



COUNTY OF HUMBOLDT

Legislation Text

File #: 21-895, **Version:** 1

To: Board of Supervisors

From: Human Resources

Agenda Section: Departmental

SUBJECT:

County Considerations After June 15 Reopening of California

RECOMMENDATIONS:

It is recommended that the Board of Supervisors:

1. Receive and file a status report regarding California COVID-19 reopening;
2. Discuss, approve and adopt staff recommendations regarding Cal/OSHA COVID-19 Prevention Emergency Temporary Standards regarding facial covering; vaccination documentation status; and physical distancing requirements;
3. Discuss and approve staff recommendation of a continuation of videoconferencing public meetings until September 30, 2021 in accordance to the Executive Order N-08-21;
4. Discuss and approve staff recommendation of a continuation of Resolution No. 20-20 Temporary Teleworking Policy; and
5. Discuss and approve staff recommendation to require visiting patrons to wear face coverings in all county facilities.

SOURCE OF FUNDING:

All county funds

BACKGROUND INFORMATION:

On May 11, 2021, staff presented a report with the following recommendations:

Direct departments to bring employees back to county facilities while following applicable safety guidance, as determined by the Humboldt County Health Officer, Human Resources/Risk Management, Department of Health & Human Services - Public Health and the County Administrative Office.

Consider returning Board meetings to be held in-person at Board Chambers beginning the first meeting date after June 15, while following applicable safety including masking and social distancing among Board members and the public.

Create and appoint two Board members to an ad-hoc committee to identify telework opportunities and issues and/or or develop a permanent telework policy.

Adopt a Resolution approving the California Supplement Paid Sick Leave retroactive January 1, 2021 with a grace period and sunset date of October 30, 2021.

Direct Human Resources/Risk Management to establish a new bank of leave hours for county employees in accordance with Senate Bill (SB) 95.

Your Board discussed staff recommendations and took the following actions on May 11, 2021:

Adoption of a Resolution approving the California Supplemental Paid Sick retroactive January 1, 2021 with a grace period and sunset date of October 30, 2021.

Establishment of a new bank leave of hours in compliance with Senate Bill 95.

Furthermore, at the May 11, 2021 meeting, your Board directed staff to return with recommendations for:

Returning to in-person work activities;

Resuming in-person Board meetings in the Board of Supervisors Chamber; and

Providing teleworking options.

The purpose of this Agenda Report is to receive and file a status report regarding California COVID-19 reopening efforts. Staff is also seeking direction from your Board regarding the county's Blueprint Reopening efforts as the *employer*.

On June 11, 2021 Governor Newsom issued Executive Order N-08-21 (Attachment #1).

On June 17, 2021 the California Occupational Safety and Health Standards Board (OSHSB) voted to approve amendments to the California Department of Industrial Relations Division of Occupational Safety and Health (Cal/OSHA) COVID-19 Emergency Temporary Standards (ETS) ("June 17 Amendments"). The June 17 Amendments affect many of the requirements that have been in place since OSHSB initially adopted the regulations "November 2020 COVID-10 Prevention Plan." Furthermore, Governor Newsom issued an Executive Order, N-09-21 (Attachment #2), implementing the amended Cal/OSHA ETS immediately upon filing with the Secretary of State.

DISCUSSION:

Issue #1: Returning to In-Person Work Activities

The County of Humboldt, an *employer*, is a public service organization. It is reasonable to assume that county residents and those doing business with the County will expect public services offered at the county to reopen as well. However, the overall direction on what reopening the county government looks like is a policy decision for your Board, and pursuant to Government Code Section 24260 it is your Board's prerogative to establish the days and hours of work and office operation for all county offices.

The quickly changing COVID-19 landscape in the State of California has been met with many questions and concerns. There are various agencies at the state and federal level providing guidance that impacts different sectors of our nation and communities. This includes the "reopening" of California on June 15, 2021, which lifted restrictions related to capacity and distancing for most business and activities; however, when acting in our capacity as employers in the State of California, the County of Humboldt must adhere to the requirements put in place by the California Department of Industrial Relations (DIR) Division of Occupational Safety and Health, better known as Cal/OSHA.

In November 2020, Cal/OSHA released COVID-19 Emergency Temporary Standards (ETS), including those related to employees' face coverings, physical distancing at worksites and the installation of partitions between workstations. The County has been operating under the November 2020 ETS since that time.

On June 17, 2021 the Cal/OSHA Board readopted the revised Cal/OSHA COVID-19 Prevention ETS. These standards incorporated the latest California Department of Public Health ("CDPH") guidance on face coverings and eliminate physical distancing requirements, except for certain employees during outbreaks.

Some of the notable June 17 Amendments (Attachment #3 COVID-19 Prevention ETS - *What Employers Need to Know About the June 18 Standards*) are as follows:

Fully vaccinated employees without symptoms do not need to be tested or quarantined after close contacts with COVID-19 cases unless they have symptoms.

Fully vaccinated employees do not need to wear face coverings except for certain situations during outbreaks and in settings where CDPH requires all persons to wear them.

Employers must document the vaccination status of fully vaccinated employees if they do not wear face coverings indoors.

Employees are not required to wear face coverings when outdoors regardless of vaccination status except for certain employees during outbreaks.

Employees are explicitly allowed to wear a face covering without fear of retaliation from employers.

Physical distancing requirements have been eliminated except where an employer determines there is a hazard and for certain employees during major outbreaks.

Employees who are not fully vaccinated may request respirators for voluntary use from their employers at no cost and without fear of retaliation from their employers.

Employees who are not fully vaccinated and exhibit COVID-19 symptoms must be offered testing by their employer.

Cal/OSHA's Vaccination status must be documented. The revised ETS does not specify a methodology. The employer must record the vaccination status for any employee NOT wearing a face covering indoors and this record must be kept confidential. Acceptable options are as follows:

Employees provide proof of vaccination - vaccine card, image of the vaccine card; and the employer maintains a copy.

Employees provide proof of vaccination. The employer maintains a record of the employees who presented proof, but not the vaccine record itself.

Employees self-attest to vaccination status and employer maintains a record of who self-attests.

Recommendation #1: Staff is seeking Board direction with regard to face coverings in the workplace for county employees. There are two options available to the County as outlined below.

OPTION #1 - Maintain the requirement that all staff, contractors, and volunteers wear face coverings.

Human Resources/Risk Management has been in contact with many other counties in the State of California, and some are taking the safest possible approach by maintaining the "status quo" and requiring that all staff continue to wear face coverings when indoors (with some exceptions), and when outdoors and unable to keep six feet of distance from others. Some notable counties that have taken this approach are Alameda, Los Angeles, and Sacramento. It is important to note that nothing in the June 17 Amendments prevents the employer from requiring all employees to wear a face covering instead of having a documentation process (as described below in Option #2).

This would be the most logistically efficient and safe approach to the changes in Cal/OSHA ETS given the fact that the County would be required to maintain and safeguard records of vaccinated employees, contractors, and volunteers in order for those employees to not wear a face covering. Under the Cal/OSHA ETS, the County does not have the option to assume self-attestation if an employee, contractor, or volunteer is simply not wearing a face covering. The county facilities and workforce, which is roughly 2300 employees not including contractors and volunteers, are very widespread, and the maintenance, tracking, and enforcement of vaccination acknowledgements would be a monumental task for all county departments to be in compliance.

OPTION #2 - Implement a Vaccination Acknowledgement Form

Cal/OSHA's revised June 17 Amendments reflected the availability of vaccination to limit workplace transmission; revised requirements in light of updated Centers for Disease Control ("CDC") and California Department of Public Health ("CDPH") face covering guidance; and provided options for employers to make a safe transition from physical distancing and face covering mandates to more normal operations. It is noteworthy to mention that the provisions under November 2020 ETS will continue in place, included but are not limited to:

An effective written COVID-19 Prevention Plan Program.

Providing effective training and instructions to employees on the employer's prevention plan and their

rights under the ETS.

Providing notification to public health department of outbreaks.

Providing notification to employees of exposure and close contacts.

Requirements to offer testing after potential exposures.

Requirements for responding to COVID-19 cases and outbreaks.

Quarantine.

With the recent June 17 Amendments and its allowances for fully vaccinated employees, as an employer, the County must consider how it will manage employees at their worksites and facilities, and whether the County would make any distinction between employees who are fully vaccinated or those who are not. The complex and multilayered legal issues would be implicated by employer requests for documentation concerning employees' vaccination status and uses of that information. There are four principle issues which the County must be mindful of:

Requests for documentation concerning employees' vaccination status;

Confidentiality requirements related to information concerning employees' vaccination status;

Limitations on the County's use or disclosure of information concerning employees' vaccination status; and

Employee authorizations to allow the County to use and disclose information concerning employees' vaccination status for additional legitimate and non-discriminatory purposes.

Under the Americans with Disabilities Act ("ADA") and the Fair Employment and Housing Act ("FEHA") the County may request or require that employees provide documentation concerning their vaccination status. Such requests are permissible because the requested information relates to the employee's vaccination status, not a health or medical condition that may qualify as a disability. As a result, the request for an employee's vaccination status does *not* constitute a disability-related inquiry under either the ADA or the FEHA, and employers may permissibly request or require the production of documentation concerning employees' vaccination status.

However, there are important limitations on employer requests for additional information from an employee and on what other information may be included on documentation concerning the employee's vaccination status. If the County asks follow-up questions that relate to the reasons why an unvaccinated employee is not vaccinated, the County risks turning a lawful request related to the employee's vaccination status into an unlawful disability-related inquiry. Such follow-up questions would constitute disability-related inquiries because the questions are likely to elicit information about the employee's health or medical conditions. The County *must* avoid making such inquiries unless the County can demonstrate that such inquiry is job-related and consistent with business necessity.

In order to take advantage of the allowances provided under the June 17 Amendments which authorize employers to exempt fully vaccinated employees from certain regulatory requirements, employers must document employees' vaccination statuses. As a recommended best practice, the County could request the employee attest to or self-certify to their vaccination status. The attestation must be in writing, and it should include the date and the employee's signature.

Implementing a Vaccination Acknowledgement Form (Attachment #4) - This form would be provided to all staff to voluntarily complete. Completion of this form will acknowledge that the staff person is fully vaccinated (meaning at least 14 days have passed since the final dose of the vaccine). Staff who choose to complete the Vaccination Acknowledgement Form will be deemed fully vaccinated and may go unmasked in most situations indoors and outdoors at County worksites, once the form is provided to County Human Resources/Risk Management.

The Vaccination Acknowledgement Form will be placed online for ease of access for employees, contractors and volunteers all of whom are subject to Cal/OSHA's regulations when at County worksites.

Employees, contractors, or volunteers who do not voluntarily complete the Vaccination Acknowledgement form are considered to be unvaccinated within the Cal/OSHA regulations. Those who are defined as unvaccinated within the Cal/OSHA must comply with the following regulations:

Wear face coverings at the worksite other than in the few limited exceptions noted in the regulations (i.e., alone in a room, eating or drinking in the workplace, provided they are at least six feet apart and there is outside air supply to the area, etc.).

Those exempted from wearing face coverings due to a medical condition, mental health condition, or disability, shall wear a face shield with a drape on the bottom, if their condition or disability permits. Unvaccinated employees unable to wear a face covering of any kind shall be tested weekly for COVID-19 during paid time, and at no cost to the employee.

If option #2 were to be chosen, the County will have to make N95 masks available for voluntary use by employees who are not fully vaccinated. Under CDC and federal OSHA guidance, unvaccinated persons are to wear face coverings and physically distance indoors. Cal/OSHA is requiring voluntary respirators because California is phasing out physical distancing, because a well-fitting respirator reduces the risk of infection better than physical distancing alone, and because respirators are readily available. The ETS provides this as an alternative protection for unvaccinated employees. N95 masks are defined as respirators under the Cal/OSHA ETS, and thus, requires the employee to complete a brief training to ensure proper donning and doffing of the N95 mask, along with acknowledgement of potential hazards associated with wearing an N95 mask. Masks, training, and acknowledgement would be made available as soon as administratively possible.

If option #2 were to be chosen, the County would also still be requiring face coverings in certain types of facilities. Per the Cal/OSHA ETS, face coverings must be worn at all times by all employees while providing services in health care facilities, including hospitals, medical clinics, mental health clinics and long-term care facilities, correctional facilities or detention centers, indoors in K-12 schools, childcare and youth settings, and homeless and emergency shelters.

Once the County obtains documentation concerning an employee's vaccination status, that information will constitute confidential medical information under both the ADA and the Confidentiality of Medical Information Act ("CMIA"). Additionally, the amended Cal/OSHA COVID-19 Regulations protect employee medical records implicated by the regulations and only permit disclosure where

expressly permitted or required by law. Confidentiality obligations apply regardless of whether the information indicates that the employee is vaccinated or unvaccinated.

Due to the stringent obligations under both the ADA and the CMIA, as such the Vaccination Acknowledgement Form will be restricted access to Human Resources/Risk Management.

In addition to the two options above, Human Resources/Risk Management recommends that the Board ease workplace re-integration and direct departments to bring employees back to county facilities while adhering to the applicable safety guidance. It is further recommended that departments remain flexible with employees as they are eased back into county facilities.

Physical Distancing- The June 17 Amendments eliminate physical distancing and barrier requirements regardless of vaccination status. There are several exceptions:

During an outbreak (3 or more employees in an exposed group), the County is required to evaluate whether physical distancing or barriers are necessary to control the transmission of COVID-19.

Physical distancing and barriers must be used in a major outbreak (20 or more employees in an exposed group) for all employees, regardless of vaccination status.

Nothing in the June 17 Amendments prevents the County from implementing additional protective measures than are required, including the use of physical distancing and barriers.

Issue #2: Returning Board of Supervisors meetings to Board Chambers

With respect to resuming the Board meetings in the Board Chambers, the governor released new language in his Executive Order N-08-21 replacing section paragraph 3 of March 2020 Executive Order N-29-20, which allowed Board Meetings to occur telephonically and over video conferencing. The new language will remain in full force and effect until expiration on September 30, 2021 and reads as follows:

“Notwithstanding any other provision of state or local law (including, but not limited to, the Bagley-Keene Act or the Brown Act), and subject to the notice and accessibility requirements set forth below, a local legislative body or state body is authorized to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body or state body. All requirements in both the Bagley-Keene Act and the Brown Act expressly or impliedly requiring the physical presence of members, the clerk or other personnel of the body, or of the public as a condition of participation in or quorum for a public meeting are hereby waived.

In particular, any otherwise-applicable requirements that

state and local bodies notice each teleconference location from which a member will be participating in a public meeting;

each teleconference location be accessible to the public;

members of the public may address the body at each

teleconference conference location;

state and local bodies post agendas at all teleconference locations;

at least one member of the body be physically present at the location specified in the notice of the meeting; and

during teleconference meetings, at least a quorum of the members of the local body participate from locations within the boundaries of the territory over which the local body exercises jurisdiction

are hereby suspended.

A local legislative body or state body that holds a meeting via teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, consistent with the notice and accessibility requirements set forth below, shall have satisfied any requirement that the body allow members of the public to attend the meeting and offer public comment. Such a body need not make available any physical location from which members of the public may observe the meeting and offer public comment.

Accessibility Requirements: If a local legislative body or state body holds a meeting via teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the body shall also:

Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the Americans with Disabilities Act and resolving any doubt whatsoever in favor of accessibility; and

Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to subparagraph (ii) of the Notice Requirements below.

Notice Requirements: Except to the extent this Order expressly provides otherwise, each local legislative body and state body shall:

Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by the Bagley-Keene Act or the Brown Act, and using the means otherwise prescribed by the Bagley-Keene Act or the Brown Act, as applicable; and

In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. As to any instance in which there is a change in such means of public observation and comment, or any instance prior to the issuance of this Order in which the time of the meeting has been noticed or the agenda for the meeting has been posted without also

including notice of such means, a body may satisfy this requirement by advertising such means using "the most rapid means of communication available at the time" within the meaning of Government Code, section 54954, subdivision (e); this shall include, but need not be limited to, posting such means on the body's Internet website.

All of the foregoing provisions concerning the conduct of public meetings shall apply through September 30, 2021.

Recommendation #2: It is recommended that your Board continue to hold public meetings via telephonically and over video conferencing until September 30, 2021.

Issue #3: Development of Teleworking Options

The Board on March 16, 2020, adopted Resolution No. 20-20 (Attachment #5) relating to employee procedures, leave accruals and telecommuting in response to COVID-19. This resolution allowed departments to permit employees to work from home for safety and to care for loved ones and children, especially as many schools moved to distance learning. While remote working has had impacts on the county's service delivery, in certain situations departments have seen that there is potential for this working style to be implemented effectively. However, many issues need to be considered that require input from your Board in order to adopt an approach to remote work going forward.

Recommendation #3: In conjunction with the County Administrative Office, County HR/Risk Management will draft several teleworking options for Board discussion at a future meeting. Until then, staff recommends the Interim Teleworking Policy for Remote Working remains in place and employees should continue to work with their supervisors, managers and/or directors to find reasonable solutions to their own individual situations.

Issue #4: Policy on Face Covering Requirements for the Public in County Facilities

On June 15, 2021 the State of California reopened and the CDPH released updated guidance on the Use of Face Coverings. This guidance is outlined below:

Guidance for Individuals

Masks are not required for fully vaccinated individuals, except in the following settings where masks are required for everyone, regardless of vaccination status:

On public transit (examples: airplanes, ships, ferries, trains, subways, buses, taxis, and ride-shares) and in transportation hubs (examples: airport, bus terminal, marina, train station, seaport or other port, subway station, or any other area that provides transportation)

Indoors in K-12 schools, childcare and other youth settings.

Healthcare settings (including long term care facilities)

State and local correctional facilities and detention centers

Homeless shelters, emergency shelters and cooling centers

Additionally, face coverings are required for unvaccinated individuals in indoor public settings and businesses (examples: retail, restaurants, theaters, family entertainment centers, meetings, state and **local government offices serving the public** [emphasis added]).

Guidance for Business, venue Operators or Hosts

In settings where masks are required only for unvaccinated individuals, businesses, venue operators or hosts may choose to:

Provide information to all patrons, guests and attendees regarding vaccination requirements and allow vaccinated individuals to self-attest that they are in compliance prior to entry.

Implement vaccine verification to determine whether individuals are required to wear a mask.

Require all patrons to wear masks.

Additionally, no person can be prevented from wearing a mask as a condition of participation in an activity or entry into a business.

Exemptions to Face Covering Requirements

The following individuals are exempt from wearing face coverings at all times:

Persons younger than two years old. Very young children must not wear a mask because of the risk of suffocation.

Persons with a medical condition, mental health condition, or disability that prevents wearing a mask. This includes persons with a medical condition for whom wearing a mask could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a mask without assistance.

Persons who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication.

Persons for whom wearing a mask would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines.

Recommendation #4: The County of Humboldt, as an *employer*, must take a number of actions to protect the health and well-being of both our employees and the patrons and to control the spread of

COVID-19 in accordance with the expert guidance of the CDC, CDPH and local public health authorities.

The safety of county staff is of the utmost importance. Providing patrons with the ability to self-attest to their vaccination status could potentially put a county employee at risk of contracting COVID-19, which is an avoidable liability by requiring that all patrons wear a face covering. Vaccination verification does not appear to be a viable option considering logistics and efficiency for patrons visiting the County facilities.

FINANCIAL IMPACT:

Most departments have already expended funding to follow industry guidance for office workspaces in order to allow limited in-person operations. However, increased in-person activities may increase the amount of services and supplies purchased by county department to keep up with required cleaning and necessary equipment to abide by CDPH/Cal-OSHA guidance.

STRATEGIC FRAMEWORK:

This action supports your Board's Strategic Framework by providing community-appropriate levels of service and investing in county employees.

OTHER AGENCY INVOLVEMENT:

CDPH, Cal/OSHA, all county departments

ALTERNATIVES TO STAFF RECOMMENDATIONS:

Your Board could choose to not approve any part of the recommendations outlined above and direct staff as you see fit. However, the reopening of the state on June 15, 2021 has now passed and the County must consider continuity of in-person public services in a safe and compliant manner.

ATTACHMENTS:

1. 2021-06-11 Executive Order N-08-21
2. 2021-06-17 Executive Order N-09-21
3. *What Employers Need to Know About the June 18 Standards*
4. County of Humboldt Vaccination Acknowledgement Self-Attestation Form
5. County of Humboldt Board of Supervisors Resolution N-20-20

PREVIOUS ACTION/REFERRAL:

Board Order No.: C-1, H-3, I-1

Meeting of: 3/16/2020, 4/14/20, 5/11/2021

File No.: 20-384, 20-459, 21-588