

BARSAMIAN & MOODY

A Professional Corporation

Attorneys at Law

1141 West Shaw Avenue, Suite 104

Fresno, California 93711-3704

Tel: (559) 248-2360

E-mail: laborlaw@theemployerslawfirm.com

Fax: (559) 248-2370

Steps for Implementing Policy to Comply with Notice Requirements under AB 685

Governor Newsome recently signed Assembly Bill (AB) 685 which expands the reporting and notification requirements for employers and increases Cal/OSHA's authority relating to COVID-19. The new law establishes requirements for employers to notify employees and any relevant unions about potential exposure to COVID-19 in the workplace as well as to report a COVID-19 "outbreak" to local health authorities. These new requirements are effective beginning on January 1, 2021 and are slated to continue through January 1, 2023. In order to comply with these new requirements, employers will likely need to develop new policies and procedures. What follows is an outline of the steps employers should consider implementing to ensure compliance with AB 685.

1. Train supervisors and employees to report COVID-19 exposure to management.

In order to comply with the notice requirements, an employer must know of the existence of an infected individual on the worksite. Employers should clearly identify a designated individual responsible for receiving such reports of COVID-19 exposure and overseeing the notice requirements. Additionally, employers should train employees on the importance of immediately notifying the designated individual of any exposures to COVID-19.

2. Determine whether the reported exposure triggers the notice requirement.

Upon learning of a potential exposure in the workplace, employers must quickly determine if notice must be provided to employees. The AB 685 noticing requirements are triggered by "qualifying individuals" being exposed, which include any of the following: (a) a laboratory-confirmed case of COVID-19; (b) a positive COVID-19 diagnosis; (c) a COVID-19-related order to isolate provided by a public health official; or (d) somebody who has died due to COVID-19 (as determined by a county public health department).

3. Determine which employees must be notified.

Once an employer is made aware that a qualifying individual has been at a worksite during the infectious period (defined below), they must provide notice to those who may have been exposed. Employers are required to notify, in writing, all employees who were at the same worksite as the qualifying individual during the infectious period. Employers must also notify the employer of any subcontracted employees or the representative (e.g., a union representative) of employees who were at the same worksite within the infectious period.

The "infectious period" is the time a COVID-19 positive individual is infectious as defined by the State Department of Public Health. That definition is subject to change as

more is learned about the spread and infection rate. Current information is available at <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx>

4. Provide timely and complete notice to exposed employees

Within one business day of being made aware of a qualifying individual having been on a worksite, the employer must provide written notice to all employees, employee representatives, and the employer of any subcontracted employees who are subject to notice. The notice must be provided in both English and any other language understood by the majority of employees. Notice should be provided in the manner normally used to communicate to the employees, such as hand delivered letters, email, or text message. Records of the written notification must be maintained for at least three years.

Employees must be made aware of the potential exposure; however, care should be taken to safeguard the protected medical information of the qualifying individual. To be legally compliant, employers must also provide notice of COVID-19 related benefits available under local, state, and federal laws, as well as anti-retaliation and anti-discrimination protections.

Finally, employees, their representatives, and employers of subcontracted employees must be notified of the disinfection and safety plan that will be implemented per the Centers for Disease Control guidelines. The CDC guidelines are constantly being amended as more information becomes available about COVID-19. Current guidelines are at <https://www.cdc.gov/coronavirus/2019-ncov/community/index.html>

5. Determine whether it is necessary to notify the local department of health

Within 48 hours of an employer being aware of an “outbreak” as defined by the State Department of Public Health, an employer must notify the local Department of Public Health in the jurisdiction of the worksite. Again, it is imperative that the employers’ designated individual be aware of the definition of an outbreak as defined by the State Department of Public Health as that definition varies from other Government administrations. The California State Department of Public Health currently defines an “outbreak” as three or more laboratory-confirmed cases of COVID-19 among workers who live in different households within a two-week period. Updates on the definition can be located at <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Workplace-Outbreak-Guidance.aspx#>

6. Prepare for potential administrative citations and civil liability

Under AB 685, Cal/OSHA has authority to issue Orders Prohibiting Use (OPU). However, Cal/OSHA does not have the authority to shut down all operations when exposure is limited to one work location, or even one department at a worksite. Therefore, preemptively, where possible, employers should limit employee cross over from one operation, facility, or job location to the next. Once a case is confirmed, employers should act quickly to limit cross contamination to avoid other operations or facilities from being subject to the OPU. In addition to the OPU, Cal/OSHA also has the authority to issue citations for serious violations without providing 15 days’ notice before issuance.

What This Means for Employers

Employers have the remaining months of 2020 to prepare policies implementing the new requirements under AB 685. Employers can begin gathering contact information necessary should it become necessary to notify the Local Health Department. The roughly two months before January should also be used to begin training employees and supervisors on the importance of notifying management when COVID exposure is suspected.

Employers should begin reviewing the steps above in order to create a seamless policy moving into January 1, 2021 because failure to comply with the new health and safety regulations may expose an entity to civil penalties.

The goal of this article is to provide employers with current labor and employment law information. The contents should neither be interpreted as, nor construed as legal advice or opinion. The reader should consult with Barsamian & Moody at (559) 248-2360 for individual responses to questions or concerns regarding any given situation.