

Lawyer Insights

California Has New COVID-19 Notice And Record-Keeping Requirements

AB 685 imposes uniform notice requirements on California employers dealing with a potential COVID-19 exposure or outbreak, according to Julia Y. Trankiem and J. Drei Munar of Hunton Andrews Kurth.

By Julia Y. Trankiem and J. Drei Munar
Published in The Recorder | January 25, 2021



In response to the ongoing spread of COVID-19 in California, Governor Gavin Newsom signed AB 685, a law meant to gather data about the spread of COVID-19 in California by tracking and tracing workplace exposure to the virus. Gathering information about workplace illness is meant to assist in efforts to limit community exposure to COVID-19 and minimize the spread of COVID-19 throughout the State.

AB 685 imposes uniform notice requirements on California employers dealing with a potential COVID-19 exposure or outbreak. Under the new law, when non-healthcare employers identify three or more cases of COVID-19 at a worksite within a 14-day period, they are required to report this to their local health department within 48 hours. The law also requires employers to maintain records of COVID-19 notices and empowers the Division of Occupational Health and Safety (“Cal OSHA”) to close down worksites where the risk of exposure to COVID-19 constitutes an imminent hazard to employees.

What Are The New Notice Requirements?

Potential COVID-19 Exposure When an employer receives notice of potential exposure to COVID-19, the employer must provide specified notifications to its employees within one business day of the notice of potential exposure. In particular, an employer must provide the following: (1) written notice of potential exposure and (2) the disinfection and safety plan the employer plans to implement and complete per Centers for Disease Control and Prevention guidelines. The notice and disinfection and safety plan must be provided to all employees who may have been exposed, including:

- Employees working at the same worksite as any individual who has tested positive for COVID-19, been ordered to isolate due to COVID-19, or died due to COVID-19.
- Employers of subcontracted employees working at the same worksite as any individual who has tested positive for COVID-19, been ordered to isolate due to COVID-19, or died due to COVID-19.
 - While AB 685 does not require an employer to notify non-employees, employers should consider notifying others who worked on the premises during the time a COVID-19-positive individual is infectious, as defined by the California Department of Public Health (CDPH).

California Has New COVID-19 Notice And Record-Keeping Requirements

By Julia Y. Trankiem and J. Drei Munar
The Recorder | January 25, 2021

In addition, within one business day of receipt of notice of potential COVID-19 exposure, an employer must also provide all employees who may have been exposed with information pertaining to applicable benefits to which the employee may be entitled under applicable federal, state, or local laws, such as workers' compensation benefits, COVID-19-related leave, company-provided sick leave, State-mandated leave, supplemental sick leave, as well as anti-retaliation and anti-discrimination protections available to employees.

Written notice must be provided in a manner the employer normally uses to communicate employment-related information. This includes, 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 transmission. The written notice must be in both English and the language understood by the majority of the employer's employees.

When drafting the written notice, employers should be mindful of protecting the infected individual's privacy and sensitive personal and medical information.

COVID-19 Outbreak Employers notified of a COVID-19 outbreak have additional obligations. The number of cases that will meet the threshold for a workplace outbreak will be determined by the CDPH. The CDPH has currently defined a workplace outbreak for non-healthcare employers as three or more cases of COVID-19 at a worksite within a 14-day period.

If an employer or representative of the employer is notified of the number of cases that meet the definition of a COVID-19 outbreak, within 48 hours, the employer must notify the local public health agency in the jurisdiction of the worksite, of the names, number, occupation, and worksite of employees who meet any of the following factors:

- The individual has a laboratory-confirmed case of COVID-19, as defined by the CDPH.
- The individual has a positive COVID-19 diagnosis from a licensed health care provider.
- The individual is subject to a COVID-19-related order to isolate provided by a public health official.
- The individual has 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.

The employer must also report the business address and NAICS (North American Industry Classification System) code of the worksite where the individuals who have tested positive for COVID-19, been ordered to isolate due to COVID-19, or died due to COVID-19 work.

Local health departments may also require employers to report additional information as part of their outbreak investigation. An employer that receives notice of an outbreak has a continuing obligation to give notice to the local health department of any subsequent laboratory-confirmed cases of COVID-19 at the worksite.

What Are The New Record-Keeping Requirements?

Employers must maintain records of written notices of potential COVID-19 exposures for at least three years. Although the record-keeping requirement does not appear to apply to COVID-19-outbreak reporting and notice requirements, employers should also consider retaining those records as well.

California Has New COVID-19 Notice And Record-Keeping Requirements

By Julia Y. Trankiem and J. Drei Munar
The Recorder | January 25, 2021

How Will COVID-19 Workplace Data Be Used?

If Cal OSHA determines that a worksite has exposed employees to a risk of infection of COVID-19 such that it constitutes an imminent hazard, Cal OSHA may prohibit entry into or use of the immediate area where the imminent hazard exists and require the employer to post a notice at the worksite.

Moreover, AB 685 requires the CDPH to share statewide information about workplace outbreaks by industry. This information will be posted on the CDPH website. Local health departments are required to provide a link to this information on the CDPH website on their own websites. Local health departments are not required to publicly post information about outbreaks by industry within their own jurisdictions but may choose to do so voluntarily.

The new law took effect on Jan. 1. Employers still have time to prepare and should use this time to review and update any existing COVID-19 policies to ensure compliance with the new law and communicate the new requirements to Human Resources and worksite managers.

***Julia Y. Trankiem** is a partner in the firm's Labor & Employment group in the firm's Los Angeles office. Julia's practice focuses on the representation of management in a broad range of employment matters under state and federal law. She can be reached at +1 (213) 532-2119 or jtrankiem@HuntonAK.com.*

***J. Drei Munar** is an associate in the firm's labor and employment group in the firm's San Francisco office. Her practice focuses on complex employment, wage and hour, and public accommodations litigation. She can be reached at +1 (415) 975-3707 or jdreimunar@HuntonAK.com.*

Reprinted with permission from the January 25, 2021 issue of The Recorder. © 2020 ALM Media Properties, LLC. Further duplication without permission is prohibited. All rights reserved.