

Alert

September 23, 2020



California Codifies New COVID-19 Notice Requirements and Expands Cal OSHA Authority

On September 17, 2020, Governor Newsom signed AB 685, implementing new reporting and notice requirements and granting Cal OSHA additional powers following employee exposure to COVID-19 in the workplace. AB 685 will take effect January 1, 2021.

Notice to Employees and Representatives

The law requires all public and private employers to provide specific written notification to all employees that may have been exposed to COVID-19 within one business day of learning of the employees' potential exposure to COVID-19 in the workplace. Notice must be provided to all employees and the employers of subcontracted employees who were on the premises at the same worksite, during the infectious period, as a "qualifying individual" (a person who was infectious with COVID-19 or who was subject to a COVID-19-related quarantine order). The notice to employees may be done in any manner that the employer normally uses to communicate employment-related information. For most employers, this could be through email, text messages, mail, or personal service. The notice also must be provided in English and in the language understood by the majority of the employer's employees. Within the same timeframe of one business day, employers must also provide to any exclusive employee representatives notice containing all the information required in an incident report in a Cal OSHA Form 300 injury and illness log.

In addition to informing employees of a potential exposure, the notice must provide employees and their exclusive representatives with information regarding COVID-19 related benefits to which the employees may be entitled under federal, state, and/or local law, including workers compensation, supplemental paid leave, and anti-discrimination and anti-retaliation protections. Employers also must provide notice to employees, employers of subcontracted employees, and any exclusive employee representatives of the disinfection and safety plan that the employer plans to implement and complete — or has implemented — per Center for Disease Control (CDC) guidelines.

Employers should remember that any notice must maintain the security and privacy of personally protected employee information and should not identify the qualifying individual.

Notice to Department of Health

If the employer becomes aware that the number of infections in the workplace constitutes an outbreak, as defined [here](#) by the California Department of Public Health (CPDH), the employer must, within 48 hours, notify the local public health agency in the worksite's jurisdiction of the names, number, occupation, and worksite of any qualifying individual at the worksite who has:

1. A laboratory-confirmed case of COVID-19, as defined by the CPDH.
2. A positive COVID-19 diagnosis from a licensed health care provider.
3. A COVID-19-related order to isolate provided by a public health official.
4. Died due to COVID-19, in the determination of a county public health department or per inclusion in the COVID-19 statistics of a county.

Employers must continually update the local health department of subsequent laboratory-confirmed



Elena K. Hillman

Member

ehillman@cozen.com
Phone: (415) 262-8314
Fax: (415) 644-0978

Related Practice Areas

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cases.

Cal OSHA

The law also grants Cal OSHA additional powers related to COVID-19. When Cal OSHA, “in its opinion,” believes that employees are exposed to COVID-19 in such a way that constitutes an imminent hazard, Cal OSHA may issue an Order Prohibiting Use (OPU) prohibiting entry or access to the worksite, or the performance of specific operations, and removing employees from the risk of harm until the employer effectively addresses the hazard. In addition, the new law provides that Cal OSHA may issue citations for serious violations related to COVID-19 without first providing employers the usual 15-day pre-citation notice and without first considering the employer’s evidence.

Cozen O’Connor will continue to provide updates as Governor Newsom and California Legislators continue to enact new laws and regulations in response to COVID-19.
