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## EMPLOYER'S GUIDANCE AND CHECKLIST ON COVID-19 COMPLIANCE

### AB 685 – NEW COVID-19 LAW – Reporting COVID-19 Exposure

Effective January 1, 2021 until January 1, 2023

- ❖ This law requires for employers to notify employees who have been exposed to COVID-19 in the workplace and employers must report COVID-19 illnesses to their local health department (LHD) and workers' compensation carrier.
- ❖ The California Department of Public Health (CDHP) is required to “publicly report information on workplace outbreaks.”
- ❖ Cal/OSHA is authorized to issue an Order Prohibiting Use to shut down worksites that expose employees to an “imminent hazard” related to COVID-19 to safeguard workers.
- Employers Responsibility:
  - o Notify all workers, including employers of subcontracted employees and/or union representatives, of a possible exposure to COVID-19 during the infectious period [1] within 24-hours of potential exposure by written notice, email, or text message; must be in both English and any other language understood by most workers.
  - o Provide dates of the individual with COVID-19 that was at the jobsite, but any personal information of the individual must be kept confidential.
  - o Provide employees with information on COVID-19 benefits under federal, state, and local laws. This includes workers' comp insurance, company sick leave, state-mandated leave, supplemental sick leave, negotiated leave, and anti-retaliation and anti-discrimination protections.
  - o Follow CDC guidelines for disinfecting and have a safety plan for the jobsite. Provide information to the subcontractor and/or union of what the company is doing to help eliminate exposure to employees on the jobsite.
- Reporting COVID-19 cases to your Local Health Department (LHD):
  - o Non-healthcare workplaces with 3 or more COVID-19 cases at the same worksite within a 14-day period must notify the LHD where the worksite is located within 48-hours. Any additional cases must be reported as well.
  - o Provide jobsite location, company name, address and North American Industry Classification System (NAIS) industry code to your LHD.
  - o Provide positive COVID-19 employee names and job titles.
- Who qualifies as a COVID-19 Case?
  - o An individual who has a positive viral test;
  - o Somebody diagnosed by a healthcare provider as COVID-19 positive;
  - o A person who is ordered to isolate by a public health official, OR
  - o A person who dies as the result of COVID-19 per the public health official.
- Cal/OSHA's Role:
  - o Issue citations or fines to employers for serious violation related to COVID-19.
  - o Issue citations or fines for failing to notify workers of possible exposure to COVID-19.
  - o Issue an Order Prohibiting Use – prohibiting entry into a place of employment or the use of something in the workplace that constitutes an imminent hazard to employees, which can result in serious physical harm or could reasonably cause death.

For additional information on AB 685 visit the California Legislative webpage or Cal/OSHA COVID-19 Infection Prevention Requirements (AB 685).

[1] For an individual who develops symptoms, the infectious period begins 2 days before they first develop symptoms. The infectious period ends when the following criteria are met: 10 days have passed since symptoms first appeared, AND at least 24 hours have passed with no fever (without use of fever-reducing medications), AND other symptoms have improved. For an individual who tests positive but never develops symptoms, the infectious period for COVID-19 begins 2 days before and ends 10 days after the specimen for their first positive test for COVID-19 was collected.

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## Senate Bill SB 1159 Workers Comp Mandatory Reporting

Effective September 17, 2020 until January 1, 2023

**Senate Bill (SB) 1159** is a new California law that imposes mandatory reporting requirements on California employers. This law took effect on September 17, 2020. SB 1159 creates presumptions of workers' compensation compensability and requires any employer with five or more employees to report to their claims administrator certain information about each California employee who has tested positive for COVID-19 from July 6, 2020 through January 1, 2023. The deadline to report this information depends upon the date the employee provided a specimen for testing (the "testing date").

- All positive COVID-19 tests must be reported to your comp carrier as follows:
  - o If employer notification of a positive test was between 7/6/20 – 9/16/20, you should have reported this information by October 28, 2020. If you haven't yet done so, please report it now.
  - o If employer notification of a positive test was/is 9/17/20 – 1/1/23, **you must report within 3 business days.**
  - o Failure to properly and timely report all Covid-19 positive cases to your carrier may subject you to civil penalties up to \$10,000.
- When does a positive test need to be reported as a claim?
  - o Any positive COVID-19 test where an employee states it is work-related must be reported as a claim.
    - Carriers have 45 days to make a compensability determination.
- What is an outbreak?
  - o In contrast with the AB 685 definition, an outbreak under SB 1149 is when one of the following occurs:
    - 4 or more employees have positive COVID-19 tests within 14 days of each other (for employers with 5-100 employees at the same specific place of employment).
    - 4% or more of employee population have positive COVID-19 tests within 14 days of each other (for employers with over 100 employees at the same specific place of employment).
    - A specific workplace is ordered closed by a local public health department, the State Department of Public Health, Cal/OSHA or a school superintendent due to risk of infection with COVID-19.
  - o Carriers may rebut the presumption of compensability if an outbreak occurs if they can prove that the employer had measures in place to reduce transmission and/or if they can prove that the employee had non-occupational exposure.
- Specific place of employment is any one specific location where employees work at the direction of the employer without co-mingling with other employees. For example:
  - o Separate building, facility, agricultural field where employees may work that has separate gathering places for breaks, lunches, restrooms, etc. This does not generally include an employee's home or residence.
- If an employee has paid sick leave benefits available related to COVID-19, those benefits must be exhausted before any temporary disability benefits are due and payable. If no such benefits are available, the employee shall receive benefits without a waiting period.

## Cal/OSHA General Industry Safety Order § 3205

Effective December 1, 2020 until October 2, 2021

- ❖ This standard requires employers to adopt new practices and procedures for managing COVID-19 in the workplace. On December 14, 2020, Governor Newsom issued an amended Emergency Order N-84-20, in which he directed Cal/OSHA to issue public notice of any change in exclusion periods by posting on the ETS web page: <https://www.dir.ca.gov/dosh/coronavirus/ETS.html>
- ❖ Among other things, the new standard requires employers to:
  - Ensure that employees who have tested positive or been ordered to isolate by public health authorities are (1) excluded from the worksite until they have satisfied the return to work criteria (discussed below) and (2) continue to be paid while they are off work. Specifically, the new standard provides that employers shall “continue and maintain an employee’s earnings, seniority, and all other employee rights and benefits, including the employee’s right to their former job status.”
  - Require certain criteria be met before COVID-19 cases (those who have tested positive or have an order to isolate from public health authorities) can return to work.
    - For cases with symptoms, (1) at least 24-hours must have passed since a fever of 100.4+ has resolved without the use of fever-reducing medications, (2) COVID-19 symptoms must have improved, and (3) at least 10 days have passed since symptoms first appeared.
    - For cases without symptoms: a 14-day quarantine from the last date of exposure is recommended by the CDC. However, the CDC and CDPH have issued options to reduce the quarantine for asymptomatic close contact cases during which the employee may discontinue quarantine after 10 days have passed from the last date of exposure with or without testing. If a public health authority issues the order to isolate or quarantine, the employee shall not return to work until either is lifted. There are additional exceptions to the quarantine period for health care workers, emergency response workers and social service workers who work face to face with clients in the child welfare system or assisted living facilities. Employees returning under shortened time must wear surgical face masks at all times during work when returning after day 7 and must wear face coverings when outside the home through day 14 after the last exposure. They must also self-monitor for symptoms and if symptoms occur, immediately self-isolate and seek testing.
    - Employer cannot require a negative test before an employee can return to work.
  - Prepare and implement a written COVID-19 prevention program (CPP), which can be integrated into an existing Injury and Illness Prevention Program (IIPP) or maintained as a separate document. Cal/OSHA has a sample CPP available.
  - Notify employees of potential COVID-19 exposure within one business day.
  - Employers must notify the local health department within 48 hours of a COVID-19 outbreak (3 or more COVID-19 cases) and provide unredacted information and medical records related to a COVID-19 case upon request to the local health department, California Department of Public Health, the Division, the National Institute for Occupational Safety and Health, or as otherwise required by law.
  - Follow special rules for employer-provided housing and transportation.
  - Ensure all employees are maintaining a physical distance of at least six feet. The new standard contains two exceptions to this requirement: (1) where the employer can demonstrate that six feet of separation is not possible, and (2) for momentary exposures while employees are in movement. That said, even if the required physical distancing is not possible, employers must still ensure individuals remain as far apart as possible. Further, for fixed locations where physical distancing is not possible, employers must install cleanable solid partitions between employees.
  - Provide face coverings and ensure they are worn by all employees when indoors and when outdoors if less than six feet away from others. The new standard contains very limited exemptions from wearing face coverings (e.g., when an employee is alone in a room, and when eating and drinking, provided employees are at least six feet apart). For employees who cannot wear face coverings due to a medical or mental health condition or disability, or who are hearing-impaired or communicating with a hearing impaired person, they must wear an effective alternative, such as a face shield with a drape on the bottom. But, there is a big caveat regarding employees who do not wear a face covering or face shield for any reason: they must be at least six feet apart from others at all times, unless the unmasked employee is tested at least twice weekly for COVID-19.
  - Implement general testing at the employer’s cost. The emergency standard provides testing obligations and requirements that will apply to all employers. In addition, as discussed below, employers who experience COVID-19 “outbreaks” have additional testing responsibilities. First, the regulation provides that if testing is required under any portion of the regulation, the employer shall inform the effected employees of the reason for the COVID-19 testing and the possible consequences of a positive test. Second, when there has been even one COVID-19 case in the workplace, the employer must offer free COVID-19 testing during working hours to all employees who have potential COVID-19

exposure in the workplace. Finally, employers may not use COVID-19 testing as an alternative to face coverings when face coverings are otherwise required.

- Conduct additional testing, investigation, correction and notification of outbreaks. The new regulation imposes substantial requirements when there is an “outbreak” in the workplace.
  - o A multiple outbreak under the Cal/OSHA regulation, similar to AB 685’s definition of “outbreak”, is when there are three or more COVID-19 cases in an exposed workplace within a 14-day period. In this case, employers shall provide COVID-19 testing to all employees at the exposed workplace during the period of the outbreak or the relevant 14-day period. This testing must be offered at no charge, during employee working hours, and immediately upon being covered by this outbreak definition. Employers must then offer this same testing again one week later for the same employees. After the first two required COVID-19 tests, employers shall provide continuous COVID-19 testing of employees who remain at the workplace at least once per week or provide testing more frequently if recommended by the local health department until no new COVID-19 cases are detected for a 14 day period.
  - o A major outbreak is when there are 20 or more COVID-19 cases in an exposed workplace within a 30-day period. In this case, employers shall provide testing for all employees present at the exposed workplace during the relevant 30-day period(s) and who remain at the workplace. This testing must be offered at no charge, during employee working hours, and twice a week or more frequently if recommended by the local health department.
  - o In addition to the onerous COVID-19 testing requirements, employers with an outbreak under either of these definitions shall also exclude all COVID-19 cases and employees with a COVID-19 exposure from the workplace, conduct an investigation of the COVID-19 illness, and provide specific notice the local health department within no longer than 48-hours after knowledge of the outbreak. There are also hazard assessment and correction criteria depending on the outbreak definition at play, including, but not limited to assessing updates to ventilation systems, evaluating or halting operations.
- Comply with reporting, recordkeeping, and access requirements. Employers must report information about COVID-19 cases at the workplace to the local health department whenever required by law, and shall provide any related information requested by the local health department. Additionally, employers must report immediately to the Division any COVID-19-related serious illnesses or death of an employee occurring in a place of employment or in connection with any employment. Employers also must keep a record of and track all COVID-19 cases with the employee’s name, contact information, occupation, location where the employee worked, the date of the last day at the workplace, and the date of a positive COVID-19 test, and make such information available to employees, authorized employee representatives, or as otherwise required by law, with personal identifying information removed.

COMPANY NAME: \_\_\_\_\_

## COVID-19 POSITIVE WORK-RELATED CHECKLIST

Date \_\_\_\_\_

- Received positive test results and/or doctor's note
- Exclude employee from the workplace until return to work criteria is met
- Investigation of exposure areas has been performed to identify who may have been exposed
- Employees, subcontractors, independent contractors, and unions have been notified (text, email, or written notice) date posted: \_\_\_\_\_
- Provide information regarding workers' comp insurance, company sick leave, state-mandated leave, supplemental sick leave, negotiated leave, and anti-retaliation and anti-discrimination protections.
- Health Department notified
- Provide unredacted information and medical records upon request from local health department, California Department of Public Health, the Division, the National Institute for Occupational Safety and Health.
- DWC-1 Form completed
- DWC-1 Form returned to Human Resources/Owner
- Workers Comp Carrier notified
- Case recorded on OSHA 300, 300A and 301 Form
- Safety precautions in place – social distancing, wear masks, disinfection procedures, etc.
- Appendix A – Identification of Covid-19 Hazards completed
- Appendix B – Facility Covid-19 Inspection completed
- Appendix C – Investigating Covid-19 Cases completed
- Appendix D – Covid-19 Training Roster – Training has been provided
- Appropriate postings are posted (CDC/OSHA)
- Ensure that employee with COVID-19 is paid during any exclusion period (earnings, seniority, and all other employee rights and benefits, including the employee's right to their former job status must be maintained.)
- Hand Sanitizers, masks, hand soap, and PPE available
- Disinfection of facility, equipment and tools has been completed
- Determine if testing is required, and if required, notify employees of reason and consequence of a positive result.
- Optional: daily screening of employees

If an outbreak has occurred, implement testing:

- Immediately provide free COVID-19 testing during working hours to all employees who have potential COVID-19 exposure in the workplace
- Offer free COVID-19 testing during working hours to all employees who have potential COVID-19 exposure in the workplace one week later
- After the first two required COVID-19 tests, provide continuous COVID-19 testing of employees who remain at the workplace at least once per week or more frequently if recommended by the local health department until no new COVID-19 cases are detected for a 14 day period.
- Implement hazard assessment and correction criteria depending on the applicable outbreak definition

Person completing checklist (Print Name) \_\_\_\_\_

Signature: \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_

### COVID-19 POSITIVE NON-WORK-RELATED CHECKLIST

Date \_\_\_\_\_

- Received positive test results
- Exclude employee from the workplace until return to work criteria is met
- Investigation of exposure areas has been performed to identify who may have been exposed
- Employees, subcontractors, independent contractors, and unions have been notified (text, email, or written notice) date posted: \_\_\_\_\_
- Provided information regarding workers' comp insurance, company sick leave, state-mandated leave, supplemental sick leave, negotiated leave, and anti-retaliation and anti-discrimination protections.
- Health Department notified
- Provide unredacted information and medical records upon request from local health department, California Department of Public Health, the Division, the National Institute for Occupational Safety and Health.
- Ensure that employee with COVID-19 is paid during any exclusion period (earnings, seniority, and all other employee rights and benefits, including the employee's right to their former job status must be maintained.)
- Determine if testing is required, and if required, notify employees of reason and consequence of a positive result.
- Disinfecting of facility, equipment and tools has been completed
- Safety precautions are in place
- Appendix D – Covid-19 Training Roster – Training has been provided

If an outbreak has occurred, implement testing:

- Immediately provide free COVID-19 testing during working hours to all employees who have potential COVID-19 exposure in the workplace
- Offer free COVID-19 testing during working hours to all employees who have potential COVID-19 exposure in the workplace one week later
- After the first two required COVID-19 tests, provide continuous COVID-19 testing of employees who remain at the workplace at least once per week or more frequently if recommended by the local health department until no new COVID-19 cases are detected for a 14 day period.
- Implement hazard assessment and correction criteria depending on the applicable outbreak definition

Person completing checklist (Print Name) \_\_\_\_\_

Signature: \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_

## RETURN TO WORK CHECKLIST

Date \_\_\_\_\_

### Positive Test or Order to Isolate

#### Symptomatic

- Confirm with employee that at least 24-hours must have passed since a fever of 100.4+ has resolved without the use of fever-reducing medications
- Confirm with employee that COVID-19 symptoms have improved, and
- Verify that at least 10 days have passed since symptoms first appeared.

### Close Contact, Positive Test or Order to Isolate

#### No symptoms

- Verify that a minimum of 10 days have passed since the last date of exposure to a COVID-19 positive case and that no symptoms have occurred. This applies, with or without testing.
- If a public health authority issues the order to isolate or quarantine, the employee shall not return to work until either is lifted. If no period was specified, then the period shall be 10 days from the time the order to isolate was effective, or 14 days from the time the order to quarantine was effective.

Person completing checklist (Print Name) \_\_\_\_\_

Signature: \_\_\_\_\_

Company Name: \_\_\_\_\_

All persons, regardless of symptoms or negative COVID-19 test results, will be considered potentially infectious. Particular attention will be paid to areas where people may congregate or come in contact with one another, regardless of whether employees are

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performing an assigned work task or not. For example: meeting spaces, entrances, bathrooms, hallways, aisles, walkways, elevators, break or eating areas, water dispenser areas, cool-down areas, and waiting areas.

Evaluation of potential workplace exposure will be to all persons at the workplace or who may enter the workplace, including coworkers, employees of other entities, members of the public, customers or clients, and independent contractors. We will consider how employees and other persons enter, leave, and travel through the workplace, in addition to addressing fixed work locations.

**Person conducting the evaluation:** \_\_\_\_\_ [enter name(s)]

**Date:** \_\_\_\_\_

**Name(s) of employee and authorized employee representative that participated:** [enter name(s)]:

\_\_\_\_\_  
\_\_\_\_\_

Interaction, area, activity, work task, process, equipment and material that potentially exposes employees to COVID-19 hazards	Places and times	Potential for COVID-19 exposures and employees affected, including members of the public and employees of other employers	Existing and/or additional COVID-19 prevention controls, including barriers, partitions and ventilation

Company Name: \_\_\_\_\_

Date: \_\_\_\_\_

Name of person conducting the inspection: \_\_\_\_\_

Work location evaluated: [enter information]: \_\_\_\_\_

Exposure Controls	Status	Person Assigned to Correct	Date Corrected
<b>Engineering</b>			
Barriers/partitions			
Ventilation (amount of fresh air and filtration maximized)			
Additional room air filtration			
Employee housing			
Employer provided transportation			
<b>Additional controls in the workplace:</b>			
<b>Additional controls in the workplace:</b>			
<b>Administrative</b>			
Physical distancing			
Surface cleaning and disinfection (frequency and availability of supplies)			
Hand washing facilities (adequate numbers and availability of supplies)			
Disinfecting and hand sanitizing solutions being used according to manufacturer instructions			
Ensure IIPP is up to date and implemented			
<b>Additional controls in the workplace:</b>			
<b>Additional controls in the workplace:</b>			
<b>PPE (not shared, availability and proper usage )</b>			
Face coverings (cleaning practices, availability, replacement and proper usage)			
Gloves (availability and proper usage)			

Face shields/goggles (cleaning practices, availability, and proper usage)			
Respiratory protection (cleaning practices, availability and proper usage)			
<b>Additional controls in the workplace:</b>			

Company Name: \_\_\_\_\_

All personal identifying information of COVID-19 cases or symptoms will be kept confidential. All COVID-19 testing or related medical services provided by us will be provided in a manner that ensures the confidentiality of employees, with the exception of unredacted information on COVID-19 cases that will be provided immediately upon request to the local health department, CDPH, Cal/OSHA, the National Institute for Occupational Safety and Health (NIOSH), or as otherwise required by law.

All employees' medical records will also be kept confidential and not disclosed or reported without the employee's express written consent to any person within or outside the workplace, with the following exceptions: (1) Unredacted medical records provided to the local health department, CDPH, Cal/OSHA, NIOSH, or as otherwise required by law immediately upon request; and (2) Records that do not contain individually identifiable medical information or from which individually identifiable medical information has been removed.

Date: \_\_\_\_\_

Name of person conducting the investigation: \_\_\_\_\_

Employee Name \_\_\_\_\_

Location where employee worked (or non-employee was present in the workplace): \_\_\_\_\_

Occupation (if non-employee, why they were in the workplace) \_\_\_\_\_

Date investigation was initiated \_\_\_\_\_

Was COVID-19 test offered? \_\_\_\_\_

Date and time the COVID-19 case was last present in the workplace \_\_\_\_\_

Date the employee was in close contact with a positive COVID-19 case \_\_\_\_\_

Date the case first had one or more COVID-19 symptoms (if applicable) \_\_\_\_\_

Date of the positive or negative test and/or diagnosis (is applicable) \_\_\_\_\_

Information received regarding COVID-19 test results and onset of symptoms (attach documentation):

\_\_\_\_\_  
\_\_\_\_\_

Notice given to employees who may have had COVID-19 exposure and their authorized representatives. (Y) / (N)

Notice given to all employers of subcontracted employees who may have had COVID-19 exposure. (Y) / (N)

Notice given to independent contractors and other employers present at the workplace during the high-risk exposure period. (Y) / (N)

Notice given to the local health department (Y) / (N) If yes, date notice was given: \_\_\_\_\_

Have all exposed persons been notified? (Y) / (N) If yes, date notice was given: \_\_\_\_\_

**If COVID-19 illness is claimed to be work related:**

**What were the workplace conditions that could have contributed to the risk of COVID-19 exposure?**

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**What could be done to reduce exposure to COVID-19?** \_\_\_\_\_

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