
EMPLOYMENT LAW ALERT

Employer Must Notify Employees of Potential COVID-19 Exposure – AB 685

In another COVID-19 related piece of legislation, on September 17, 2020, Governor Newsom signed Assembly Bill (“AB 685”). AB 685 requires employers to provide written notifications to employees within one (1) business day of receiving notice of potential exposure to the coronavirus. AB 685 has also authorized the Division of Occupational Safety and Health (“Cal OSHA”) to prohibit operations and processes, and to prevent entry into workplaces that it has determined present a risk of infection of COVID-19 so severe as to constitute an imminent hazard. Not only is Cal OSHA provided with authority to order the cessation of work operations, but also AB 685 authorizes Cal OSHA to issue citations for serious violations related to COVID-19 without requiring the agency to comply with pre-citation requirements.

When do you have to provide notice?

When an employer learns that a “qualifying individual” was in the workplace while they were considered potentially infectious, the employer is subject to notice requirements. A qualifying individual is anyone who tested positive for or was diagnosed with COVID-19, or is subjected to an isolation order.

To whom do I have to provide notice?

AB 685 requires an employer to provide notice within one (1) business day of “potential exposure” to a positive confirmed case of COVID-19 in the workplace. Notice is required as follows:

- 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;
- Written notice to employee representatives, including unions;
- Written notice to employees and/or employee representatives regarding COVID-19 related benefits that the employee(s) may receive. These may include worker’s compensation benefits, COVID leave, FFCRA leave, paid sick leave and the company’s anti-discrimination, anti-harassment and anti-retaliation policies; and
- Notice to employees regarding all safety protocols, including disinfecting protocols, the employer has in place or will put in place in order to eliminate further exposure.

Additionally, employers are required to notify the local health department within 48 hours of becoming aware of a COVID-19 workplace “outbreak”. The California Department of Public Health defines an “outbreak” as three (3) or more laboratory-confirmed cases of COVID-19 within a two (2)-week period among employees who live in different households. Note, however, that each local health department may have a different definition of “outbreak” that will need to be considered for reporting requirements.

As with any employer communication regarding an employee’s private information, in this case health information, the notice should be drafted in order to protect employee privacy and without disclosure of personally identifiable information or personal health information.

Impact on OSHA Process?

Currently, employers are allowed fifteen (15) days to respond to a Cal OSHA issuance of a notice

of intent to contest a serious citation, an “IBY notice.” This provides the employer with an opportunity to provide evidence to support their defense that a serious citation should not be issued. Under AB685, Cal OSHA will not be required to issue this notice and employers will no longer have an opportunity to contest a serious citation before it is issued.

AB 685, in turn, requires employers to report COVID-19 cases to Cal OSHA if such cases rise to the level of a “serious occupational injury or illness”. With this reporting requirement and the elimination of the IBY notice, employers will need to require employees to report potential exposures to COVID-19, if they have tested positive for COVID-19, or if they are having symptoms of COVID-19. Employers will then need to determine if they are required to report an employee COVID-19 case under Cal OSHA regulations.

Notice to the Public

AB685 also includes a provision that requires the State Department of Public Health to publish information that it receives for local public health departments on their website. This information must 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.

Although AB685 does not go into effect until January 1, 2021, employers should immediately take efforts to align their reporting efforts with the new law.

If you have any questions or would like any additional information concerning this, or any of the other COVID-19 related laws that are going into effect, please contact Tonya D. Hubinger.



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