



News & Publications

New Employment Laws Relating to COVID-19 Exposures in the Workplace

10.29.20 | Client Alert

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As California employees return to workplaces, employers should take note of two laws, AB 685 and SB 1159, that the California Legislature recently passed and which impose employer requirements in the event of reported COVID-19 cases.

[AB 685](#)

Under AB 685, a California employer who receives a notice of “potential exposure” to COVID-19 is required to provide notice of that event to its employees. In order for the notification requirements to be triggered, 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; notification from the employee or their emergency contact that the person is a qualifying individual; notification through the employer’s testing protocol that an individual is a qualifying individual; or notification from a subcontracted employer that a qualifying individual was on the worksite.

A “qualifying individual” is any person who has a laboratory-confirmed case of 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 has died due to COVID-19.

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

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1. The employer must 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, and this written notice must be provided in a manner that the employer normally uses to communicate employment-related information;
2. The employer must provide a written notice to the exclusive representative, if any, of employees under paragraph (1);
3. The employer must 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, including COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave, or negotiated leave provisions, as well as antiretaliation and antidiscrimination protections; and
4. The employer must 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 further requires that if an employer is notified of a number of COVID-19 cases that meets the definition of a COVID-19 outbreak, as defined by the State Department of Public Health, the employer must notify the local public health agency within 48 hours.

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. Cal/OSHA has been able to issue OPU's (Orders Prohibiting Use) under other circumstances, to protect workers from imminent hazards, by prohibiting entry into a place of employment or prohibiting the certain uses in a workplace that is in imminent hazard. Now, under AB 685, Cal/OSHA can issue such orders relating to COVID-19 exposure.

AB 685 takes effect on January 1, 2021 and is set to expire on January 1, 2023. Importantly, given the short timeframes in which notice is required, employers should review the new notice requirements carefully and be prepared to issue notices quickly. Employers may also want to prepare now by collecting up-to-date contact information for employees (including email and text message contacts) to simplify the notice process if triggered.

SB 1159

On May 6, 2020, Governor 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 two months later, on July 5, 2020.

On September 17, 2020, Governor Newsom signed into law SB 1159, which took effect immediately. SB 1159 codified Executive Order N-62-20 with respect to employees who reported to their workplaces between March 19 and July 5, 2020, and who tested positive for or were diagnosed with COVID-19 within the following 14 days during that time



period. The new law also extended the presumption beyond July 6, 2020, for firefighters, peace officers, fire and rescue coordinators, and certain kinds of health care and health facility workers.

For all other employees, SB 1159 created an additional presumption that applies if the employee works for an employer with five or more employees and the employee tests positive for COVID-19 within 14 days after reporting to their place of employment during a COVID-19 “outbreak” at the employee’s workplace. An “outbreak” exists if one of the following occurs within that 14 day period: (i) if the employee has 100 employees or fewer, four employees test positive; (ii) if the employer has more than 100 employees, four percent of the number of employees who reported to a specific workplace test positive; or (iii) a place of employment is ordered to close due to a risk of infection with Covid-19.

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, which is the date that the specimen was collected for testing; the specific address or addresses 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.

Employers should take their reporting obligations seriously under SB 1159. The new law states that if an employer submits false or misleading information, or fails to submit information, they may be subject to civil penalties to be assessed by the Labor Commissioner.