

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

Updates to Memo of October 6, 2020 Providing the Steps for Implementing Policy to Comply with Notice Requirements under AB 685

Recently, the California Department of Public Health (CDPH) has published new guidance, [Employer Questions about AB 685, California's New COVID-19 Law](#), to answer questions and assist employers in complying with upcoming AB 685 requirements. The CDPH has also established [definitions](#) for several of the key phrases in the law which previously left employers searching the CDPH website for answers. What follows is an update to our October 6, 2018 Memorandum which outlined the steps that employers should be taking to prepare for compliance with AB 685 requirements.

Updated definitions for determining 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 present at a worksite. The CDHP provided a slightly more specific definition of a “qualifying individual” to include any of the following: (a) an individual receiving a positive viral test for COVID-19; (b) a positive COVID-19 diagnosis by a licensed health care provider; (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).

As stated, under the new guidance, an individual receiving a “positive viral test” is a qualifying individual. The CDHP made this terminology change, from the previous term: “laboratory-confirmed.” In addition to the terminology change, the CDPH also defined a “positive viral test,” which has previously had no definition in context of AB 685, to include nucleic acid (PCR) and antigen tests.

Update to the definition of “infectious period,” which is key in determining 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.

The “infectious period” is the time period during which a COVID-19 positive individual is infectious as defined by the CDPH. Under the new guidance, the CDPH provided an update on the definition of “infectious period” for both symptomatic and asymptomatic individuals:

- For an individual **who develops symptoms**, the infectious period for COVID-19 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

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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 the specimen for their first positive COVID-19 test was collected. The infectious period ends 10 days after the specimen for their first positive COVID-19 test was collected.

It is important to be aware that as we move forward, this definition is subject to change as more information is learned about the spread and infection rate. Current information is available at the CDPH [COVID-19 page](#).

Update to the definition of “outbreak” for determining 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. Under the new guidance, an “outbreak” is defined as **“three or more workers with COVID-19 within a 14-day period.”** Updates on the definition can be located on the CDPH website [guidance page](#).

Update to Cal/OSHA authority relating to administrative citations

In addition to having authority to issue Orders Prohibiting Use, and issue serious violations without otherwise required notice, employers should also be aware that Cal/OSHA has the authority to cite or fine employers for violations of the worker notification provision.

What This Means for Employers

Employers have the remaining months of 2020 to prepare policies implementing the new requirements under AB 685. With the additional definitions provided by the State Department of Public Health, employers can ensure that they are familiar with and continue to train management and employees to provide for a smooth transition with compliance into 2021.

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.