



June 3, 2021

Chair David Thomas and Members  
Occupational Safety & Health Standards Board  
Department of Industrial Relations, State of California  
2520 Venture Oaks Way, Suite 350  
Sacramento, CA 95833

**Delivered via email:** [oshsb@dir.ca.gov](mailto:oshsb@dir.ca.gov)

**RE: New COVID-19 Temporary Standard Amendments Ignore Science of Safe and Effective COVID Vaccine**

Dear Chair Thomas and Members:

On behalf of the California Business Roundtable, which represents California's largest employers, I am writing to express our concern and disappointment with the proposed re-adoption of the COVID-19 Emergency Temporary Standard (ETS). While we believe the draft regulations released on May 28, 2021 are an improvement over the previous version, the ongoing refusal of the board to accept the safety and efficacy of the COVID-19 vaccine is troubling and contradictory, leading to significant confusion in the entire business community. Our concern is that this confusion becomes a legal liability, as businesses see the ETS as a significant barrier to fully reopening and bringing employees back to work.

The Centers for Disease Control (CDC), California Department of Public Health (CDPH) and every recognized public health official has affirmed that the COVID-19 vaccine is safe and effective in preventing both infection and transmission of the virus. However, the ETS continues to mandate that vaccinated employees must still wear a mask in an indoor setting except in very limited circumstances, despite both the CDC and CDPH no longer recommending that action. Moreover, the mandate for N95 masks, which again is not supported by science or experience, will increase the cost burden on all businesses as they once again compete against each other to secure enough supply for their employees.

**The ongoing mask mandate for vaccinated employees is confusing, anti-science and denies the safety and efficacy of the COVID-19 vaccine.** The state and business community have spent considerable resources encouraging people to get vaccinated. The governor has even tied vaccinations with the economic reopening. By treating vaccinated employees to nearly the same standard as unvaccinated employees, the ETS effectively casts doubt on whether the COVID-19 vaccine makes a person safe from COVID and is effective at preventing infection. Moreover, since the ETS makes little distinction between a vaccinated and unvaccinated employee, it creates a disincentive for employees to get vaccinated. This is the wrong message to send to employees looking to re-enter the workforce.

**The ETS will create a hostile work environment and lead to discrimination and harassment.** By mandating masking for vaccinated employees unless and until all employees are vaccinated, the

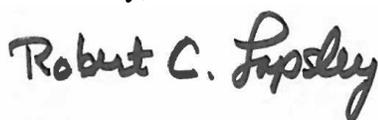
ETS sets up the real and inevitable probability for conflict between vaccinated and unvaccinated employees—including those who cannot get vaccinated due to pre-existing medical conditions. As we know, there continue to be barriers in ensuring equity in the distribution and utilization of the COVID-19 to certain regions and ethnic groups. We are gravely concerned that the ETS will pressure employers to hire only those who have been fully vaccinated, which could lead to discrimination against prospective employees who have not had extensive access to the vaccine.

**The ETS could exacerbate the existing worker shortage by creating additional frustration among employees.** Under the ETS, a vaccinated employee can enter their workplace as a customer unmasked but must be masked if they enter the same workplace as an employee. This unequal and unnecessary double standard will lead to considerable frustration, especially for essential workers who have worn masks for 14 months and were “prioritized” for vaccination during the initial vaccine rollout. We have considerable concern that the ETS will only exacerbate existing frustrations for our employees, who listened to the state and got vaccinated when it was their turn with the expectation that they would be able to return to “normal” faster. Moreover, this frustration from employees could create additional legal liability as well.

We respectfully ask you to be a partner in the state’s economic recovery, **follow the science** and immediately conform the ETS with the guidance provided by the CDC, CDPH, Governor Gavin Newsom and public health experts across the nation. Businesses need certainty and predictability, but as written, the ETS is still one of the most significant barriers to a rapid and equitable recovery.

The business community has invested hundreds of millions of dollars throughout the pandemic to provide a safe and healthy environment for employees and customers. A full reopening of the economy does not change that commitment. We support the governor’s reopening strategy, which acknowledges the critical role consistency and clarity are in fully reopening the economy by removing the Blueprint and creating a simpler set of guidelines moving forward. We hope that you will join Governor Newsom and the business community in supporting guidelines and regulations that promote economic activity and reinforce the safety and efficacy of the COVID-19 vaccine by immediately aligning the ETS with the science.

Sincerely,

A handwritten signature in black ink that reads "Robert C. Lapsley". The signature is written in a cursive, slightly slanted style.

ROBERT C. LAPSLEY  
President