March 2, 2021

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**RE: COVID-19 Advisory Committee Comments**

Dear Chief Parker:

On behalf of the California Chamber of Commerce, I represent the breadth of California employers, across all regions and sectors of California, public and private, large and small, from agriculture to manufacturing to tourism. We write to thank you for inviting us to participate in Cal/OSHA's Advisory Committee regarding revising the COVID-19 Emergency Temporary Standard (ETS) which took place on February 11th, 12th, and 16th of 2021 ("Advisory Committee"), and to comment on draft text released ("Discussion Draft")1 prior to the Advisory Committee as well as comments made during the meeting.

At the outset, we want to emphasize that we appreciate the seriousness of COVID-19's threat to the people of California. We are committed to addressing COVID-19 and complying with the already-existing state, county, legal mandates, and local guidance – including Cal/OSHA's guidance documents and any further updates to fight against COVID-19. We also appreciate the difficult work which the Division of Occupational Health and Safety (the "Division) performed in preparation for the Advisory Committee in drafting the Discussion Draft which, we hope, will culminate in improvements to the ETS being passed by the Standards Board later this year.

In support of that effort, we offer this letter to identify concerns with the Draft Regulation and suggest specific as well as conceptual changes to the ETS. All suggestions discussed below are based on the Discussion Draft. [2]

## Textual Suggestions.

- **Suggested Amend No. 1 - 3205. (a)(1)(B) – Telework locations:**

  "Employees working from home, or any other location chosen by the employee and not the employer."

  **Rationale:** The ETS's exceptions to scope should recognize that employers cannot control all environments outside the workplace, such as if an employee who is working remotely chooses to work outside their home, e.g., at a park, or a coffee shop, or any other non-employer controlled location.

- **Suggested Amend No. 2 - § 3205. (b)(3) – COVID-19 Exposure:**

  "~~COVID-19 exposure~~ 'Close contact' means being within six feet of a COVID-19 case for a cumulative total of 15 minutes or greater in any 24-hour period within or . . ."

  **Rationale:** Because "exposure" and "exposed group" are going to describe very different statuses – either within 6 feet for 15 minutes, or in the general working vicinity, but not necessarily within 6 feet for

[1] Draft text available at: https://www.dir.ca.gov/dosh/DoshReg/covid-19-emergency-standards/Discussion-Draft-2021-Feb-11,12,16.pdf. Notably, a revision to this text was released on February 12th to incorporate newly-released CDC guidance regarding vaccines.
[2] To be clear, this means that redlines are suggested changes to the Discussion Draft, and black text may be present ETS text, or suggested text from the Discussion Draft.

any time period at all – we believe the terms needs to be more distinct from one another. To that end, we believe describing those individuals who meet the 6 feet/15 minutes criteria as "close contacts" would be more consistent with other health guidance and common usage and minimize confusion.

- **Suggested Amend No. 3 - § 3205. (b)(3) – Optional § 5144 Compliance:**

  We support the inclusion of an alternative means of compliance with the ETS, such as the use of respiratory protection under Section 5144. Notably, we would prefer such alternative compliance be more feasible for employers without existing Section 5144 compliant plans, as discussed below. Regardless of that concern, however, we would clarify the Discussion Draft's language as follows.

  "EXCEPTION: Employees have not had a COVID-19 exposure if they wore ~~required~~ respiratory protection, in accordance with Section 5144, whenever they were within 6 feet of the COVID-19 case during the high risk exposure period."

  **Rationale:** Because the Draft Discussion intends to allow the use of compliant respiratory protection pursuant to Section 5144 as an option, not a requirement, its language should not create the appearance of compulsion by inserting "required." With "required" included in the provision, it would appear that the exception applies only where Section 5144 traditionally applies and compels the use of such respiratory protection – which, based on discussions at the Advisory Committee, is not the intent.

- **Suggested Amend Nos. 4 & 5 - § 3205(b)(7). – Exposed Group:**

  Generally, we are supportive of the transition from utilizing the "exposed workplace" to the "exposed group" as clearer and easier to apply, without changing its role in the ETS or the scope of coverage.[3] However, we do think that the exception to the "exposed group," as well as consistency with the existing FAQs, should be considered.

  **Suggested Amend No. 4:**

  "Exposed group" means all workers at a work location, working area, or a common area at work where they may have been exposed to a COVID-19 case ~~was present~~ during the high-risk exposure period. A common area at work includes bathrooms, walkways, hallways, aisles, break or eating areas, and waiting areas.

  **Rationale:** The ETS's present language regarding the scope of the "exposed workplace" differs from the present FAQs, which provide that workers of different shifts can be separated for purposes of the if "the facility is well ventilated and the cleaning and disinfection requirements of the ETS are met between or before shift changes …"[4] However, the text of both the present "exposed workplace" and the proposed "exposed group" do not reflect the ability to temporally separate shifts if proper methods are followed. This is an important provision which should not be left ambiguous in the ETS then applied only in the FAQs. To that end, we suggest the above clarification.

  **Suggested Amend No. 5:**

  **Text Option 1:** "EXCEPTION: ~~Places where~~ persons who were wearing face coverings and passed through the work location, working area, or common area when a COVID-19 case was present without interacting, or congregating ~~not a work location, working area, or a common~~ may be excluded from the exposed group."

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[3] As discussed at the Advisory Committee, we agree with the resulting change that an outbreak can only be triggered by COVID-19 cases among workers.

[4] See the Frequently Asked Question page (available here: https://www.dir.ca.gov/dosh/coronavirus/COVID19FAQs.html) ("FAQs"), Question #9 under "Outbreaks and the Exposed Workplace", as of the date of this letter.

**Text Option 2:** "EXCEPTION: For purposes of identifying work locations, working areas, or common areas where a COVID-19 was present during the high risk exposure period and therefore workers present may fall into the "exposed group", such places shall not include areas where the potential "exposed group" member passed through without interacting or congregating and were wearing a face covering."

**Rationale:** As written, the exceptions to the "exposed workplace" refers to places, whereas the new definition of "exposed group" refers to people, making the present ETS's exception more difficult to understand than necessary. In order to maintain its effect but clarify its language, we have provided two options above. Option one changes the emphasis of the definition to focus on "persons." Option two, based on the comments made by Mr. Berg during the Advisory Committee, focuses on clarifying that the exception is a refinement of the areas covered, by inverting the sentence structure and emphasizing the locations as an element of the "exposed group" definition.

- **Suggested Amend No. 6 - § 3205(b)(7):**

"EXCEPTION: Employees are not part of the exposed group if they wore respiratory protection, in accordance with Section 5144, when present at the same work location, working area, or a common area as a COVID-19 case."

**Rationale:** If employees wearing suitable respiratory protection are not considered as part of the definition of COVID-19 exposure (which we would suggest be clarified as "close contact") then they should certainly not fall into "exposed workplace" population who were even less proximate to the COVID-19 case. Therefore, we would insert the same exception used under § 3205(b)(3) into 3205(b)(7), with the removal of the reference to "required", pursuant to Suggested Amend No. 3.

- **Suggested Amend No. 7 - § 3205. (b)(8) - Gaiters:**

"'Face covering' means a surgical mask, a medical procedure mask, a respirator worn voluntarily, or a tightly woven fabric or non-woven material of two to three layers. The face covering must have no visible holes or openings and must cover the nose and mouth. Single-layer materials may qualify if they are folded over to create a double-layer."

**Rationale:** Pursuant to present CDC guidelines,[5] "gaiter" face coverings are permitted so long as they have two layers or are folded to make two layers. Because of their popularity and ease, we would ask that the Discussion Draft follow the present CDC guidance and permit single-layer materials (such as some gaiters) if they are folded over.

- **Suggested Amend No. 8 - § 3205. (c)(3)(B)3 – Language Requirements for Notice:**

"Give written notice of a potential COVID-19 case at the worksite exposure in a ~~form readily understandable by employees~~ language understood by the majority of the employees within one business day, in a way that does not reveal any personal identifying information of the COVID-19 case . . ."

**Rationale: AB 685** (Reyes), which was codified in Labor Code Section 6409.6, required notice be provided in "both English and the language understood by the majority of employees." The ETS should be consistent in its requirements. Under the present text of the ETS and the Discussion Draft, the employer is required to provide notice pursuant to AB 685 "in a form readily understandable by employees," which differs significantly from AB 685's requirements. While we appreciate that this phrase is also utilized in other sections of the ETS (such as Section 3205(c)(1)), we believe AB 685's notice requirements should be consistent with the statute.

[5] Available here: https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.html.

- **Suggested Amend No. 9 - § 3205. (c)(3)(B)3.b – Multi-employer Worksite Notice:**

  "b. Independent contractors and other employers of workers present at the worksite during the high risk exposure period. For such employers that receive notice from the discovering employer, they shall have one business day to provide compliant notice from when they receive notice of the COVID-19 exposure."

  **Rationale:** At present, the ETS and Discussion Draft are ambiguous as to who must provide notice to workers in a multi-employer worksite where individuals from different employers may pass through or work on different elements of a project. This ambiguity is critical because employers have only one business day to provide the required notice.

  These multi-employer worksites range from construction sites to retail or commercial properties where different entities share the same or closely proximate spaces. For example, in a commercial property, building maintenance may pass through a rented office space intermittently, though they are not employed by the renting entity. In the event of a triggering outbreak in that office space, would the renting employer be obligated to provide direct notice to the maintenance staff who had passed through previously? And, if so, how would they locate those staff in sufficient time? Alternatively, in the construction space, how is one contractor to locate the workers of another contractor who passed through the site for one specific project days or weeks ago?

  The only feasible solution here is to require best efforts to notify the employers of those workers, who would then have the obligation to notify their own workers within a business day of receiving such notice.

- **Suggested Amend No. 10 - § 3205. (c)(3)(B)3.b – Clarification of Exception:**

  "Employers shall provide face coverings and ensure they are worn by employees over the nose and mouth when indoors, ~~when outdoors and less than six feet away from another person,~~ and where required by orders from the CDPH or local health department. Employers shall ensure face coverings are clean and undamaged. Face shields are not a replacement for face coverings, although they may be worn together for additional protection. The following are exceptions to the face coverings requirement:

  1. When outdoors and more than six feet away from another person
  2. When an employee is alone in a closed room.
  3. …

  **Rationale:** This simply moves one implicit exception (outdoors and more than six feet away) into the explicit list of exceptions, and therefore clarifies the ETS. It has no substantive effect on the ETS's application.

- **Suggested Amend No. 11 - § 3205. (c)(10) – Exclusion of Protected Employees:**

  **"(C)** Employers shall not be required to exclude employees from the workplace who have been vaccinated or recently-recovered against COVID-19 if all of the following criteria are met

  1. Are fully vaccinated (i.e., ≥2 weeks following receipt of the second dose in a 2-dose series, or ≥2 weeks following receipt of one dose of a single-dose vaccine);
  2. Are within 3 months following receipt of the last dose in the series; and
  3. Have remained asymptomatic since the current COVID-19 exposure."

  **Rationale:** CDC guidelines released during the Advisory Committee changed guidance on who was required to quarantine after exposure, and permitted individuals to choose not to quarantine if their immune systems likely provided some protection against COVID-19, specifically because they had

been vaccinated or had previously recovered from COVID-19.[6] Pursuant to these guidelines, we believe that employees who have been vaccinated should be exempt from exclusion pursuant to Subsection (c)(10). This would be consistent with CDC guidance *and* will allow essential workplaces (where vaccination will be increasingly common in the coming months) to continue to operate with minimal disruption.[7]

- **Suggested Amend No. 12 - § 3205. (c)(11)– Return to Work:**

  ~~2. During critical staffing shortages, when there are not enough staff to provide safe patient care, essential critical infrastructure workers in the following categories may return after Day 7 from the date of last exposure if they have received a negative PCR test result from a specimen collected after Day 5:~~

  ~~a. Asymptomatic health care workers;~~

  ~~b. Asymptomatic emergency response workers; and~~

  ~~c. Asymptomatic social service workers who work face to face with clients in child welfare or assisted living.~~

  …
  (F) If no violations of local or state health officer orders for isolation or quarantine would result, critical infrastructure employees ~~the Division~~ may~~, upon request, allow employees to~~ return to work on the basis that the removal of an employee would create undue risk to a community's health and safety. In such cases, the employer shall develop, implement, and maintain effective control measures to prevent transmission in the workplace.

  **Rationale:** We appreciate the recognition that certain workforces, such as medical workers, are essential during this time and the need to recognize slightly shorter exclusion periods for those essential workers. However, we believe this list of essential workers (and the related shortened return-to-work period) should be broadened to include all essential industries identified by Governor Newsom.[8] Moreover, referring to the Governor's list may avoid concerns with any specific language (such as that presently included in the ETS) becoming outdated.[9] Finally, we believe it is important to avoid a bottleneck such as requiring each workplace involved to request permission of the Division to do so, as this would be unworkable with the scale of utilization which our suggested amend would permit.

- **Suggested Amend No. 13 - § 3205.1(a)(2) – Outbreak exit threshold:**

  "This section shall apply until there fewer than three ~~no new~~ COVID-19 cases detected in the exposed group ~~for~~ within[10] a 14-day period.

  **Rationale:** The ETS presently relies on differing triggers to begin and end an outbreak, which is confusing for employers when applying those standards. For example: under the ETS presently, a 14-day period with two cases is not an outbreak, *unless* the workplace was in an outbreak previously and

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[6] Relevant CDC guidance available here: https://www.cdc.gov/vaccines/covid-19/info-by-product/clinical-considerations.html.

[7] While we are sensitive to the concerns raised during the Advisory Committee that research is ongoing regarding the efficacy of certain vaccines against COVID-19 variants, we believe that waiting for the next prospective round of amendments to the ETS to include vaccines would be hugely problematic. In effect, this would mean that while it is clear that California's healthcare professionals can and should rely on the vaccines for protection, Cal/OSHA would be refusing to admit their efficacy in other workplaces.

[8] Available here: https://covid19.ca.gov/essential-workforce/.

[9] Obviously, we appreciate the legal difficulties related to changing documents, and believe a reference to the essential workplace list as it presently exists (and has remained virtually unchanged in months) would be workable here.

[10] Though not substantively critical, "within" was also added to be consistent with Section 3205.1(a)(1), which utilized "within" instead of "for."

has had no 14-day periods with zero cases since that outbreak was triggered. That is, *unless* the employer was previously in a major outbreak threshold, and again has had no 14-day period with zero cases . . . in which case the workplace would continue to be a major outbreak. This analysis is logically inconsistent and confusing, particularly for smaller employers. An employer should be able to look at their case rate of the past few weeks, and easily determine what level of precautions are necessary. As a corollary, the ETS presently utilizes a standard to end an outbreak ("no new cases detected in the exposed group"), which is too low, given that social spread may create new case in the exposed workplace with no relation to the outbreak.

To correct for these issues, we believe the threshold to end an outbreak should more closely correspond to the threshold used to begin an outbreak. This change is also consistent with the initial justification for utilizing the low threshold of three cases as an "outbreak." As discussed at the Advisory Committee, the justification utilized for why three cases should trigger broad testing was that three cases likely means more cases (or "invisible cases") are already occurring and have not been discovered. However, when considering how to end an outbreak, that justification does not apply, because the entire exposed workplace is *already receiving regular testing*, so the possibility of "invisible cases" is not applicable. If the testing finds one case, we can be relatively certain that there is, in fact, only one case in the workplace. With that in mind, there is certainly no justification to continue outbreak-level testing protocols when we fall below the outbreak trigger threshold.

- **Suggested Amend No. 14 - § 3205.2(a)(2) – Major outbreak exit threshold:**

"This section shall apply until there are fewer than 10 ~~fewer than three~~ COVID-19 cases detected in the exposed group ~~for~~ within[11] a 14-day period.

**Rationale:** We appreciate the Discussion Draft's change here, suggesting that a major outbreak could end when "fewer than three" new COVID-19 cases are discovered. However, we believe this transition point makes little sense in the overall context of the ETS because it creates overlap between the categories of "outbreak" and "major outbreak."

For simplicity and clarity, we believe outbreaks should generally end just below their trigger threshold, as noted above. However, we believe that an exception to this general rule should be made to keep the major outbreak exit threshold based on a 14-day timeline.[12] To reflect the use of a 14-day timeline (as opposed to the roughly 30-day trigger period that is roughly twice as long), we believe a fair approximation would be the use of an exist threshold of 10 cases within 14 days. Furthermore, this will allow employers whose outbreaks are coming under control to reduce necessary testing volume from twice-per-week pursuant to Section 3205.2 to weekly testing pursuant to Section 3205.1, and thereby preserve testing resources for other potential citizens who may need them most urgently, such as those showing symptoms.

## Over-arching Concerns With the ETS & Discussion Draft

In addition to our specific textual suggestions to the Discussion Draft, discussed above, we also have multiple concerns which are less well-suited to specific language, and so we include them here.

- **Concern No. 1 - § 3205(c)(10)(D) – Uncapped leave and maintaining earnings.**

Though we appreciate the intention of ensuring workers are not dissuaded from reporting illness or quarantining, we believe the ETS's present system of exclusion and paid time off is not sustainable for employers and is out-of-step with California's existing sick leave policies.

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[11] Though not substantively critical, "within" was also added to be consistent with Section 3205.1(a)(1), which utilized "within" instead of "for."
[12] Though utilizing a 30-day timeline would be more consistent with the major outbreak trigger, it would add complexity for small employers by requiring them to watch two different exit timelines (keeping track of their cases over the last 30 and 14 days to determine when they could exit a major outbreak or a minor outbreak) and these two exit timelines measures might conflict depending on the days that cases are discovered.

First – we are concerned with the burden such uncapped paid leave places squarely on employers. Notably, the leave provided by the ETS contains no overall caps on paid time off or cumulative pay. Given that the ETS appears likely to remain in effect until at least mid-2022,[13] and potentially later, it is quite likely an employee may need to be excluded multiple times over that duration due to social spread bringing individual cases into the workplace. Though employers cannot prevent such social spread from entering the workplace, this could lead to multiple 10-day periods of paid exclusion, during which the employer is simultaneously paying (and potentially training) the excluded individual's replacement. This is a considerable cost which many employers will struggle to bear and is independent of California's existing system of paid and unpaid leave. The ETS and its requirements must be integrated with that system, which employers have considerable experience working with. This includes present law and upcoming legislation. For example, pending legislation aimed at providing more paid leave related to COVID-19 (particularly **AB 84 & SB 95**)[14] provides a maximum number of hours as well as a maximum daily and aggregate pay.[15] We would ask that the ETS incorporate similar limits on paid leave both in length and amount, then provide for unpaid leave if an employee needs to be excluded for a third or fourth 10-day period. Or, at a minimum, the ETS (or a related FAQ) should explicitly address the potential conflicting amounts indicated by "maintain earnings" and the statutorily-provided benefits via language such as: "For purposes of this subsection, employer-provided paid time off or sick leave benefits shall be considered as 'maintaining an employee's earnings'."

Second – we remain concerned that employers *are not legally permitted to compel the use of paid leave*, pursuant to DLSE guidance.[16] As a result, the language of the ETS ("Employers may use employer-provided employee sick leave benefits for this purpose …") is illusory, because employers in fact cannot compel employees to utilize their employer-provided leave prior to utilizing the uncapped paid time off provided by Section 3205(c)(10)(D). Though this may not be an issue that Cal/OSHA can address via the ETS because it rests on a conflict with other areas of law, we believe the ETS must not ignore the legal realities and conflicts that face employers in attempting to comply.

- **Concern No. 2 – The ETS's use of "possible" as a standard.**

At present, the Discussion Draft utilizes a standard of "not possible" in various provisions.[17] Specifically, the ETS allows alternative means where the initial requirement is "not possible." This is concerning because "possible" is not a standard employed in similar workplace safety regulation and raises a question as to how an employer might meet such a burden. For example – if an employer could spend the majority of their revenue to remodel a kitchen to create additional spacing pursuant to Section 3205(c)(6)(A), but doing so would force them into operating at a net loss for two months – would that qualify as "not possible"? Or, if the employer is already operating at a net loss (as many in California are presently), how much deeper into debt would qualify as "not possible"? Arguably, no such level of deficit spending would meet that standard – because, after all, taking out loans and operating at a loss is possible . . . until it isn't, and the business must close. To avoid such discussions, we would recommend that all such instances be replaced with a standard that has been used previously and that employers and the Cal/OSHA Appeals Board are familiar with, such as "practicable."

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[13] This is pursuant to comments made at the Advisory Committee by Deputy Chief of Research and Standards Eric Berg and Executive Officer for the Standards Board Christina Shupe.
[14] These bills are a pair and feature identical provisions as of the date of this letter.
[15] In the text of both bills as of the date of this letter, 80 hours and $511 per day, or $5,110 in aggregate.
[16] *See Labor Code §* 233 "… Employees have the sole discretion to designate days taken as paid sick leave under Section 233."; DLSE Enforcement Manual – "30.2 Entitlement: An employee who … works in California for 30 or more days within a year for the same employer is entitled to paid sick days …An employee may determine how much paid sick leave he or she uses at any given time." (available at: https://www.dir.ca.gov/dlse/dlsemanual/dlse_enfcmanual.pdf); DLSE FAQ on paid sick leave – "For what purposes can an employee take paid sick leave – What can I use sick leave for? …The employee may decide how much paid sick leave he or she wants to use (for example, whether you want to take an entire day, or only part of a day). Your employer can require you to take a minimum of at least two hours of paid sick leave at time, but otherwise the determination of how much time is needed is left to the employee."
[17] Specifically, "not possible" is referenced in Sections 3205(c)(6), (c)(8), and (c)(11).

- **Concern No. 3 – Concern over calls for increasingly precise definitions.**

During the Advisory Committee, there were multiple comments calling for more precise definitions of terms, including "good faith," "reasonable accommodation," and "immediately." We are very concerned that limiting these terms via precise definitions will not improve outcomes because non-compliant employers will continue not comply with any new definition as they would with the present language. However, it will render these terms less evergreen in their application and rob them of the flexibility needed to address every industry and workplace in California, from the small to large and urban to the rural.

As an example – determining a "reasonable accommodation" requires an interactive process under existing law, which requires case-specific analysis of the disability, the position, and alternatives. Creating a more specific definition of this term here, when it is already defined elsewhere, would only serve to duplicate (and potentially conflict with) existing law.

In addition, defining "good faith" is problematic. For example, for purposes of Sections 3205.1 & 3205.2, defining "good faith" relates to attempts to provide testing. As an initial matter, it is important to remember that the burden remains on the employer to demonstrate good faith. With that in mind, any added precision is difficult to imagine without potentially conflicting with some of the situations that the term must cover. In that breadth, we must consider multiple axis of variability, including:

- Workplaces with publicly available testing resources, as well as more well-resourced worksites that can hire their own testing company.
- Workplaces that are in rural and distant locations (where testing is less easily available) and those which operate in the Bay Area and have multiple potential testing resources nearby.
- Workplaces where workers travel often (such as logistics or construction), and therefore may not be able to present themselves for testing as quickly as where a workplace that involves only local personnel.

In light of the necessity for these terms to apply broadly, we are concerned that adding specificity might result in language that is inapplicable to certain workplaces or infeasible, particularly given the timeline within which the Discussion Draft must be finalized and become the new ETS.[18]

- **Concern No. 4 – Voluntary Use of N95 Masks.**

Despite our general appreciation of additional compliance methods being added to the ETS, and our preference for the redline discussed in Suggested Amend No. 6, we have considerable concern that the onerous provisions of § 5144 will disincentivize the use of N95 or KN95's by employers who do not have the resources to setup and maintain a compliant program. In addition, we believe that even imperfectly fitting N95 or KN95 masks are superior to generic face coverings. Therefore, in order to ensure the perfect is not the enemy of the good, we believe that the ETS should encourage voluntary usage, much as the Wildfire Smoke Protection Regulation (§ 5141.1) does. This will encourage more workers to wear protection that – while imperfect – is better than the gaiters or surgical masks they are likely presently wearing. We are open to discussing which provisions of the ETS might be appropriate to incorporate non-fit-tested N95's into, and would also be open to a multi-tiered system, where fit-tested N95's would be suitable to replace certain requirements, and non-fit-tested N95s would be incentivized, but perhaps not replace the same safeguards.

- **Concern No. 4 – Implicit expansion of § 3205.4.**

Broadly-speaking, we appreciate many of the improvements made to this section, including the inclusion of a "one-seat" alternative for compliant spacing in vehicles. However, we are concerned that the changes proposed by the Discussion Draft seem to expand the scope of the section beyond its original understanding (transportation to and from work) to all vehicles which might be used as part of work, such as industrial vehicles or work trucks. If this scope is intended, then an exception must be added to clarify that the physical distancing requirements of the section (§ 3205.4(c)) are not applicable in working vehicles

[18] Pursuant to discussion at the Advisory Committee, we believe the Discussion Draft may potentially come before the Standards Board for a vote as soon as May of 2021.

where they are not feasible. This would apply in situations where multiple workers in a team must cover considerable distance to reach a worksite and it is not feasible to transport them separately.

We would also strongly disagree with the suggestion made during the Advisory Committee to provide N95 to all vehicles occupants if travel is greater than 30 minutes. If the ETS is not going to allow voluntary use similar to Wildfire Smoke Standard (see above), requiring employers to provide N95 masks and develop compliant programs in order to use basic vehicles will be blatantly infeasible for many employers, including in essential industries such as agriculture. To the converse, if the ETS were to incorporate voluntary use of N95's or KN95s, then such precautions would be more consistent with the ETS and would be more feasible for employers.

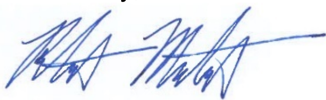
- **Concern No. 5 – Use of cohorting should be encouraged.**

During the Advisory Committee, and particularly in regards to §§ 3205.3 & 3205.4, there was much discussion about how effective cohorting was a suitable and useful tool to minimizing risk in environments (such as agriculture) where workers may live, work, and travel to-and-from work, together. We would like to see the ETS incentivize and recognize such best practices. Notably, we believe such cohorting could be an effective resolution to the much-discussed issue of how spacing of workers inside of transportation (§ 3205.4(c)(2)) and also potentially regarding the bed-spacing issue (§ 3205.3(c)). We also believe such cohorting should be considered for inclusion in the "assignment of transportation" hierarchy (§ 3205.4(b)) as an additional exception.

## Conclusion

We thank Cal/OSHA for inclusion in the Advisory Committee and provide these comments in the hopes of improving the Discussion Draft and the ETS as we move forward to fight COVID-19.

Sincerely,



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