

CALIFORNIA ENACTS COVID-19 REPORTING REQUIREMENTS FOR EMPLOYERS

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Employment Law Reporter

On September 17, 2020, California Governor Gavin Newsom signed AB-685, which creates new COVID-19 reporting requirements for employers, increases mandatory public disclosure of COVID-19 outbreaks, and expands the powers of Cal/OSHA to cite and shut down employers with worksite infections in a streamlined process.

The law requires all public and private employers that find out about workplace exposure to COVID-19 to provide written notification to employees and contractors who were on the premises at the same worksite during the infectious period within one business day of becoming aware of the potential exposure. Any union representative must also be notified of the outbreak. The written notice must include information regarding COVID-19 benefits under state and federal law, workers' compensation rights, legally mandated and employer-provided sick leave options, as well as anti-discrimination and anti-retaliation protections (the law prohibits retaliation against a worker for disclosing a positive COVID-19 test or diagnosis or order to quarantine or isolate). The notice must also include information about the employer's disinfection and safety plan that the employer will implement and complete per the guidelines of the federal Centers for Disease Control. The notice must be written in English and in the language understood by the majority of workers. These notices must be kept for at least three years. The notice requirements will expire on January 1, 2023.

Workplaces with a COVID-19 outbreak as defined by the State Department of Public Health (currently defined as three or more cases) must provide information to local public health agencies within 48 hours. The notice must include the names, number, occupation, and worksite of all persons with laboratory-confirmed COVID-19, a positive COVID-19 diagnosis from a licensed health care provider, a COVID-19-related order to isolate provided by a public health official, or who have died due to COVID-19. In addition, the notice must provide the business address and North American Classification System (NAICS) code of the worksite where the qualifying individuals work. The notice provided to the local public health agency shall also include the same information that would be required in a Cal/OSHA Form 300 incident report

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regardless of whether the employer is required to maintain a Cal/OSHA Form 300 injury and illness log. After this initial report, the employer must continue to give notice to the local health department of any subsequent laboratory-confirmed cases of COVID-19 at the worksite. Health facilities are excluded from this reporting requirement.

The law also requires the State Department of Public Health to make workplace industry information received from local public health departments available on its internet website to allow the public to track the number and frequency of COVID-19 outbreaks and the number of COVID-19 cases and outbreaks by industry reported by any workplace. Local public health departments and the Division of Occupational Safety and Health will provide a link to this page on their internet websites. No personally identifiable employee information will be made public or posted.

Business groups, including restaurant industry groups, criticized this aspect of the law and argued that it provides “no safety value because the data will be weeks old by the time it is posted, and the exposed employees will have already received notice.” Additionally, they noted that the public disclosure requirement would cause public shame for businesses that may be fully compliant with state and local requirements and which had no control of the infections among their staff.

Lastly, the law provides additional enforcement authority to Cal/OSHA to act when it believes that employees are exposed to COVID-19 in a way that creates an “imminent hazard.” If Cal/OSHA makes this determination, the agency is authorized to prohibit entry to a worksite, shut down worksite operations, and require the company to post an imminent hazard notice. In addition, the law reduces an employer’s rights to rebut a Cal/OSHA determination of a serious violation for COVID-19 circumstances. In particular, if the employer does not provide information in response to a division inquiry, the employer may be prohibited from introducing information at a later hearing. Further, the division does not need to notify an employer 15 days before issuing a serious violation if the violation is related to COVID-19. These provisions relating to Cal/OSHA COVID-19 enforcement will automatically expire on January 1, 2023.

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