



Policy and Protocols for Testing City of Oakley Employees

I. Preamble

The purpose of the California Occupational Safety and Health Act of 1973 is to assure safe and healthy working conditions for all workers. (Labor Code § 6300, et seq.)

On April 23, 2020, the Equal Employment and Opportunities Commission (“EEOC”) issued updated Technical Assistance Questions and Answers (“Guidance”) concerning the Americans with Disabilities Act (“ADA”) and Rehabilitation Act. The Guidance states that, despite certain restrictions under the ADA and the Rehabilitation Act concerning medical-related testing in the workplace, employers may administer a COVID-19 test to detect the virus that causes COVID-19 and determine if employees attempting to enter the workplace have the virus for the purpose of ensuring the health and safety of their workplaces. In publishing the Guidance, the EEOC recognized that an employee with the virus will pose a direct threat to the health of others.

On November 30, 2020, pursuant to emergency rulemaking authority, the California Occupational Safety and Health Standards Board adopted temporary regulations regarding measures employers must take in order to prevent the spread of COVID-19 in the workplace. The regulations require employers to offer COVID-19 testing at no cost to all employees who had a potential “COVID-19 exposure” in the workplace, as that term is defined in the regulations. (Title 8, California Code of Regulations, section 3205 et seq.)

II. Statement of Policy

The purpose of this policy is ensure the health and safety of working conditions for all City of Oakley employees through the administration of COVID-19 testing for City of Oakley employees. Ensuring healthy and safe working conditions and the health and safety of employees is a business necessity for the City of Oakley.

III. Authority

Pursuant to Labor Code section 6300, et seq. and California Code of Regulations, Title 8, sections 3205 et seq., and consistent with the Equal Employment and Opportunity

Commission's April 23, 2020 Guidance, the City of Oakley is authorized to adopt this COVID19 testing policy.

IV. Compliance

The City of Oakley will fully and faithfully comply with any and all applicable laws, including, but not limited to, the ADA and Rehabilitation Act, the Fair Employment and Housing Act ("FEHA") and the California Medical Information Act ("CMIA") in the administration of this policy and associated protocol.

V. Policy

Scope of Coverage:

This policy will apply with equal force to all City of Oakley employees as testing for the virus that causes COVID-19 and preventing the transmission of the virus that causes COVID-19 in the workplace is reasonably related to all City of Oakley jobs.

On a case-by-case basis, the City Manager or his designee is authorized to determine that this policy will not apply to an employee if the City Manager or his designee determines that testing such employee is not job related or consistent with business necessity. Testing may not be job related or consistent with business necessity for a particular employee if his or her job responsibilities do not result in contact with or proximity to other people, including other employees or members of the public.

Effective Dates:

This Policy shall be effective immediately upon adoption and shall remain in effect until the City of Oakley advises employees that the Policy is no longer operative due to the end of the present public health emergency.

Acknowledgement of Agreement to Submit to Testing:

The City of Oakley may require that employees acknowledge receipt of the notice and execute an agreement submitting to testing for the virus that causes COVID-19. Such agreement will include a CMIA authorization for release of the test results to the City of Oakley.

Refusal to Submit to Testing:

The City of Oakley will place any employee who refuses to submit to testing in accordance with the testing protocol associated with this policy on unpaid leave. The employee may then elect to use any earned or accrued leave to which they are entitled in order to provide compensation during the time away from work.

Adoption of Testing Protocol:

The City Manager or his designee is authorized to adopt a testing protocol concerning the administration of COVID-19 tests for City of Oakley employees.

Notification of Test Results:

The City may require employees to obtain a COVID-19 test when the employee has symptoms of COVID-19, the employee returns from an absence of one week or more, or the employee has been in close contact (within six feet for a cumulative total of 15 minutes or greater in any 24 hour period) with a COVID-19 case, which includes an individual with a positive COVID19 test, is subject to a COVID-19-related order to isolated issued by a local or state health official, or has died due to COVID-19. The employee will notify the Human Resources Division of test results. In the event of a positive COVID-19 test result, HR will email you a formal notice not to Return to Work and any other relevant instructions.

When the City requires the employee to get a test, the City will compensate employees for all time spent traveling to and from testing and the time for the test.

Test Results and Any Other Health or Medical Records:

The City of Oakley will store test results and any other health or medical records, in a manner consistent with applicable law and in accordance with the City's practice for storing medical information in a file separate from the employee's personnel file. Please see the City's [Policy & Protocols for Use & Disclosure of Medical Information Related to COVID](#) on the City of Oakley's Employee only page.

Effect of Positive COVID-19 Diagnosis:

In the event that a City of Oakley employee tests positive for the virus that causes COVID-19, the employee will, as provided above, notify the Human Resources. After the City receives notification of the positive result, the City will instruct the employee not to return to work until such time as either of the following occur: (1) The employee's health care provider

advises the employee that it is safe for them to return to work and has provided the employee with a note certifying this, which the employee provides to the City of Oakley; or (2) The employee self-certifies that they are and have been:

- Free of fever (a “fever” is defined as 100.4° F [37.8° C] or greater using an oral thermometer) for at least 24 hours without the use of fever-reducing medicines;
- Any other signs of other COVID-19 related symptoms that I may have experienced, including my respiratory symptoms (*e.g.*, cough or shortness of breath) have significantly resolved within the last 24 hours;
- At least 10 days have passed since testing positive or since any COVID-19 symptoms first appeared; and
- Complying with all directives provided by their health care provider before seeking to return to work, including, but not limited to, directives regarding the length of time that the employee needs to self-isolate/quarantine, follow-up testing, and social distancing.

The City may not require a negative test for an employee to return to work.

Leave Status of Employee with Positive COVID-19 Diagnosis:

The City of Oakley will place any employee who tests positive for the virus that causes COVID-19 on paid sick leave status for the remainder of the day following the positive diagnosis. The employee may elect to use Supplemental Paid Sick Leave, if they have a balance of such leave, or may elect another form of other earned or accrued leave, or may take such leave on an unpaid basis.

Testing After COVID-19 Outbreak

If the City has been identified by a local health department as the location of a COVID-19 outbreak, or when there are three or more COVID-19 cases in an exposed workplace within a 14-day period, the City will provide COVID-19 testing to all employees at the exposed workplace, except for employees who were not present during the period of the outbreak, at no cost to the employees and during working hours. The City will meet all additional testing requirements under Title 8, California Code of Regulations, section 3205.1. The City will exclude employees with COVID-19 exposure for 10 days after the last known COVID-19 exposure to a COVID-19 case or as prescribed by regulatory guidelines.

Reservation of Right to Require Additional or Subsequent Testing:

The City of Oakley expressly reserves the right to require that employees submit to additional or subsequent tests in order to ensure healthy and safe working conditions for all employees.