



CALIFORNIA CORRECTIONAL  
HEALTH CARE SERVICES

## MEMORANDUM

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**Date:** December 21, 2020

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**To:** California Department of Corrections and Rehabilitation All Institution Staff  
California Correctional Health Care Services All Institution Staff  
Division of Juvenile Justice All Facility Staff

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**From:**

A handwritten signature in blue ink, appearing to read "K. Allison".

KATHLEEN ALLISON

Secretary

California Department of Corrections and Rehabilitation

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J. CLARK KELSO

Receiver

California Correctional Health Care Services

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**Subject:** MANDATORY EMPLOYEE COVID-19 TESTING AND NON-COMPLIANCE  
ACCOUNTABILITY

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This memorandum updates and clarifies expectations and requirements outlined in the July 31, 2020 memorandum, titled *Staff COVID-19 Testing – Non-Compliance Accountability*, regarding mandatory employee COVID-19 testing requirements at all California Department of Corrections and Rehabilitation (CDCR) institutions and Division of Juvenile Justice (DJJ) facilities. This memorandum shall be immediately posted at the entrance of every institution and facility.

Pursuant to the June 11, 2020, *Plata* Order Regarding Staff Testing for COVID-19, and July 1, 2020, Order Re: Baseline Staff Testing for COVID-19, all CDCR and DJJ institution and facility employees are subject to mandatory COVID-19 testing. Employees who are teleworking exclusively are not required to test onsite and are not subject to this memorandum.

Any employee who refuses to comply with mandatory COVID-19 testing shall not be permitted to enter the institution or facility and shall be placed on unapproved dock (without pay) until they comply with mandatory testing. Unwillingness to comply with mandatory staff testing shall be interpreted as a refusal. Concurrently, employees that refuse to comply with mandatory employee COVID-19 testing and who are not actively engaged in a request for reasonable or religious accommodation, shall be also subject to progressive discipline for their refusal to submit

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to the mandatory testing. Refer to Department Operations Manual (DOM), Chapter 3, Article 22, *Employee Discipline*.

If an employee returns to work from a regular day off, approved leave, shift swap, long-term sick, workers' compensation and/or Administrative Time Off, and employee testing is not available on the day of their return, the employee shall be tested in the next round of institution or facility employee testing. Employees on shift swaps shall not miss more than two testing cycles in a given month.

## **REASONABLE AND RELIGIOUS ACCOMMODATIONS**

If an employee is unable to comply with mandatory employee COVID-19 testing due to a disability, they shall immediately notify their supervisor and Return-to-Work Coordinator to engage in the interactive process.

Employees requesting a religious accommodation shall immediately contact their local Equal Employment Opportunity Coordinator. If employees have submitted a request for reasonable or religious accommodation due to the inability to comply with mandatory testing, they may request permission to remain off work, using their own leave credits or take an unpaid leave-of-absence, pending a determination on their request. The Department shall engage in the interactive process with the employee to ensure that a timely reasonable or religious accommodation determination is made.

## **REQUIREMENTS FOR NON-COMPLIANCE**

In consultation with the assigned Employee Relations Officer (ERO)/Health Care Employee Relations Officer (HCERO), managers and supervisors shall utilize DOM Sections 33030.8-9, *Causes for Corrective Action/Causes for Adverse Action*, to apply progressive discipline on the initial refusal and each subsequent refusal to comply with mandatory staff COVID-19 testing. The required steps are as follows:

- A Letter of Instruction (LOI) shall be issued to the employee immediately upon their initial refusal to comply and shall include a specified date to comply based on testing availability. Mandatory COVID-19 employee testing is currently conducted weekly at all institutions and facilities; however, if the testing frequency changes, the date to comply shall coincide with the next available testing at the institution or facility.
- After issuance of the initial LOI and if the employee still refuses to comply with mandatory employee COVID-19 testing by the date specified and/or fails to provide substantiation that they have attempted to schedule a test but were unable to test within the identified timeframe, the employee shall remain on unapproved dock (without pay). The Hiring Authority shall immediately electronically submit a Confidential Request for Internal Affairs Investigation/Notice of Direct Adverse Action form (CDCR 989) within the Case

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Management System 4.0, consistent with DOM, Chapter 3, Article 14, Section 31140.15, *Request for Internal Affairs Investigation*.

- For probationary employees refusing to comply with mandatory COVID-19 testing, the Hiring Authority shall coordinate with their assigned ERO/HCERO to issue a Notice of Rejection During Probation immediately.

To assist Hiring Authorities in ensuring corrective action is promptly issued to employees who refuse to comply with mandatory employee COVID-19 testing, the attached LOI template is provided for use by supervisors and managers. Hiring Authorities are encouraged to coordinate with their ERO/HCERO, should they have any questions related to the progressive discipline process.

All departmental supervisors and managers are responsible for ensuring subordinate staff comply with testing.

## **NON-COMPLIANCE TRACKING**

All departmental supervisors and managers are responsible for ensuring subordinate staff consistently wear approved face coverings correctly, practice physical distancing, and comply with mandatory employee COVID-19 testing. With information provided by each supervisor and manager, the attached Non-Compliance Tracking log shall be maintained by the ERO/HCERO until further notice. The attached Non-Compliance Tracking log shall immediately replace the log issued on December 4, 2020, and October 27, 2020. EROs shall submit the log every Monday at noon for the preceding week.

Attachments