

## In This Issue:

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New California OSHA regulations impose significant obligations on healthcare employers and on certain other types of employers whose employees are exposed to aerosol transmissible diseases. The new regulations are effective August 5, 2009.

## Preventing Pandemics in the Workplace: Cal/OSHA's New Regulations on Aerosol Transmissible Diseases and What They Mean for Certain Employers

By William Terheyden and Kyle E. Kelly

Cal/OSHA's proposed standard on aerosol transmissible diseases (ATDs), such as tuberculosis, SARS, measles, or pandemic flu, was approved by the Office of Administrative Law on July 7, 2009, and became the first such regulation in the country.<sup>1</sup> The new standard, effective August 5, 2009, applies mainly to facilities in the health care industry and to specific other operations where employees may come into contact with certain types of aerosol transmissible diseases, such as correctional facilities, homeless shelters, drug treatment programs, and pathology laboratories. The regulation aims to protect against the spread of certain aerosol transmissible diseases, and requires that covered employers take precautionary measures to avoid their transmission. A complete list of the diseases is found in Appendix A of the standard. In addition, another regulation sets forth a zoonotics standard, applicable to facilities or operations that handle animals or animal byproducts (not including restaurants or other businesses for which the animals are only handled for human consumption and that have passed a USDA or CDFA inspection as such).

### Which Employers Are Affected

The vast majority of health care employers, and certain other employers whose employees are likely to come into contact with persons infected with aerosol transmissible diseases, are required by the regulation to take affirmative steps to ensure that the diseases are contained as much as possible.

Covered employers specifically include the following in the health care profession:

- Hospitals
- Skilled nursing facilities
- Clinics
- Medical offices
- Home healthcare services

- Long-term healthcare facilities
- Emergency service providers
- Medical transport

Certain other high-risk facilities outside of the health care profession also are covered by the regulations. These include:

- Police services during transport or detention of persons suspected to be cases of aerosol transmissible diseases
- Homeless shelters
- Drug treatment programs
- Medical examiners' offices
- Pathology laboratories
- Correctional and detention facilities
- Maintenance or repair operations involving air handling systems or building areas that can be anticipated to be contaminated with the aerosol transmissible pathogens

Employers specifically not covered by the regulation are outpatient dental clinics or other outpatient medical specialty practices, so long as those employers' practices meet certain screening and other criteria that are listed in the regulation. Certain outpatient medical specialty practices are not covered.

## Referring Employers and Some Laboratories Are Subject to Less Extensive Regulation than Other Employers

Employers who fall under the *referring employers* category are subject to less extensive regulations than other employers. *Referring employers* are those who operate a facility in which there is occupational exposure (that is, where work activities create a higher risk that the employee might contract one of the diseases), and who screen persons for infectious diseases and then refer them to medical providers if necessary. Referring employers do not provide any other medical services to infected persons, or those suspected to be infected persons. Laboratories in which employees do not have direct contact with suspected cases of ATD also have limited compliance requirements.

## What All Covered Employers Have to Do to Comply

All covered employers (including referring employers) must:

- designate an administrator, who is in charge of establishing and maintaining procedures for infection control;
- establish written source control procedures including a means of informing persons with whom employees will have contact about the infection control procedures;
- establish procedures for screening persons who may have infectious diseases and for referring these persons to medical services if the employer is not a health care provider;
- establish written procedures to communicate with employees about infectious disease status of referred patients; and
- establish procedures to reduce the risk that the infected person might transfer the disease to other persons in the facility, including placing the person in a separate room and supplying respiratory protection to employees entering the room.

All covered employers must also make specified vaccines (listed in Appendix E of the regulation) available to their employees, including the flu vaccine during the time period designated by the CDC. All employees with occupational exposure must attend training programs on ATDs, both at the initial assignment to high-risk work and at least once a year thereafter.

All covered employers are required to keep accurate related records, including confidential employee medical records (for employees with occupational exposure), employee training records, and records of the implementation of the aerosol transmissible diseases plan. All non-confidential records—*i.e.*, all records other than medical records—must be made available to the local health officer.

## Additional Obligations for Employers Other than Referring Employers

Employers other than referring employers are those who deal more extensively with infected persons, or suspected infected persons, than just screening and referring them to medical providers. These employers are required to take affirmative steps in addition to those listed above.

The written Exposure Control Plan required of these employers is more extensive than that required of referring employers. For example, it requires a list of all job classifications in which employees have occupational exposure, a description of all source control methods in the facility, methods of implementation of work practice controls and training, exposure incident procedures, employee communication, and a procedure for obtaining employee involvement in the annual review of the Plan.

Respiratory protection is one of the major requirements imposed on employers. This part of the regulation provides that employers must establish a respiratory protection program so that employees with occupational exposure are protected from contracting the diseases. As of September 1, 2010, employers must provide a powered air purifying respirator with a High Efficiency Particulate Air (HEPA) filter, or its equivalent, to those employees performing high hazard activities. *High hazard activities* are those that pose a higher risk of disease transmission than normal procedures. For example, a medical examiner performing an autopsy on a cadaver known to be infected with an ATD is a high hazard procedure. If the employer determines that providing these respirators would interfere with the employees' ability to perform the required task, the employer is not required to provide the respirators.

Covered employers must perform "fit tests" to ensure that employees using respirators are protected from contracting ATDs. These fit tests are to be performed the first time an employee is fitted with a respirator, and whenever the employee uses a different respirator than usual. Until January 1, 2014, employers may perform these tests once every two years. After this date, the tests must be performed at least once, annually. A fit test also should be administered whenever an employee reports a change in physical characteristics that would affect the fit of the respirator. Examples of such changes are major facial injury or weight gain or loss.

Covered employers, other than referring employers, also are required to provide employees with occupational exposure with medical services. These services include confidential vaccinations, tests, examinations and other procedures.

Finally, these employers must ensure that all employees with occupational exposure participate in a training program. The training shall take place at the time of initial assignment to tasks where occupational exposure may take place and at least annually thereafter, or when changes in the workplace affect the employee's occupational exposure or control measures.

## Zoonotics Standard

*Zoonotics* refers to a disease that can be transmitted from animals to humans, and the zoonotics regulation applies only to employers whose facilities or operations handle animals or animal byproducts, including animal capture or transportation, farms which produce animals or their byproducts, slaughterhouses, animal health services such as veterinarians, zoos and pet stores, and laboratories that work with animal cultures or other materials that may contain the harmful pathogens. It does not apply to restaurants or other businesses for which the animals are only handled for human consumption and that have passed a USDA or CDFA inspection.

Covered employers must establish written procedures to prevent employee exposure to the zoonotic aerosol transmissible pathogens (ZATPs). Included in these procedures are sanitation practices, employee training, investigation of occupational injuries and illness, and the use of protective equipment if necessary.

If any employee performs certain operations, the employer is required to take further steps in addition to those listed above. These operations include testing wildlife for ZATPs, handling animals infected with ZATPs, and cleaning or disinfecting areas used by infected animals. Additionally, hazardous waste and emergency response operations, all laboratories dealing with samples of ZATPs, and any operations that have been quarantined are all subject to this higher standard as well. What steps the employer must take to be in compliance with the regulation depend on which operations the employees perform.

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<sup>1</sup> The standards will be codified at Title 8, Chapter 4, Sections 5199 ("Aerosol Transmissible Diseases") and 5199.1 ("Aerosol Transmissible Diseases—Zoonotic"). The text of the standard until codified can be found at [www.dir.ca.gov/oshsb/atdapprvdtxt.pdf](http://www.dir.ca.gov/oshsb/atdapprvdtxt.pdf). There are seven appendices to the main part of the regulation, which contain helpful information for employers. They are listed here for your convenience.

Appendix A: List of Aerosol Transmissible Diseases/Pathogens

Appendix B: Alternate Respirator Medical Evaluation Questionnaire

Appendix C: Vaccination Declination Statement and Seasonal Influenza Vaccination Declination Statement

Appendix D: Aerosol Transmissible Pathogens—Laboratory

Appendix E: Aerosol Transmissible Disease Vaccination Recommendations for Susceptible Health Care Workers

Appendix F: Sample Screening Criteria for Work Settings Where No Health Care Providers are Available

Appendix G: Information for Respirator Fit-Test Screening