

**MINUTES OF THE SPECIAL MEETING OF THE
COAST LABOR RELATIONS COMMITTEE**

Meeting No. 25-22

Time/Date: March 25, 2022

Place: Via Teleconference

Present:	<u>For the Union</u>	<u>For the Employers</u>
	W. Adams	J. McKenna
	R. Olvera, Jr.	S. Hennessey
	C. Williams	W. Bartelson
	F. Ponce De Leon	M. McKenna
		B. Alverson
		M. Hall
		C. Shaw

Also Present: K. Donovan

CalOSHA COVID-19 Emergency Temporary Standard

The CLRC met to review the Cal/OSHA COVID-19 Emergency Temporary Standard (ETS) and CLRC Mtg. Nos. 01-21 and 59-20.

The Employers stated that the Cal/OSHA COVID-19 ETS requires each terminal/facility to have their own specific plan and that the relevant CLRC agreements can be incorporated into each plan.

The Union stated that the Cal/OSHA COVID-19 ETS should be applied to the single, coastwise ILWU-PMA bargaining unit and that PMA and its member companies are jointly responsible for adherence to the ETS, which went into effect on November 30, 2020.

The following requirements of the ETS are updated to reflect changes to the Cal/OSHA ETS effective January 14, 2022.

1. **COVID-19 Testing:** COVID-19 testing is provided for by the Employers to workers at no cost during compensable working hours, as one-time testing in the event of COVID-19 work-related exposure, and periodic testing for all workers in an “exposed workplace”¹ during an “outbreak”² as defined by the ETS, with the exception for those workers

¹ An “exposed workplace” is a work location, working area, or common area used or accessed by a “COVID-19 case” during the high-risk period, including bathrooms, walkways, hallways, aisles, break or eating areas, and waiting areas. A “COVID-19 case” is a person who: (1) has a positive “COVID-19 test”; (2) is subject to COVID-19-related order to isolate issued by a local or state health official; or (3) has died due to COVID-19, in the determination of a local health department or per inclusion in the COVID-19 statistics of a county. Areas where masked workers momentarily pass through the same space without interacting or congregating do not constitute an exposed workplace under the ETS.

² An “outbreak” is three or more COVID-19 cases in an exposed workplace within a 14-day period or an outbreak as identified by a local health department. The ETS also differentiates between “outbreaks” and “major outbreaks” (20

previously excluded from the workplace within the last 90 days who tested positive in that prior instance for COVID-19 but were asymptomatic following the workplace exposure.

2. **Exclusion from the Workplace:** Exclusion from the workplace is required when a worker tests positive for COVID-19, receives a diagnosis of COVID-19 or, if unvaccinated, has had a COVID-19 exposure.
3. **Workplace Exclusion Pay:** In accordance with the Return to Work criteria below, workers with COVID-19 workplace exposure³ may maintain pay and benefits during the exclusion period.⁴ The requirement to maintain pay and benefits exists in situations in which a worker is excluded but otherwise able and available to work, and the requirement does not apply where it can be demonstrated that the COVID-19 exposure is not work related or where the worker received disability payments during the exclusion period.⁵
4. **Return to Work Criteria⁶:**

COVID-19 Symptoms: Any worker who develops symptoms of COVID-19 can return to work after five days if symptoms are resolving and they submit a negative test on day five or later. Workers who cannot test or decline to test may return to the workplace after day 10 days provided that they do not have a fever of 100.4 or higher and symptoms are resolving. Workers must wear a face covering at all times for no less than 10 days after the onset of symptoms. If an order to isolate, quarantine, or exclude a worker has been issued by a state or local health official, the worker can only return to work as indicated on that order.

COVID-19 Positive: Workers who test positive for COVID-19 may return to work after five days if symptoms are not present or resolving and if the worker submits a negative test taken on or after day five. Workers who cannot test or decline to test may return to the

or more COVID-19 cases in an exposed workplace within a 30-day period) and mandates different levels of testing in both settings.

³ “COVID-19 exposure” 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 overlapping with the “high-risk exposure period”. “High-risk exposure period” for COVID symptomatic cases is two days before symptoms develop until it has been 10 days since symptoms first appeared, 24 hours have passed without fever, and symptoms have improved. “High-risk exposure period” for asymptomatic COVID cases is from two days before until 10 days after the first positive test was performed. This definition applies regardless of the use of face coverings.

⁴ This category of leave is available on the Dockworker Self-Service Portal for a worker to seek the maintenance of pay and benefits when the worker is excluded from the workplace under these circumstances.

⁵ If an excluded worker becomes sick with COVID-19 (e.g., someone who has tested positive and/or is symptomatic), they may seek paid leave under CLRC Mtg. No. 24-22, Item 3(i) (“Testing positive for COVID-19, with supporting documentation”) and/or Item 3(iv) “Experiencing symptoms of COVID-19, and seeking medical diagnosis, with supporting documentation”).

⁶ The Return to Work Criteria is based on isolation and quarantine recommendations from the California Department of Public Health issued January 6, 2022.

workplace after day 10 provided that they do not have a fever of 100.4F or higher and symptoms are resolving. Workers must wear a face covering at all times for no less than 10 days after a positive test.

COVID-19 Exposure for Unvaccinated Workers: Unvaccinated workers exposed to COVID-19 may return to work after five days if they obtain a negative test result collected on or after day five of the exposure and lack symptoms. Workers who cannot test or decline to test can return to work after day 10. Workers must wear a face covering at all times for no less than 10 days after the exposure.

COVID-19 Exposure for Vaccinated Workers (Not Yet Booster Eligible): Vaccinated workers, if exposed to COVID-19, are not subject to workplace exclusion, and may continue to work provided they have no symptoms. Vaccinated workers who continue to work after an exposure must wear a face covering at all times and maintain six feet of distance for no less than 14 days after the exposure. Vaccinated workers who elect to test on day five after the exposure and produce a negative result can continue to work without the aforementioned restriction.

COVID-19 Exposure for Boosted Workers: Vaccinated workers, if exposed to COVID-19, are not subject to workplace exclusion, and may continue to work provided they have no symptoms. Vaccinated workers who continue to work after an exposure must wear a face covering at all times and maintain six feet of distance for no less than 14 days after the exposure. Vaccinated workers who elect to test on day five after the exposure and produce a negative result can continue to work without the aforementioned restriction.

COVID-19 Exposure for Vaccinated Workers (Booster Eligible but Not Yet Boosted: Booster eligible workers who are not yet boosted and exposed to COVID-19 may return to work after five days if they obtain a negative test result collected on or after day five of the exposure and lack symptoms. Workers who cannot test or decline to test can return to work after day 10. Workers must wear a face covering at all times for no less than 10 days after the exposure.

5. **Screening:** The process for screening employees for and responding to employees with COVID-19 symptoms will continue. The ETS permits workers to conduct a self-assessment for the presence of COVID-19 symptoms.⁷ Accordingly, the CLRC agreed to continue use of the attached COVID-19 Daily Checklist.
6. **Face Coverings:** Workers must continue to wear face coverings consistent with Cal/OSHA ETS requirements in higher risk settings. In addition to the face covering requirements identified in No. 4 above, an approved face covering will continue to be required, regardless of vaccination status, when: (1) inside employer-provided shared transportation, such as shuttle buses and Ro-Ro transport vans; (2) during COVID worksite outbreaks; and, (3) at transportation hubs, such as cruise terminals.

⁷ The self-assessment requirement, as with any other aspect of the ETS regulation, may be insufficient in some geographic areas where other regulations create higher standards – such as in Los Angeles, for example, where the Los Angeles County Health Department is currently requiring an in person, interactive symptoms check prior to the start of work.

Consistent with Item 1 above, the Employers agreed to provide the Union with its plan for offering COVID-19 testing as required by the ETS.

Consistent with Item 2 above, the Employers recognized there is an obligation under the ETS to maintain the pay and benefits of those excluded from the workplace because of exposure to COVID-19 in the workplace regardless of whether the exposed worker tests positive for COVID-19.

The CLRC agreed to continue to use the jointly approved template notification form covering COVID testing and workplace exclusions.

The CLRC further agreed that the requirements outlined in this set of minutes will apply coastwise, including California, Oregon, and Washington.

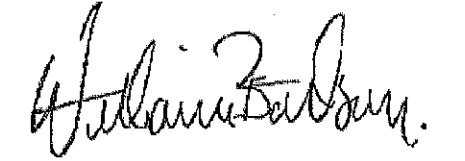
The CLRC agreed to the attached Questions and Answers Document on these topics. The CLRC agreed that these minutes will be in effect through April 30, 2022.

Date Signed: 03/25/22

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For the Union:

For the Employers:



ILWU-PMA JOINT COAST LABOR RELATIONS COMMITTEE

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March 25, 2022

QUESTIONS AND ANSWERS REGARDING APPLICATION OF COASTWISE WORKPLACE EXCLUSION PAY, CORRESPONDING BENEFITS, COVID-19 TESTING PAY, AND WORKING AFTER TESTING POSITIVE FOR COVID-19 OR A COVID-19 EXPOSURE

The following questions and answers are provided to address questions we anticipate workers will have regarding the workplace exclusion pay, corresponding benefits, COVID-19 testing pay and workers continuing to or returning to the workplace after testing positive for COVID-19 or exposed to COVID-19, as agreed to by the Coast Labor Relations Committee (CLRC) in CLRC Mtg. No. 25-22. See also CLRC Mtg. No. 24-22.

1. How does a worker apply for workplace exclusion pay and corresponding benefits or COVID-19 testing pay?

The worker applies online using their phone or computer at Pacific Maritime Association's (PMA) Dockworker Self-Service Portal at: <https://selfservice.pmanet.org>. The worker will complete the application for workplace exclusion pay and corresponding benefits by selecting Reason vii. If a worker is seeking COVID-19 testing pay only, he/she will select Reason viii. The worker then clicks "submit" to process the application.

2. If a worker has any questions regarding how to apply for workplace exclusion pay and corresponding benefits or COVID-19 testing pay, who does he/she contact?

A worker may call his/her union representative or the PMA Payroll number, (888) PMA-1234 (888-762-1234), with questions. The union representative or PMA representative cannot complete the application on behalf of the worker but can assist in answering questions regarding the application process. The worker may also contact the local PMA representatives in Southern California at (562) 495-7661, in Northern California at (510) 891-4631, and in the Pacific Northwest (PNW) at (503) 827-4040.

3. How are benefits treated under CLRC Mtg. No. 25-22?

Under CLRC Mtg. No. 25-22, any exclusion pay provided to a worker will be converted into corresponding work hours and used to determine benefit eligibility consistent with the

PCL&CA. Under the PCL&CA, non-registered workers such as casuals are not eligible for holiday, vacation, welfare, or pension. If such workers subsequently become registered, any hours accrued under CLRC Mtg. No. 25-22 will be counted for holiday, vacation, and pension qualifying purposes only per the PCL&CA. Exclusion pay will be eligible compensation for elective deferrals and employer contributions to the ILWU-PMA Savings (401(k)) Plan. To convert exclusion pay into corresponding work hours an individual's daily average hours will be calculated by dividing their total hours worked for the last six months by the number of calendar days in the preceding six months multiplied by five-sevenths (5/7), to represent five days in a seven-day payroll week and then rounded up two decimals and capped at 8 hours.

The equation is:
$$\frac{\text{Total hours worked for the last 6 months}}{\# \text{ of calendar days in last 6 months} \times 5/7}$$

* The result will then be rounded up two decimals and capped at 8 hours to derive final daily average hours.

4. When may a worker start receiving workplace exclusion pay and corresponding benefits or COVID-19 testing pay?

Exclusion pay, corresponding benefits, and COVID-19 testing pay are available retroactively starting on November 30, 2020 and will terminate with the expiration of the Cal/OSHA COVID-19 Prevention Emergency Temporary Standard (ETS) regulation. Where there are modifications to the ETS regulation or its interpreting Cal/OSHA guidance, conforming modifications to the exclusion pay, corresponding benefits, COVID-19 testing pay, and the circumstances in which workers may work following a diagnosis of or exposure to COVID-19 may be appropriate.

5. Is any worker prohibited from submitting an application?

No worker is prohibited from filing an application through PMA's Dockworker Self-Service Portal.

6. How long will it take for the worker to receive an answer to an application?

A worker will be able to view the status of his/her application in PMA's Dockworker Self-Service Portal. In most circumstances, the status of the application will be updated within a week from the date of the application. Delays in the application review process may occur

based upon the volume of applications received. Applications will be processed in priority order based on the date submitted.

7. Will a worker be able to track progress on his/her application for review?

Yes, the worker will be able to log onto PMA's Dockworker Self-Service Portal and check their own application history to determine the application's status as in process, approved, or denied.

8. Will workers receive workplace exclusion pay and corresponding benefits based upon all hours and wages earned working for companies that are not members of PMA?

No, the CLRC agreement in CLRC Mtg. No. 25-22 does not apply to companies that are not members of PMA.

9. How is eligibility determined for workplace exclusion pay and corresponding benefits?

A worker is eligible to receive workplace exclusion pay and corresponding benefits if the worker is able and available to work but excluded from the workplace because the worker either tests positive for COVID-19, as a result of workplace exposure (based on contact tracing) or is exposed to someone at work who has tested positive for COVID-19 (based on contact tracing). Only workers who receive the "Notice to ILWU Worker 1 for COVID-19 Exposure" are eligible to apply for exclusion pay and corresponding benefits.

10. Under which reason would a worker apply for workplace exclusion pay and corresponding benefits on PMA's Dockworker Self-Service Portal?

Reason vii: You received the "Notice to ILWU Worker 1 for COVID 19 Exposure" letter from the JPLRC.

11. Does a worker need to provide any documentation to request workplace exclusion pay and corresponding benefits?

No.

12. What are the reasons for which a worker may be denied workplace exclusion pay and corresponding benefits?

There are several possible reasons:

A worker whose COVID-19 exposure is demonstrably not work related, will be denied workplace exclusion pay and corresponding benefits.

A worker who becomes symptomatic due to workplace exposure will be denied workplace exclusion pay and corresponding benefits because the worker is not considered “able and available” to work in such circumstances. If an excluded worker becomes sick with COVID-19, he/she may seek paid leave under CLRC Mtg. No. 24-22, Item 3(iv), “Experiencing symptoms of COVID-19, and seeking a medical diagnosis.”

13. Under which reason on the Dockworker Self-Service Portal would a worker apply for COVID-19 testing pay?

Reason viii: You received either the “Notice to ILWU Worker 2 - Multiple COVID-19 Exposures” letter or the “Notice to ILWU Worker 3 - Major Outbreak” letter from the JPLRC.

14. Does a worker need to provide any documentation to request COVID-19 testing pay?

Yes, workers will be required to upload the test results to receive COVID-19 testing pay.

15. How does a worker provide documentation to support an application on PMA’s Dockworker Self-Service Portal?

A worker may upload a document in the following formats: PDF, GIF, JPEG, DOC, DOCX.

16. How is a worker’s exclusion pay and corresponding benefits determined?

The daily average wage is calculated by dividing the gross wages by the number of calendar days in the preceding six months multiplied by five-sevenths (5/7), to represent five days in a seven-day payroll week.

The equation is:
$$\frac{\text{Gross Wages for the last 6 months}}{\# \text{ of calendar days in last 6 months} \times 5/7}$$

A worker may receive an amount up to worker's daily average wage for each day excluded. As discussed above in Question 3, benefits are maintained based upon the worker's exclusion pay consistent with the PCL&CA.

17. What will the worker receive with respect to COVID-19 testing pay?

The worker will be paid a sum equivalent to two hours at the individual's basic straight-time rate for each test taken. COVID-19 testing pay only applies if the worker was not already eligible for the workplace exclusion pay and received an "Notice to ILWU Worker 2 - Multiple COVID-19 Exposures" letter or the "Notice to ILWU Worker 3 - Major Outbreak" letter from the JPLRC. A worker's claim that a test took longer than two hours may be submitted to the JPLRC for consideration. The agreed to sum paid for COVID-19 testing pay will not count as qualifying hours for benefits purposes.

18. Can a worker receive Pay Guarantee Plan (PGP) payments, Clerk Work Opportunity Guarantee (CWOOG) payments, or pay for CLRC COVID-19 Related Leave on the same day they receive exclusion pay and corresponding benefits?

No.

19. Are workers who are jointly employed by and paid through local Joint Port Labor Relations Committees (JPLRC), such as dispatchers, eligible for workplace exclusion pay?

Yes.

20. Will paid hours of workplace exclusion pay count as qualifying hours for benefits purposes?

Yes. Workplace exclusion pay will count as hours credits for pension, welfare and vacation benefits, and will count as eligible compensation for elective deferrals and employer contributions to the ILWU-PMA Savings (401(k)) Plan.

21. Do PGP, CWOOG, and training wages count in one's daily average wage?

Yes, PGP, CWOOG, and training wages are counted in determining the daily average wage.

22. Do steady guarantee payments count towards the calculation of one's hours?

Yes.

23. Are these workplace exclusion and COVID-19 testing payments taxable?

Yes, these are treated like normal wages in withholdings and deductions.

24. Can a worker receive exclusion pay for the same period of time that they are receiving or have received leave under CLRC Mtg. No. 24-22?

No. While there is one overlapping category under CLRC Mtg. No. 24-22 and CLRC Mtg. No. 25-22 (individuals who test positive for COVID-19 but remain asymptomatic), a worker cannot receive paid leave under both CLRC Mtg. No. 24-22 and CLRC Mtg. No. 25-22 simultaneously. Those testing positive for COVID-19 due to exposure in the workplace but remaining asymptomatic should seek exclusion pay under CLRC Mtg. No. 25-22 in order to preserve availability of the benefit provided by CLRC Mtg. No. 24-22.

25. Is a worker eligible for exclusion pay under CLRC Mtg. No. 25-22 and paid leave under CLRC Mtg. No. 24-22 stemming from the same workplace exposure?

Depending on the timing of an individual's exclusion from the workplace and subsequent development of COVID-19 symptoms, an individual may, prior to becoming symptomatic, receive exclusion pay under CLRC Mtg. No. 1-21. The development of symptoms, if this occurs, means that an individual is no longer able and available for work and thus their exclusion pay will cease and the individual must apply for paid leave under CLRC Mtg. No. 24-22.

26. Will the worker receive the workplace exclusion payment after the application is approved?

The worker will receive the workplace exclusion payment(s) in the payroll period immediately following the application's approval. For example, payroll runs each Tuesday for the prior Saturday to Friday work week. Payroll will process all requests received and approved before Monday from the week prior (Sunday is the review cutoff day); approved payments then will be issued on Friday and the worker will see the paid leave benefits in the worker's paycheck. Paid leave requested for future dates will be paid during the payroll cycle under which they fall.

27. How long will a worker be eligible to receive workplace exclusion pay?

For each instance that a worker receives a notice of COVID-19 exposure letter from the JPLRC, the worker will be eligible for workplace exclusion pay for up to 10 days. If the worker is not able to return after 10 days, it is an indication that the worker is not able and available to work due to illness and the worker may be eligible for leave under CLRC Mtg. No. 24-22 or other benefits.

28. If a worker arrives at a workplace, but is turned away because they demonstrate COVID-19 symptoms, are they eligible for workplace exclusion pay?

No, a worker who arrives at a workplace with COVID-19 symptoms is not eligible for workplace exclusion pay, but may seek paid leave under CLRC Mtg. No. 24-22, Item 3(iv) (“Experiencing symptoms of COVID-19 and seeking supporting documentation”).

29. If a worker tests positive for COVID-19, when may they return to work?

Workers who test positive for COVID-19 may return to work five days after the positive test specimen is collected, but only if they do not have COVID-19 symptoms or any symptoms are resolving and the worker submits a negative test on or after day five. If a worker does not produce a negative test on or after day five, a worker may return to work 10 days after a positive test, provided they do not have a fever of 100.4F and the symptoms are resolving. Workers must wear face coverings at all times for no less than 10 days after the collection of the positive test specimen. If you have had COVID-19 within the last three months, you do not need to quarantine again if you remain asymptomatic.

30. If a worker has symptoms of COVID-19, when may they return to work?

Workers with COVID-19 symptoms may return to work five days after the onset of COVID-19 symptoms if the symptoms are resolving and the worker submits a negative test on or after day five. If a worker does not produce a negative test on or after day five, a worker may return to work 10 days after the onset of symptoms, provided they do not have a fever of 100.4F and symptoms are resolving. Workers must wear face coverings at all times for no less than 10 days after the onset of symptoms.

31. If an unvaccinated worker is exposed to COVID-19, are they able to work?

Unvaccinated workers who have been exposed to COVID-19 may return to work five days following that exposure if they produce a negative test which was collected on or after day five of the exposure and they do not have COVID-19 symptoms. If workers do not produce a negative test result, they can return to work after day 10. Workers must wear face coverings at all times for no less than 10 days after the exposure.

32. If a vaccinated worker is exposed to COVID-19, are they able to work?

Vaccinated workers who are not booster eligible and exposed to COVID-19 may continue to work after an exposure, provided they wear a face covering at all times and maintain six feet of distance for no less than 14 days after the exposure. Vaccinated workers who provide a negative test collected on or after day five following the exposure can continue to work without this restriction.

33. If a boosted worker is exposed to COVID-19, are they able to work?

Boosted workers if exposed to COVID-19 are not subject to workplace exclusion and may continue to work provided they have no symptoms. Boosted workers who continue to work after an exposure must wear a face covering at all times and maintain six feet of distance for no less than 14 days after the exposure. Boosted workers who elect to test on day five after the exposure and produce a negative result can continue to work without the aforementioned restriction.

34. If a booster eligible, but not boosted worker is exposed to COVID-19, are they eligible to work?

Booster-eligible workers who are not yet boosted and exposed to COVID-19 may return to work after five days if they obtain a negative test result collected on or after day five of the exposure and lack symptoms. Workers who cannot test or decline to test can return to work after day 10. Workers must wear a face covering at all times for no less than 10 days after the exposure.

35. Is testing available to a worker who seeks testing for the circumstances identified in Nos. 29, 30, 31, or 32?

Yes. Covered workers may utilize the free FDA-approved over-the-counter COVID-19 diagnostic testing kit (“OTC Test”) available through the ILWU-PMA Welfare Plan to them at no cost for this purpose. Workers who do not have access to these OTC Tests through the ILWU-PMA Welfare Plan are eligible for reimbursement in the amount of \$12

for each OTC test purchased through the Dockworker Self-Service Portal and uploading a copy of the test result.

In the event that the cost of the OTC Test purchased by a worker exceeds \$12, a worker may submit a claim for additional OTC Test reimbursement to the JPLRC. Claims for additional OTC Test reimbursements shall be submitted to the JPLRC and should include a copy of the original pharmacy receipt. Workers will indicate in the Dockworker Self-Service Portal that they were ineligible and unable to obtain free COVID-19 diagnostic testing through a group or individual health plan, policy or program (including the ILWU-PMA Welfare Plan), the federal government, local health department and/or a community testing site, that the worker has not already been reimbursed for the cost of the COVID-19 diagnostic test through some other third-party source, that the COVID-19 diagnostic test for which reimbursement is being sought was used by the worker for the purpose of either returning to or continuing to work, and that the amount of the reimbursement being sought by the worker in excess of the standard rate of reimbursement was a reasonable and necessary expense.

Workers may be eligible for pay associated with time spent taking the OTC Test by applying for two hours per each test taken under Reason viii on the Dockworker Self-Service Portal. The test results must be uploaded.

36. Under what circumstances are workers to wear face coverings?

In addition to the face covering requirements identified in Nos. 29, 30, 31, and 32 above, an approved face covering will continue to be required for all individuals, regardless of vaccination status, in higher risk settings. All individuals accessing PCL&CA covered work sites are required to wear face coverings at all times regardless of vaccination status when: (1) inside employer-provided shared transportation, such as shuttle buses and Ro-Ro transport vans; (2) during COVID worksite outbreaks; and (3) at transportation hubs, such as cruise terminals.