



MEMBER ALERT
AB 685 – Workplace Monitoring & COVID Reporting
New OSHA Powers
(October 20, 2020)

Recently enacted AB 685 imposes additional obligations on employers, including public school districts and county offices of education, to closely track and report COVID-19 exposures. AB 685 also expands the authority of Cal-OSHA to enforce safety and reporting obligations. The new laws under AB 685 are effective **January 1, 2021**.

While Members' existing safety protocols (IIPP Programs, OSHA training programs, COVID-general safety and response protocols) may already address some of the substantive issues contained within these new laws, this Member Alert provides an overview of important obligations which may still need to be implemented, by policy and by training, before the start of the new year.

The new standards are summarized as follows:

I. **Report of Potential Exposure to Employees/Volunteers/Contractors**

Under Labor Code Section 6409.6, **within 24 hours**, Members must provide written notice to employees, volunteers, and subcontractors of their exposure to a person with COVID if:

- ✓ The Member learns of the potential exposure from a generally reliable source;¹ and
- ✓ An individual performing services at a "worksite,"² during the period of time they would be considered "infectious" under the State Department of Health standards,³ tested positive for the virus or has been ordered by a health official to quarantine.

If both conditions are met, the Member must advise the impacted parties, as well as any applicable union representatives, of the potential exposure and include information on:

- COVID-19-related benefits to which the employee may be entitled under applicable 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;
- Antiretaliation and antidiscrimination protections; and
- The disinfection and safety plan that the employer plans to implement and complete per the guidelines of the federal Centers for Disease Control.

1 A reliable source can include a laboratory or health care provider (independent or part of an employer-sponsored testing program), an employee or the employee's emergency contact/spouse/partner, or from a contractor's employees. While the definition of parties who can give notice to the employer has statutory limitations, out of an abundance of caution and care, Members should implement notice and investigatory processes and procedures whenever the source of information is credible and reliable.

2 A "worksite" involves a generally confined physical space or group of spaces (i.e., an office and lunch/break room area) that are contiguous or that form a part of the same or shared working area. Different floors or buildings constitute different worksites.

3 This information may change, and is not easy to find or apply, and is based on state-level (not national) information. As of July 31, 2020, the CDPH states that for symptomatic cases, the infectious period should be considered as up to 10 days before the onset of symptoms, with infectious capabilities lasting for potentially 10 (or even 20) days thereafter. For asymptomatic individuals, the guidelines are not clear, but we would recommend that the same standards be applied for a person with an adverse COVID test result.

○ "Close contact" is anyone who has spent a total of 15 minutes over a 24 hour period within 6 feet of an infected person.

Personally identifiable information (name, job title, etc. that would clearly identify the person testing positive) should not be disclosed in the notice. Notice can be given through normal methods of communication (usually email). Notices must be kept for three calendar years.

Additionally, if a Member discovers through its investigatory or management processes above that it is facing an “outbreak” at a worksite (key limitation), which is currently defined by the California Department of Public Health (“CDPH”) as three (3) or more cases in a 14-day period, the Member will then have **48 hours** to provide notice of the “outbreak” to their County Health Department. The notice to the Health Department must include the names, telephone numbers, occupations, and worksite(s) of all Qualified Individuals (those testing positive), and the address and North American Industry Classification System (NAICS) code for the worksite. Notice must also be given of later-discovered cases from the worksite.

II. Increased OSHA Enforcement

Under Labor Code Section 6325, Cal-OSHA had the authority to issue “stop work orders” if it determines the site or its operations create an “imminent hazard,” specifically an operation or location that was reasonably expected to cause death or serious physical harm unless abated.

The amendment to Section 6325 allows Cal-OSHA to issue stop work orders if it concludes a site, or locations/operations within a site, pose an undefined increased level of risk exposures for COVID that should be considered an imminent hazard. In addition, Cal-OSHA is no longer required to issue an advance warning (a “1BY notice”) before issuing a serious citation under Labor Code Section 6432.

As a result, if Members become aware of a Cal-OSHA report situation, or an investigation, they should be immediately prepared to proactively respond (and notify NBSIA, so it can be of assistance and guidance) in an effort to avoid the new “no notice” citations that be problematic from a financial and operational standpoint.

Conclusion

AB 685 is one of two new laws related to the tracking and reporting of COVID-19. While there is some overlap, AB 685 puts more responsibility on Members to notify employees and others, as well as publish health, of potential exposure to COVID-19 in the workplace. It also gives additional authority to Cal-OSHA to declare imminent hazard and close work locations due to COVID-19.

Members will no doubt have questions about the notification requirements and working with Cal-OSHA should the need arise. North Bay Schools is here to help.

- **For questions about any of the notification requirements, including content, timing, and method, please contact Patricia Eyres, peyres@eyreslaw.com through our free EPL hotline service.**
- To notify us of a Cal-OSHA report or investigation situation, please contact Suzanne Dillman, Member Services Manager, suzanned@nbsia.org.