

California's New COVID-19 Exposure and Notification Law

December 18, 2020

Employers should be mindful of a new law, California A.B. 685, which goes into effect on January 1, 2021 and creates reporting obligations that require employers of all sizes to provide written notice of their industrial and nonindustrial COVID-19 cases to employees and local public health officials, as well as the California Occupational Safety and Health Administration (Cal-OSHA). The law will remain in place until January 1, 2023. Employers who fail to comply with A.B. 685 regulations are subject to civil penalties and citations.

This advisory summarizes California A.B. 685, codified under California Labor Code section 6409.6 (and sections 6325 and 6432 as amended), which sets out new requirements for employers to notify their employees, employees of subcontracted workers, and union representatives of suspected and diagnosed cases of COVID-19 and also to report workplace "outbreaks" of COVID-19 to local health departments.

Notification of COVID-19 Exposure

Under newly enacted Section 6409.6, employers are required to notify employees of a potential COVID exposure. Specifically, the new notice requires employers to take the below actions **within one business day** of a "potential exposure" based on a confirmed positive case of COVID-19 in the workplace:

1. **Notice to Employees and Subcontractor Employers** – Provide written notice to all employees and employers of subcontracted employees who were at the worksite within the infectious period who may have been exposed to COVID-19. "Worksite" under A.B. 685 means "the building, store, facility, agricultural field, or other location where a worker worked during the infectious period."
2. **Notice to Employee Representatives** – Provide written notice to employee representatives, including unions and attorneys that are representing employees (which shall contain the same information as would be required in an incident report in Cal-OSHA Form 300 injury and illness log, unless the information is inapplicable or unknown to employer).
3. **Notice to Employees Regarding COVID-19-Related Benefits** – Provide written notice to employees and/or employee representatives regarding COVID-19 benefits that an employee may receive, including workers' compensation benefits, paid sick leave, supplemental paid sick leave, as well as the employer's anti-retaliation and anti-discrimination policies.
4. **Notice to Employees Regarding Safety Protocols** – Provide written notice to employees regarding the employer's disinfection and safety plan to eliminate any further exposures, per CDC guidelines.

Written notice may include any method of delivery (such as personal service, email or text message), if it can be received by the employee within one business day of sending. The notice must be in both English and the language

understood by the majority of the employees. Notices should not reveal the identity of the employee who tested positive for COVID-19 to preserve employee privacy. Records of these notices must be maintained for at least three years.

The new law also requires an employer with a “COVID-19 outbreak,” as defined by the California Department of Public Health (CDPH), to report prescribed information to the local public health agency in the jurisdiction of the workplace within 48 hours of learning of the outbreak. As of December 3, the CDPH defined a COVID-19 outbreak in a non-healthcare workplace as **having at least three probable or laboratory-confirmed COVID-19 cases among workers at the same worksite within a 14-day period**. The employer must also continue to provide notice to the local health agency of any subsequent laboratory-confirmed cases of COVID-19 at the workplace.

Cal-OSHA Enforcement Changes

Cal-OSHA already has the authority to shut down a worksite that presents an imminent hazard, which is defined as a “hazard which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of the hazard can be eliminated through regular Cal-OSHA enforcement procedures.” A.B. 685 provides that Cal-OSHA can now shut down operations when, in the opinion of Cal-OSHA, a worksite or operation “exposes workers to the risk of infection” of COVID-19 so as to constitute an imminent hazard.

A.B. 685 also modifies the process for when Cal-OSHA intends to issue a serious citation. Normally, if Cal-OSHA plans to issue a serious citation, the agency must first provide a notice of intent to the employer that identifies alleged violations and conditions that warrant a citation. The employer then has the option of responding to the notice with evidence within 15 days. A.B. 685 eliminates the requirement for Cal-OSHA to provide a notice for COVID-19-related hazards. As a result, Cal-OSHA can effectively issue a citation immediately, and employers will no longer have the ability to learn of a citation in advance and respond accordingly, though employers can still appeal the citation.

Employer Takeaways

Employers should take steps now to create and coordinate documentation and tracking procedures, as well as safety processes and notification methods, with the assistance of their counsel. Considerations should include:

- Implementing safe and effective measures to prevent and minimize the risk regarding the spread of COVID-19 at the worksite;
- Documenting and implementing disinfectant procedures upon notification of a COVID-19 exposure at the worksite;
- Developing documentation and procedures to notify employees of COVID-19 exposure;
- Developing documentation and procedures to notify employees of COVID-19 benefits.

CONTACTS

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