

CHANGES TO STATUTORY COVID-19 EXPOSURE NOTICE AND REPORTING REQUIREMENTS

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COVID-19 has had a unique and continued impact on health and safety requirements in the workplace. As a result, laws are being revised to catch up to the current work climate. Assembly Bill 654, which amends California Labor Code sections 6325 and 6409.6, is one such law. The amendments to these two statutes which initially established California's COVID-19 notice and reporting requirements went into effect on October 5, 2021 and the statutes themselves shall remain in effect only until January 1, 2023.

What Does AB 654 Do?

Amendment to Labor Code § 6325

As a minor amendment to this statute, AB 654 now provides that delivery of renewable natural gas is an essential governmental function. Accordingly, notice of a COVID-19 infection or outbreak at a worksite related to the delivery of renewable natural gas will not result in a material interruption to such services.

Amendment to Labor Code § 6409.6

Most notably, AB 654 expands the set of persons who must be notified of a COVID-19 infection. In addition to the employer notifying all employees and employers of subcontracted employees who were on the premises at the same worksite as the qualifying individual within the infectious period, the employer must provide written notice to the exclusive representative of any qualifying individuals and employees who had close contact with qualifying individuals. Further, the amendment serves to expand the set of employees who must be given notice of potential benefits to which they may be entitled, "including, but not limited to, workers' compensation, and options for exposed employees, including COVID-19-related leave, company sick leave, or negotiated leave provisions, as well as anti-retaliation and anti-discrimination protections of the employee," to include all those employees who were on the premises at the same worksite as the qualifying employee within the infectious period, rather than merely those who may have been exposed. All

such persons must also be informed of the cleaning and disinfection plan that the employer will be implementing under federal Centers for Disease Control and Prevention and the Cal-OSHA COVID-19 Emergency Temporary Standards.

For purposes of AB 654, “Close contact” is defined to mean 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, regardless of the use of face coverings. “High-risk exposure period” means either: for persons who develop COVID-19 symptoms, from 2 days before they first develop symptoms until 10 days after the symptoms first appeared, and until 24 hours have passed with no fever, without the use of fever-reducing medications and symptoms have improved; or, for persons who test positive who never develop COVID-19 symptoms, from 2 days before until 10 days after the specimen for their first positive test for COVID-19 was collected.

The amendment also revises the time frame for employers to give notice of a COVID-19 “outbreak” (at least three COVID-19 cases among workers at the same worksite within a 14-day period) to the local health department from “within 48 hours” to “within 48 hours or *one business day, whichever is later*” – a slight reprieve for employers.

Exemptions

AB 654 has also expanded the list of employers that are exempt from Labor Code section 6409.6. The complete list of exempt employers is as follows:

1. A “health facility,” as defined in Section 1250 of the Health and Safety Code.
2. A “community clinic,” as defined in subdivision (a) of Section 1204 of the Health and Safety Code.
3. An intermittent clinic exempt from licensure under subdivision (h) of Section 1206 of the Health and Safety Code.
4. A tribal clinic exempt from licensure under subdivision (c) of Section 1206 of the Health and Safety Code.
5. An outpatient setting conducted, maintained, or operated by a federally recognized “Indian tribe,” “tribal organization,” or “urban Indian organization,” as defined in Section 1603 of Title 25 of the United States Code.
6. A “rural health clinic,” as defined in Section 1395x(aa)(2) of Title 42 of the United States Code.
7. A “federally qualified health center,” as defined in Section 1395x(aa)(4) of Title 42 of the United States Code.
8. A “chronic dialysis clinic,” as defined in paragraph (2) of subdivision (b) of Section 1204 of the Health and Safety Code.
9. An employer that provides health care services and that has employees licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code.
10. An “adult day health center” as defined in subdivision (a) of Section 1570.7 of the Health and Safety Code.
11. A “home health agency” as defined in subdivision (a) of Section 1727 of the Health and Safety Code.
12. A “pediatric day health and respite care facility” as defined in paragraph (1) of subdivision (a) of Section 1760.2 of the Health and Safety Code.

13. A “hospice” as defined in subdivision (d) of Section 1746 of the Health and Safety Code.
14. A community care facility, as described in the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code), and including an adult residential facility for persons with special health care needs, as described in Section 1567.50 of the Health and Safety Code.
15. A residential care facility for persons with chronic life-threatening illness, as described in Chapter 3.01 (commencing with Section 1568.01) of Division 2 of the Health and Safety Code.
16. A residential care facility for the elderly, as described in the California Residential Care Facilities for the Elderly Act (Chapter 3.2 (commencing with Section 1569) of Division 2 of the Health and Safety Code).
17. A child day care facility, as described in the California Child Day Care Facilities Act (Chapter 3.4 (commencing with Section 1596.70), Chapter 3.5 (commencing with Section 1596.90), and Chapter 3.6 (commencing with 1597.30) of Division 2 of the Health and Safety Code).

Conclusion

Employers should make note of these subtle but important changes to the COVID-19 notice requirements. Employers should also continue to observe all other applicable OSHA, Cal-OSHA, county and city health department requirements regarding COVID-19 which remain in effect.

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