

AB 685 COVID-19 Employer Notice & Reporting Requirements

As the coronavirus pandemic continues, the State of California is working to enforce elements of COVID-19 management and controls. At this time, you may be aware of SB 1159 which requires employers to report employee COVID-19 cases to their workers compensation claims administrator. Another reporting bill, AB 685, goes into effect on January 1, 2021. This bill requires employers to notify employees of potential COVID-19 exposures in the workplace and to report outbreaks to the local public health department.

Notice to Employees, Employers of Subcontracted Employees, and Exclusive (Union) Representative

A potential exposure to COVID-19 means that a “qualifying individual” was physically present at the employer’s “worksite” during the “infectious period.”

An employer who receives notice of a potential exposure to COVID-19 must provide written notice within one business day to:

- 1 All employees, and the employers of subcontracted employees, who were on the premises at the same worksite as the qualifying individual during the infectious period.
 - 2 The employees’ exclusive (union) representative.
- The notice may be sent in a manner the employer usually uses to communicate employment-related information. Communication may include personal delivery, e-mail, or text message if it can be reasonably anticipated to be received by the employee within one business day. The notice must be written in English and (if different) the language understood by a majority of the employees.
 - The notice must include information regarding COVID-19 benefits available under federal, state, or local law, including workers compensation, COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave, or negotiated leave, as well as anti-retaliation and anti-discrimination protections for employees.
 - The notice must include information regarding the disinfection and safety plan that the employer plans to implement and complete per CDC guidelines.

Key Terms

Qualifying individual

A person who:

- Tested positive for COVID-19
- Was diagnosed with COVID-19 by a licensed health care provider
- Is subject to an isolation order
- Died due to COVID-19
- In most jurisdictions, a person is subject to an isolation order if they display symptoms of COVID-19

Worksite

The building, store, facility, agricultural field, or other location. It does not include buildings, floors, or other locations that the “qualifying person” did not enter.

Infectious period

Begins 48 hours before symptoms first appear or, if there are no symptoms, 48 hours before a positive test.

Notice to Local Public Health Department

Employers are required to notify the local public health department within 48 hours if there is an “outbreak” at an employer’s worksite.

Please remember that **you** are required to contact your local health department if an outbreak, as defined above, occurs. Additionally, cases that occur within fourteen (14) days of the last case in the initial outbreak are to be reported as well. The outbreak is considered closed when there are no cases within fourteen (14) days of the last reported case.

Notice to the Local Public Health Department Must Include the Following

Any “qualifying individual” employees’:

- Names
- Numbers
- Occupations
- Worksite

An employer shall also report the business address and NAICS code of the worksite where the qualifying individuals work. This differs from SB 1159 in that the insurance carriers only need individual names if a workers compensation insurance claim has been filed.

Recordkeeping Requirements

Employers are required to maintain records of written notifications for at least three years.

Definition of an “Outbreak” AB 685 vs. SB 1159

As defined by the California Department of Public Health in AB 685, an “outbreak” occurs if there are 3 or more laboratory-confirmed cases of COVID-19 within a two-week period. This definition of “outbreak” is different than the definition in SB 1159. It is critical that you maintain contact with your workers compensation insurance team to understand the various ways the term outbreak is enforced.

For additional information, please reach out to Loss Control at losscontrol@bhhc.com and visit the Cal/OSHA website: [Cal/OSHA FAQs](#).

Employer Notification Requirements

DEADLINE	Day 1 (or less)			Day 2	Day 3
STEPS FOR NOTIFICATION	Notify Employee Exposed (close contact) : (Title 8 CCR 3205)	Notify Persons Potentially Exposed (present at the worksite) : (AB 685 / LC 6409.6) Effective January 1, 2021	Notify CalOSHA: Serious Injury or Death (Title 8, CCR 330)	Notify Public Health: Outbreak Reporting (AB 685 / LC 6409.6(b)) (8 CCR 3205.1(f))	Notify Workers Compensation: Presumptions (SB 1159 Section LC 3212.88)
WHO TO CONTACT	Employees who may have had COVID-19 exposure and their union representative as well as independent contractors and other employers present at the workplace during the “high-risk exposure period”	All employees and their union representative, and the employers of subcontracted employees, who were on the premises at the same worksite as a “qualifying individual” within the “infectious period”	CalOSHA Enforcement Office in your area (see link under “How”).	Local Public Health Department	Workers Compensation Claims Administrator
TRIGGER	Employee was within 6 feet of a “COVID-19 case” for a cumulative total of 15 minutes or greater in any 24-hour period during the “high-risk exposure period,” regardless of the use of face coverings	Employer or representative of employer receives “notice of a potential exposure”	Employee Death or Hospitalization for COVID-19	Three or more “COVID-19 cases” or “qualifying individuals” at a “worksite” or “exposed workplace” within a 14-day period	Positive COVID test (Work related, as well as non-industrial)
WHEN	1 Business Day	1 Business Day	8 Hours	48 Hours	3 Business Day(s)
HOW	<ul style="list-style-type: none"> Notice must include information regarding COVID-19 related benefits to which the employee may be entitled under applicable law Employer must offer COVID-19 testing at no cost to employees during their working hours to all employees who had potential exposure in the workplace For employees excluded from work due to a work-related exposure and otherwise able and available to work, employer must continue and maintain an employee’s earnings, seniority, and all other rights and benefits 	Written notice (personal delivery, email, text) must include: <ul style="list-style-type: none"> Information regarding COVID-19 related benefits to which the employee may be entitled under applicable law as well as anti-retaliation and anti-discrimination protections Information regarding the disinfection and safety plan the employer plans to implement and complete per CDC guidelines 	Serious Injury Reporting to CalOSHA Open this link to report a serious injury or death	A list of local health department home pages can be found at List of Local Health Dept Home Page <ul style="list-style-type: none"> You will be required to provide information, such as names, number, occupation, and worksite address, NAICS code, etc. of any “qualifying individual” employees Employers are required to maintain records of written notifications for at least three years specific to COVID-19 exposures 	Email or fax

Definitions & Additional Information

<p>INFECTIOUS PERIOD LC 6409.6(d)(2) The time a COVID-19 positive individual is infectious, as defined by the State Department of Public Health. CDPH Guidelines - 7/31/20</p>	<ul style="list-style-type: none"> For an individual who develops symptoms, the period for COVID-19 begins 2 days before they first develop symptoms. The period ends when the following criteria are met: 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. For an individual who tests positive but never develops symptoms, the period for COVID-19 begins 2 days before the specimen for their first positive COVID-19 test was collected. The period ends 10 days after the specimen for their first positive COVID-19 test was collected.
<p>QUALIFYING INDIVIDUAL LC 6409.6(d)(4) COVID-19 CASE 8 CCR 3205(b)</p>	<ul style="list-style-type: none"> A person who has a positive COVID-19 test A person who has a positive COVID-19 diagnosis from a licensed health care provider (LC 6409.6 ONLY) A person subject to a COVID-19-related order to isolate issued by a public health official A person who has died due to COVID-19, as determined by the public health department
<p>NOTICE OF POTENTIAL EXPOSURE LC 6409(d)(3)</p>	<p>Notice to the employer or an employer representative from:</p> <ul style="list-style-type: none"> A public health official or licensed medical provider that an employee was exposed to a “qualifying individual” at the worksite An employee, or their emergency contact, that the employee is a “qualifying individual” The testing protocol of the employer that the employee is a “qualifying individual” A subcontracted employer that a “qualifying individual” was on the worksite of the employer
<p>WORKSITE LC 6409.6(d)(5) EXPOSED WORKPLACE 8 CCR 3205(b)</p>	<p>Any work location, working area, or common area at work used or accessed by a “qualifying individual”/“COVID-19 case” during the “infectious period”/“high-risk exposure period.” It does not include areas where the “qualifying individual”/“COVID-19 case” did not enter.</p>
<p>CAL/OSHA AUTHORITY</p>	<ul style="list-style-type: none"> From January 1, 2021 until January 1, 2024, Cal/OSHA can issue an Order Prohibiting Use (OPU) to shut down an entire worksite or a specific worksite area that exposes employees to an imminent hazard related to COVID-19. From January 1, 2021 until January 1, 2024, Cal/OSHA can issue citations for serious violations related to COVID-19 without giving employers 15-day notice before issuance.
<p>SERIOUS INJURY Serious Injury Definition, Title 8 CCR 330 Serious Injury Definition CalOSHA</p>	<p>“Serious injury or illness” means any injury or illness occurring in a place of employment or in connection with any employment that requires inpatient hospitalization for other than medical observation or diagnostic testing, or in which an employee suffers an amputation, the loss of an eye, or any serious degree of permanent disfigurement, but does not include any injury or illness or death caused by an accident on a public street or highway, unless the accident occurred in a construction zone.</p> <p>Definition of Serious Injury</p> <p>Reporting Work Connected Fatalities or Serious Injury</p>

<p>COVID-19 PLAN Title 8, CCR 3205</p>	<p>Please select the following link to view the CalOSHA model plan. CalOSHA Model COVID-19 Prevention Plan</p>
<p>MULTIPLE COVID-19 INFECTIONS, OUTBREAKS, AND MAJOR COVID-19 OUTBREAKS 3205.1 & 3205.2</p>	<p>Please select the following link for more information If your workplace is identified by a local health department as the location of a COVID-19 outbreak, or there are three or more COVID-19 cases in your workplace within a 14-day period. Reference: Title 8, 3205.1 & 3205.2 CDPH Definition</p>
<p>RETURN TO WORK CRITERIA Title 8, Section 3205 Section c(11)</p>	<p>Please select the following link for more information. Reference: Title 8, 3205 Section c(11)</p>

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