

OSHA REPORTING STANDARDS FOR COVID-19 EXPOSURE (AB 685)

AB 685, which does not become effective until January 1, 2021, will require employers to provide notice and report information related to COVID-19 exposures, and provides the California Division of Occupational Safety and Health (“Cal/OSHA”) expanded authority to enforce such requirements and ensure safe workplace operations.

New COVID-19 Employer Notice and Reporting Requirements – 4 Notices Required Within One Business Day

AB 685 requires employers to comply with certain reporting requirements and provide the following four notices related to potential COVID-19 exposures in the workplace within one business day of being informed of the potential exposure:

1. Potential COVID-19 Exposure Notice to All Employees Within 1 Day – If an employer or the employer’s representative receives a notice of a potential exposure to COVID-19 in the workplace by a “qualifying individual,” the employer must provide a written notice to all employees, and to the employers of subcontracted employees, who were present at the same worksite within the infectious period (as defined by the State Department of Public Health), stating that they may have been exposed to COVID-19.

The notice must be sent in a manner the employer normally uses to communicate employment-related information. This can include personal service, email, or text message so long as it can be reasonably anticipated that employees will receive the notice within the one business day requirement. The notice must be in both English and the language understood by the majority of employees.

For purposes of this requirement, a “qualifying individual” means a person who can establish any of the following requirements:

- A laboratory-confirmed case of COVID-19;
- A positive COVID-19 diagnosis from a licensed healthcare provider;
- A COVID-19 related isolation order issued by a public health official; or
- Death due to COVID-19 as determined by the County public health department.

2. Potential COVID-19 Exposure Notice to Exclusive Representative of Represented Employees – If the affected employees who are required to receive this COVID-19 exposure notice include represented employees, the employer must send the same notice to the exclusive representative of the affected bargaining unit.

3. Notice of COVID-19 Related Benefits and Employee Protections – An employer must also provide all affected employees and the exclusive representative, if any, with a notice of information regarding any COVID-19-related benefits or leave rights under federal, state, and local laws, or pursuant to employer policy, as well as the employee’s protections against retaliation and discrimination.

4. Notice of Safety Plan in Response to Potential COVID-19 Exposure – Finally, the employer must notify all employees, the employers of subcontracted employees, and any exclusive representative, of the employer’s plans for implementing and completing a disinfection and safety plan pursuant to guidelines issued by the federal Centers for Disease Control.

Civil Penalty – Failure to comply with these requirements may subject the employer to a civil penalty.

Non-Disclosure of Medical Information – Employers are prohibited from requiring employees to disclose medical information except as required by law.

Retaliation – Employers are prohibited from retaliating against an employee for disclosing a qualifying case of COVID-19.

Recordkeeping – Employers are required to maintain records of these four notices for at least three years.

Outbreak Reporting Within 48 Hours – Where employers are notified of a number of cases that meet the definition of a COVID-19 “outbreak” as defined by the California Department of Public Health (“CDPH”), the employer must also notify the applicable local public health agency within 48 hours of the names, number, occupation, and worksite of any “qualifying individuals” related to the “outbreak” [1][2]

Cal/OSHA Will Be Authorized to Shut Down A Workplace, Operation, or Process That Creates an Imminent Hazard Due to COVID-19 Exposure Risk Through January 1, 2023

When Cal/OSHA finds that a place of employment or specific equipment in the workplace creates an imminent hazard to employees, Cal/OSHA has the authority to prohibit entry into the affected part of the workplace or to prohibit the use of the dangerous equipment in the workplace. AB 685 expands and clarifies Cal/OSHA’s authority within the context of COVID-19 related issues in the workplace. If Cal/OSHA uses its authority to apply such a workplace restriction, it must then provide the employer with notice of the action and post that notice in a conspicuous place at the worksite. Any restrictions imposed by Cal/OSHA must be limited to the immediate area where the imminent hazard exists and must not prohibit any entry into or operation/process within a workplace that does not cause a risk of infection. In addition, Cal/OSHA may not impose restrictions that would materially interrupt “critical government functions” essential to ensuring public health and safety functions, or the delivery of electrical power or water.

¹ An “outbreak” is currently defined by CDPH as “three or more laboratory-confirmed cases of COVID-19 within a two-week period among employees who live in different households.” (See CDPH’s “COVID-19 Employer Playbook – Supporting a Safer Environment for Workers and Customers – available online at <https://files.covid19.ca.gov/pdf/employer-playbook-for-safe-reopening--en.pdf>.)

² These new COVID-19 notice and reporting requirements apply to all private and public employees, with two exceptions: (1) Health facilities, as defined in Section 1250 of the Health and Safety Code, are exempt from reporting an “outbreak” within 48 hours as described above; (2) Exposures by employees whose regular duties include COVID-19 testing or screening or who provide patient care to individuals who are known or suspected to have COVID-19, unless the “qualifying individual” is also an employee at the same worksite.

Removal of Notice Requirement Procedures for Serious Violation Citations Relating to COVID-19 Through January 1, 2023.

Under existing law, before Cal/OSHA can issue a citation to an employer alleging a “serious violation” of occupational safety and health statutes or regulations, it must make a reasonable attempt to determine and consider whether certain mitigating factors were taken by an employer to rebut the potential citation. Cal/OSHA satisfies this requirement by sending an employer a description of the alleged violation at least 15 days before issuing a citation and providing the employer an opportunity to respond. An employer is not precluded from presenting such information at a later hearing to contest the citation, even if an employer does not provide information in response to Cal/OSHA’s inquiries. Under AB 685, Cal/OSHA is not obligated to provide an alleged violation notice at least 15 days prior to issuing the citation to allow an employer the opportunity to respond and can instead issue the citation immediately for COVID-19 serious violation citations. The employer can still contest the citation through the existing Cal/OSHA appeal procedures.

IF YOU HAVE QUESTIONS PLEASE REACH OUT TO
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