

California AB 685: COVID-19 Legislation

On Sept. 17, 2020, California Gov. Gavin Newsom signed [Assembly Bill 685](#) into law. **The provisions of the bill take effect on Jan. 1, 2021 and expire on Jan. 1, 2023.** AB 685 impacts how employers track COVID-19 cases, notify impacted employees and includes Cal/OSHA enforcement enhancements.

EMPLOYER RESPONSIBILITIES

Under the bill, a public or private employer or representative of the employer will have an obligation to issue notices within **one business day** when they receive a **notice of potential exposure** to COVID-19 about a **qualifying individual** at the **worksite**. (Definitions of the terms in bold are provided below.) Employers will need to take the following steps to comply with this notice requirement:

1. Provide written notice to:
 - All employees who were on the premises at the same worksite as the “qualifying individual within the infectious period”, letting them know they may have been exposed to COVID-19. Written notice may be provided in person, email, text message or other form of communications the employer normally uses if it can reasonably be anticipated that the employee will receive it within one business day. The notice must be in both English and any language understood by the majority of employees. The notice must include:
 - COVID-19-related benefits to which they may be entitled under federal, state or local laws, including, but not limited to, workers’ compensation, COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave or negotiated leave provisions.
 - Anti-retaliation and anti-discrimination employee protections; and
 - The employer’s disinfection and safety plan per the guidelines from the federal Centers for Disease Control (CDC).
 - The employer of any sub-contracted workers at the worksite during the infectious period. This notice does not need to include benefit, anti-retaliation or anti-discrimination information.
 - The notice to any exclusive representative must contain the same information required in Cal/OSHA’s Form 300, Log of Work-Related Injuries and Illnesses, unless the information is inapplicable or unknown to the employer.
 - An employer must maintain records of notifications for at least 3 years.
 - While not specifically stated in the bill, employers will also want to determine which employees may have had **close contact** with the qualifying individual. Those close contacts should isolate for 14 days.
2. Additionally, employers are required to track cases among qualifying individuals at a particular worksite to determine if an **outbreak** has occurred. An [outbreak](#) is defined by the California Department of Public Health for

non-health care or non-residential congregate setting workplaces as three or more laboratory confirmed cases of COVID-19 among employees who live in different households within a two-week period.

3. If an outbreak does occur, employers must notify the [local public health agency](#) in the jurisdiction of the worksite. The notice must include:
 - Names, number, occupation and worksite of the qualifying individuals;
 - Address of the worksite; and
 - [NAICS code](#).
4. This notice is required within 48 hours of the outbreak. Once an outbreak has occurred, the employer must also inform the local public health agency if there are any subsequent laboratory confirmed cases of COVID-19 at that worksite.
 - **More information on AB 685's employer reporting requirements can be found on the [Cal/OSHA website](#).**
5. AB 685 excludes from the notice requirements employees who, as part of their duties, conduct COVID-19 testing or screening, or provide direct patient care or treatment to individuals who tested positive for COVID-19, unless the qualifying individual is an employee at the same worksite. Additionally, the outbreak notice requirements don't apply to "health facilities" as defined by Health and Safety Code Section 1250.
6. Employers should become familiar with the detailed notice requirements and consult with legal counsel to develop the necessary policies and procedures.

CAL/OSHA ENFORCEMENT ENHANCEMENTS

AB 685 also enhances Cal/OSHA's enforcement of COVID-19 infection prevention requirements. Cal/OSHA can issue an order prohibiting use (OPU) to shut down an entire worksite or a specific worksite area that exposes employees to an **imminent hazard** related to COVID-19. Cal/OSHA can also issue citations for serious violations related to COVID-19 without giving employers a 15-day notice prior to issuance. **Additional information about the enhanced enforcement practices can be found on the [Cal/OSHA website](#).**

DEFINITIONS

The following are definitions under California labor code or from the California Department of Public Health (CDPH):

- **Close contact:** As defined by the CDPH, a close contact is someone who spent 15 minutes or more within six feet of an individual with COVID-19 during the infectious period.
- **Imminent hazard:** Defined as any condition or practice posing a hazard that could reasonably be expected to lead to death or serious physical harm.
- **Infectious period:** As defined by the CDPH, the infectious period includes, at minimum, the 48 hours before the individual developed symptoms.
- **Notice of potential exposure:** This may occur when:

- A public health official or licensed medical provider notifies the employer or representative that an employee was exposed to a qualifying individual at the worksite;
 - An employee or emergency contact notifies the employer or representative that the employee is a qualifying individual;
 - The employer learns through its testing protocol that the employee is a qualifying individual; or
 - A sub-contractor employer notifies the employer or representative that a qualifying individual was on the worksite of the employer receiving the notification.
- **Outbreak:** For non-health care and non-residential workplaces, an outbreak is defined as three or more laboratory confirmed cases of COVID-19 among employees, who live in different households, within a two-week period.
 - **Qualifying individual:** A person who:
 - Has a laboratory confirmed case of COVID-19;
 - A COVID-19 diagnosis from a licensed health care provider;
 - A COVID-19 isolation order provided by a public health official; or
 - Died due to COVID-19.
 - **Worksite:** The building, store, facility, agricultural field or other location where an employee worked during the infectious period. It does not apply to buildings, floors or other employer locations that a qualified individual did not enter. In a multi-worksites environment, the employer need only notify employees who were at the same worksite as the qualified individual.