing statutory authority to make the needed changes highlighted above in italics.* These changes would reduce confusion in the workplace and provide as much clarity as possible to those responsible for overseeing the implementation of the changes.

Thank you in advance for your consideration of our concerns.

Sincerely,



Michael Müller  
Director of Government Affairs  
California Association of Winegrape Growers



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Director, Employment Policy  
California Farm Bureau



Tricia Geringer  
Vice President of Government Affairs  
Agricultural Council of California



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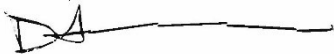
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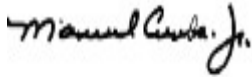
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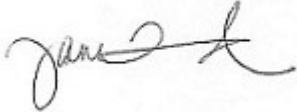
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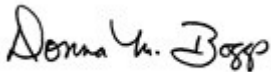
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