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New California Employment Laws for 2021

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In 2020, the California Legislature passed significant laws, including several intended to respond to the unprecedented COVID-19 pandemic. Commercial real estate businesses in the state should be aware of the following important workplace requirements in effect.

COVID-19 Notification Requirements (AB 685)

AB 685 requires that a California employer who receives a notice of “potential exposure” to COVID-19 at a worksite must give notice to its employees. To trigger the notification requirements, an employer must receive notification from a public health official or licensed medical worker that an employee was exposed to a qualifying individual at the worksite, from an employee or their emergency contact that the person is a qualifying individual, through the employer’s testing protocol that an individual at the worksite is a qualifying individual or from a subcontracted employer that a qualifying individual was on the worksite.

Once the employer receives the notice of potential exposure, the employer must, within one business day, do the following:

- Provide a written notice of possible exposure to COVID-19 to all employees and the employers of subcontracted employees

who were on the premises at the same time as the qualifying individual within the infectious period;

- Provide a written notice to the exclusive representative, if any, of employees;
- Provide all employees who may have been exposed, and any exclusive representative, with information regarding COVID-19-related benefits to which the employees may be entitled under applicable federal, state or local laws, including workers’ compensation and options for exposed employees and
- Notify all employees on the disinfection and safety plan that the employer plans to implement and complete per the guidelines of the Centers for Disease Control.

AB 685 also allows Cal/OSHA, the state program responsible for protecting worker safety, to close a worksite, or a specific area of a worksite, that exposes employees to an “imminent hazard” related to COVID-19.

AB 685 took effect on January 1 and is set to expire on January 1, 2023.

COVID-19 Rebuttable Presumption (SB 1159)

On May 6, 2020, Governor Gavin Newsom signed an executive order, N-62-20, that created a rebuttable presumption that employees with COVID-19 symptoms contracted the disease at their workplace for purposes of workers’ compensation benefits. The order expired on July 5, 2020.

On September 17, 2020, Newsom signed SB 1159, which codified N-62-20 with respect to employees who reported to their workplaces between March 19, 2020 and July 5, 2020 and who tested positive for or were diagnosed with COVID-19 within the following 14 days. The law also extended the presumption beyond July 6, 2020 for certain health care and health facility workers.

For other employees, SB 1159 created a presumption that applies if the person works for an employer with five or more employees and they test positive for COVID-19 within 14 days of reporting to their workplace during a workplace outbreak.



SB 1159 imposes additional reporting requirements on employers. When an employer knows or reasonably should know that an employee has tested positive for COVID-19, the employer must report to their claims administrator in writing within three business days that an employee has tested positive, the date that the employee tested positive, the address of the employee's place of employment during the 14 days preceding the date of the employee's positive test and the highest number of employees who reported to work at the employee's workplace in the 45-day period preceding the last day the employee worked there.

Expansion of Family Leave (SB 1383)

SB 1383 significantly expands California Family Rights Act (CFRA) coverage. Previously, the CFRA applied to California employers with 50 or more employees working within a 75-mile radius of the same worksite and requires those employers to provide 12 workweeks of medical and family leave to their California employees for the following: the birth of a child, adoption of a child

or placement of a foster child; care of a spouse, parent or child with a serious health condition or recovery from an employee's own serious health conditions.

SB 1383 extends the CFRA coverage requirement to any California business with five or more employees and removes the requirement that employees must work within a 75-mile radius of the same worksite. The new law also expands the coverage under the CFRA by (1) extending the statutory definition of "child" to include adult children and children of a domestic partner; permitting leave for the care of a grandparent, grandchild or domestic partner who has a serious medical condition and permitting leave because of a "qualifying exigency" related to active military duty of an employee's spouse, domestic partner, child or parent in the United States armed forces.

Exceptions to AB 5 (AB 2257)

AB 2257 revises Assembly Bill 5, which was passed last year, and codified a strict "ABC" test to determine if a person was an inde-

pendent contractor or an employee for purposes of protections under state employment laws. AB 2257 retains the strict ABC test but clarifies and expands its exemptions. Newly exempt professions include real estate appraisers, home inspectors and insurance underwriters. The law also broadens a previously narrow exemption for business-to-business relationships.

The partial employee exemption will continue and apply to information that a business collects about a person in the course of acting as a job applicant, employee or owner, director, officer, medical staff member or contractor of a business. The exemption also applies to personal information used for emergency contact purposes. Employers should still implement and maintain reasonable security procedures and practices, including providing employees notice of collected information. AB 1281 also extends the business-to-business exemption, which recognizes that businesses are not required to provide certain notices or extend certain consumer rights to their business contacts.