

California AB 685 Analysis and Outline

S | M | S

By: Timothy W. Rose, Esq.

Assembly Bill 685

This assembly bill is set to take place January 1, 2021 and can be classified as a further expansion of legislation and additional reporting requirements than those put forth in prior Executive Orders/Bills as signed into law in 2020.

It expands both reporting and notification requirements for employers, and increases Cal/OSHA's authority to issue Stop Work Orders and citations where it identifies hazards threatening immediate and serious physical harm related to COVID-19. ER's who fail to comply with the new regulations could be subject to civil penalties and/or citations.

- LC 6325 and 6432 are amended
- LC 6409.6 is added
- Adds LC 6409.6

AB 685 AND SB 1159 CONNECTIONS

- Presumption of workplace exposure is present with both
- Timeframes for investigation and claim acceptance/denial are decreases
- Notification of multiple parties/departments required with serious penalties for failure to report
- "Outbreak" standards are DIFFERENT between the two pieces of legislation
- Potential impact for greater amount of SW claims and 132a claims due to violations in reporting or workplace safety

“INFECTIOUS PERIOD”, DEFINED

Sec. 6409.6(d)(2) - The time a COVID-19 positive individual is infectious, as defined by the State Department of Public Health.

- CDPH Guidelines - 7/31/20
 - Symptomatic cases - Infectious period is up to 10 days after onset
 - Asymptomatic cases - Recommendation of isolation for 10 days
- CDPH and CDC also advise an infected person can spread COVID-19 2 days before symptoms appear and tests positive (if worked 2 days prior).
 - If same EE works for 2 days after, infectious period is 4 days
- Stress staying home if symptomatic
- Each individual can produce different symptoms

NOTICE OF POTENTIAL EXPOSURE

LC 6409(d)(3) - Notice to the ER or representative from one of the following:

- Public Health Official/licensed medical provider
- Employee directly
- EE’s emergency contact
- Notice through ER’s testing protocol
- Notice from subcontracted ER that qualifying individual was on site

RECEIPT OF A “NOTICE OF POTENTIAL EXPOSURE”

ERs must provide written notice of potential COVID-19 exposure within **one day of knowledge** of exposure by a **“qualifying individual.”**

1. Notice to employees and other subcontractor employers with employees present at the worksite in question on the date of exposure
2. Notice to employee representatives, such as unions and attorneys
3. Notice to employees regarding benefits related to COVID-19 and protections for employees against discrimination and retaliation for reporting COVID-19 cases
4. Notice to employees regarding disinfection protocols and safety plans to prevent further exposure, pursuant to CDC guidelines

“Notice” may include any written notice, such as email, text message, or personal service, so long as it can be “reasonably anticipated” that the employee will receive the notice within one business day. Employers must keep record of the notices for at least four years.

QUALIFYING INDIVIDUALS - DEFINED

- Those who have a laboratory confirmed case of COVID-19
- A COVID-19 diagnosis from a licensed health care official
- A COVID-19 related isolation order from a public health official, or
- A death due to COVID-19 confirmed by a county public health official

WORKSITE- DEFINED

LC 6409.6(d)(5)- The building, store, facility, agricultural field or other location where worker worked during infectious period

- Location does not apply to locations where qualified individual did not enter
- In a multi-worksite environment, the ER need only notify EE’s who were at the same site of the qualified individual

UNION NOTIFICATION

- ER must provide written notice to the representative for the union, if any of the union members are a qualified individual or exposed to a qualified individual
- Information to the Union must be the same as required in a Cal/OSHA Form 300 log unless inapplicable or unknown to the ER

- Report even if no requirement to maintain said log
- Exception to privacy to CA Confidentiality of Medical Information Act (Civ. Code 56-56.16)(“CMIA”)
 - Disclosure compelled by specific provision of law
 - ER may now disclose this information to the union representative without needing to obtain EE authorization.

NOTIFICATION TO ALL EEs AND UNION OF ER SAFETY PLAN

Must notify all EEs, ERs of sub-contracted EEs and exclusive representatives of the ER’s COVID-19 disinfection protocols and safety plan, per federal CDC guidelines

NOTICE TO PUBLIC HEALTH AGENCIES

- ERs must notify their local public health agency of an “outbreak” at the place of employment within 48 hours of knowledge of the outbreak
- 9/11/20 - the California Department of Public Health defines an “outbreak” as occurring when three or more employees who do not live in the same household have laboratory-confirmed cases of COVID-19 within a two-week period
 - **Note- This is a different definition of “outbreak” than noted per SB 1159**
- ERs must continue to report positive COVID-19 cases at the worksite.
- ERs are further required to report any employee COVID-19 related deaths to the local public health agency

CAL/OSHA AUTHORITY

- AB 685 expands power of Cal/OSHA’s ability to prohibit entry to workplace locations and work stoppages to include prohibiting entry or causing a work stoppage in the event there is a risk of COVID-19 infection
- CAL/OSHA must provide ER with proper notice of any action taken and post notice in a conspicuous location

- Cannot impose restrictions on work considered a “critical government function”, work essential for public health/safety or services that deliver water and power
- Limited to “imminent hazard” locations only.
- Expires 1/1/23
- Violation citations previously required 15 day notice. AB 685 eliminates this requirement in the event of COVID-19 exposure.
 - ER can still appeal as normal