



MEMBER ALERT

AB 685 - COVID-19 IMMINENT HAZARD TO EMPLOYEES: EXPOSURE, NOTIFICATION, SERIOUS VIOLATIONS

SEPTEMBER 22, 2020

Effective January 1, 2021, the California Labor Code is amended to require the following:

1. NOTICE TO EMPLOYEE OF POTENTIAL EXPOSURE TO COVID-19

If an employer or representative of the employer receives a notice of **potential exposure**ⁱ to COVID-19, the employer shall take all of the following actions within one business day of the notice of potential exposure:

Provide a written notice of potential exposure to COVID-19 to all employees (and the exclusive representative), and the employers of subcontracted employees, who:

- were on the premises at the same **worksite**ⁱⁱ as the **qualifying individual**ⁱⁱⁱ
- within the **infectious period**^{iv}

Written notice may be conducted in a manner the employer normally uses to communicate employment-related information, including, but is not limited to: personal service, email, or text message if it can reasonably be anticipated to be received by the employee within one business day of sending and shall be in both English and the language understood by the majority of the employees.

Provide information regarding:

- 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, and options for exposed employees, including COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave, or negotiated leave provisions, as well as antiretaliation and antidiscrimination protections of the employee.
- Information on the disinfection and safety plan that the employer plans to implement and complete per the guidelines of the federal Centers for Disease Control.
- SIA recommends providing **COVID-19 information**^v as a reminder to all employees of the dangers of the virus and best practices for protecting oneself.

California Department of Public Health Guidance

- [Self-isolation Instructions for Individuals Who Have or Likely Have COVID-19](#)
- [Self-quarantine Instructions for Individuals Exposed to COVID-19](#)
- [Returning to Work or School Following COVID-19](#) – Isolation or Quarantine

Individuals who test positive for SARS-CoV-2, the virus that causes COVID-19, and who **have had symptoms**, may return to work or school when:

- At least 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.

Individuals who test positive for SARS-CoV-2 who **never develop symptoms**, may return to work or school

- 10 days after the date of their first positive test for SARS-CoV-2.

2. NOTICE TO LOCAL PUBLIC HEALTH

If an employer is notified of the number of cases that meet the definition of a COVID-19 **outbreak**^{vi}, as defined by the State Department of Public Health, the employer shall notify the local public health agency within 48 hours:

Notify the local public health agency in the jurisdiction of the worksite with:

1. Employee names,
2. Total number of employees
3. Occupation of each employee
4. Worksite of employees
5. Business address
6. NAICS code

An employer that has an outbreak subject to this section shall continue to give notice to the local health department of any subsequent laboratory-confirmed cases of COVID-19 at the worksite.

California Department of Public Health Guidance:

[Responding to COVID-19 in the Workplace](#) – June 16, 2020 & **Revised** September 11, 2020

This guidance was released on June 16, 2020 and **revised** on September 11 to:

1. require all employers to notify local health departments when they meet the reporting threshold of three or more cases of COVID-19 in their workplace within a two-week period.
2. align return to work criteria with updated guidance from CDC on release from isolation, issued on July 17, 2020.
3. provide employers information on how COVID-19 exposure or infection in the workplace may impact operations.

SERIOUS VIOLATIONS AND CLOSURE OF OPERATIONS – Cal/OSHA

A “**serious violation**” exists in a place of employment if the division demonstrates that there is a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation.

Before issuing a citation alleging that a violation is serious, the division shall make a reasonable attempt to determine and consider, among other things, all of the following:

- Training for employees and supervisors relevant to preventing employee exposure to the hazard or to similar hazards.
- Procedures for discovering, controlling access to, and correcting the hazard or similar hazards.
- Supervision of employees exposed or potentially exposed to the hazard.
- Procedures for communicating to employees about the employer’s health and safety rules and programs.
- Information that the employer wishes to provide, at any time before citations are issued

“Closure of Operations” When, in the opinion of the division (Cal/OSHA), a place of employment, operation, or process, or any part thereof, exposes workers to the risk of infection with severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) so as to constitute an imminent hazard to employees, the performance of such operation or process, or entry into such place of employment, as the case may be, may be prohibited by the division, **and** a notice thereof shall be provided to the employer and posted in a conspicuous place at the place of employment.

i **“Notice of potential exposure”** means any of the following:

- Notification to the employer or representative from a public health official or licensed medical provider that an employee was exposed to a qualifying individual at the worksite.
- Notification to the employer or representative from an employee, or their emergency contact, that the employee is a qualifying individual.
- Notification through the testing protocol of the employer that the employee is a qualifying individual.
- Notification to an employer or representative from a subcontracted employer that a qualifying individual was on the worksite of the employer receiving notification.

ii **“Worksite”** means:

- The building, store, facility, agricultural field, or other location where a worker worked during the infectious period.
- It does not apply to buildings, floors, or other locations of the employer that a qualified individual did not enter.
- In a multiworksite environment, the employer need only notify employees who were at the same worksite as the qualified individual.

iii **“Qualifying individual”** means any person who has any of the following:

- A laboratory-confirmed case of COVID-19, as defined by the State Department of Public Health.
- A positive COVID-19 diagnosis from a licensed health care provider.
- A COVID-19-related order to isolate provided by a public health official.
- Died due to COVID-19, in the determination of a county public health department or per inclusion in the COVID-19 statistics of a county.

iv **“Infectious Period”**

A person with COVID-19 is considered to be contagious:

- 2 days before their first symptoms appear
- until they are no longer required to be self-isolated (as described in [Self-isolation Instructions for Individuals Who Have or Likely Have COVID-19](#)).

A person with a positive COVID-19 test but no symptoms is considered to be contagious:

- 2 days before their test was taken
- until 10 days after their test.

v **COVID-19 Information:**

1. [Information on COVID-19, preventing spread](#), and [who is especially vulnerable](#).
2. Self-[screening at home](#), including temperature and/or symptom checks using [CDC guidelines](#).
3. The importance of [not coming to work](#) if workers have [symptoms](#) such as; a cough, fever, difficulty breathing, chills, muscle pain, headache, sore throat, recent loss of taste or smell, congestion or runny nose, nausea or vomiting, or diarrhea, or if they or someone they had contact with has been diagnosed with COVID-19.
4. To [return to work after a COVID-19 diagnosis](#) only after 10 days since symptom onset and 72 hours of no fever.
5. When to [seek medical attention](#).
6. The importance of [hand washing](#).
7. The importance of [physical distancing](#), both at work and off work time.
8. Proper [use of cloth face covers](#), including information in the [CDPH guidance](#).
9. Information on [paid leave benefits](#), including the [Families First Coronavirus Response Act](#), and workers’ compensation benefits under the Governor’s Executive Order N-62-20 while that Order is in effect.

vi **“Outbreak”** Defined by California Department of Public Health on 9/11/2020 as three or more cases of COVID-19 in their workplace within a two-week period.

<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Workplace-Outbreak-Guidance.aspx>

*Note: This definition of outbreak does not apply to SB 1159 and determination of Workers’ Compensation benefits.