

New COVID-19 Legislation

I. California Enacts Notice Requirements Of “Outbreak”

Yesterday, Governor Gavin Newsom signed legislation requiring employers immediately to notify their workers (employees and those working for subcontractors) exposed at work to COVID-19. Businesses must disclose their efforts to disinfect the workplace.

Notice to Employees Exposed to the Illness

A new statute, Labor Code section 6409.6, requires all employers to give written notice to all employees on the premises at the same worksite as someone who (i) received a diagnosis of COVID-19 from a laboratory or healthcare provider, (ii) received an order to isolate by a public health official, or (iii) died from COVID-19. If an employer learns that any of those things happened, the employer must notify all exposed employees, (and the “exclusive representative” employees of subcontractors) of the following:

- i. Benefits available under federal, state, or local laws, including, workers’ compensation,
- ii. Options for COVID-19 related leave, including company-offered sick leave, state-mandated leave, supplemental sick leave, or leave under collective bargaining provisions, and
- iii. Protections the workers have from retaliation and discrimination.

Notice to All Employees, Including Those Not Exposed to the Illness

The employer must notify the entire workforce of actions taken to (i) disinfect the workplace, and (ii) protect employees by following the guidelines of the Centers for Disease Control to protect workers.

Notice to Government

If the number of cases qualifies as an “outbreak,” the employer must also notify the local public health agency within 48 hours. The state 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.” The state uses a different definition for an “outbreak” prompting workers’ compensation coverage. (See below.)

Timing of Notice

The employer must “reasonably ensure” the employees receive notice within one business day of learning of the

exposure.

Threat of OSHA Violation

Under amendments to Labor Code section 6432, the California Occupational Safety and Health Administration may find a “serious violation” of its regulations if it can prove a “realistic possibility that death or serious physical harm could result from the actual hazard created by” the business violating its obligations to notify employees. One way to avoid that penalty is to give timely and complete notice. Another is to take “all steps” of a “reasonable and responsible employer” in the same situation.

II. California Reinstates Workers Compensation Presumption: COVID-19 Positive Employees Infected At Work

Governor Newsom also signed into law legislation creating a “disputable presumption” for purposes of workers’ compensation benefits that illness or death resulting from COVID-19 arose out of employment.

To Whom Does the Presumption Apply?

The presumption applies to all employees who: (1) test positive during an outbreak at the employee’s specific place of employment, and (2) whose employer has five or more employees. The following conditions must exist:

- The employee tests positive for COVID-19 within 14 days of the employee working at the employee’s place of employment.
- The day on which the employee worked is on or after July 6, 2020.
- The employee’s positive test occurred during an outbreak at the place of employment.

“Outbreak” Defined

Under the new law, an outbreak exists if within 14 calendar days one of the following occurs:

- Employers of 100 employees or fewer at the location: Four employees test positive for COVID-19.
- Employers of 100 employees or more at the location: Four percent of the employees who worked at the specific place of employment tested positive for COVID-19.
- A local public health department, the State Department of Public Health, the Division of Occupational Safety and Health, or a school superintendent orders the specific place of business close because of the risk of COVID-19 infection.

III. What Should Employers Do?

The state requires businesses to follow the new legislation, which it packed with details. A business can protect itself and its workers in different, creative ways. Contact your legal counsel for additional advice.

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