

This post is for general informational purposes only and should not be considered to constitute legal advice.

Employment Update: New COVID-19 Related Laws
Posted November 10, 2020

California passed a number of laws this year related to COVID-19 that impact employers. To help clarify this changing landscape for our clients, we have created a summary of COVID-19-related laws that are in effect, or will go into effect in the new year. This is meant for informational purposes only and does not constitute legal advice. For assistance with any specific issues please contact us to discuss.

Workers' Compensation Presumption and Reporting Related to COVID-19 (SB 1159) – Effective Now

SB 1159 went into effect as urgency legislation on September 17, 2020 and is effective until January 1, 2023. The new law provides a presumption that COVID is work-related, but it is disputable and may be controverted by other evidence. There are two time periods under the law, with important differences reflected below.

1st Time Period: March 19 – July 5, 2020

The law establishes a presumption that illness or death resulting from COVID-19 is work-related for purposes of workers' compensation benefits if an employee tests positive or is diagnosed with COVID-19 within 14 days after a day that the employee performed labor or services at the employee's place of employment at the employer's direction.

2nd Time Period: July 6, 2020 – January 1, 2023

After July 6, 2020, the same presumption will continue to apply to first responders, workers at health facilities and in-home supportive services workers. However, for all other employees, the presumption that illness or death resulting from COVID-19 is work-related for purposes of workers' compensation benefits will only occur during an "outbreak" at work. For these other employees, the presumption will apply if the following conditions are met:

- Employer has 5 or more employees;
- An employee tests positive within 14 days after a day that the employee performed labor or services at the employee's place of employment at the employer's direction; and
- The employee's positive test occurred during a period of "outbreak" at the employee's specific place of employment. An "outbreak" exists if within 14 calendar days one of the following occurs at a specific place of employment:
 - For employers with 100 employees or fewer, 4 employees test positive for COVID-19
 - For employers with more than 100 employees at a specific place of employment, 4 percent of the number of employees who reported to the specific place of employment, test positive for COVID-19.
 - A place of employment is ordered to close by a local public health department, the State Department of Public Health, the Division of Occupational Safety and Health, or a school superintendent due to a risk of infection with COVID-19.

Reporting Requirement

The law also creates a workers' compensation reporting requirement. When an employer with five or more employees knows or reasonably should know that an employee has tested positive for COVID-19, the employer must report to their workers' compensation claims administrator in writing via email or fax all of the following within three business days:

- That an employee tested positive without identifying information about the employee*;
 - *employers should include identifying information about the employee if the employee asserts the infection was work related or files a workers' compensation claim form
- The date of the test;
- The place(s) where the employee worked during the 14 days prior to the test; and
- The highest number of employees who reported to work at the employee's workplace in the 45-day period before the last day the employee worked at each specific place of employment.

Although not required, if you know the employee contracted COVID-19 outside of work, we recommend including that information in the report to your claims administrator. Employers may be subject to civil penalties of up to \$10,000 for intentionally submitting false or misleading information, or for failing to report required information. Further information about SB 1159 can be found here:

<https://www.dir.ca.gov/dwc/Covid-19/FAQ-SB-1159.html>.

Notice Obligations Regarding COVID-19 Workplace Exposure (AB 685) – Effective January 1, 2021

Notice to Employees of Potential Exposure

Within one business day of receiving notice of potential exposure to COVID-19, employers are required to provide written notice to all employees, and the employers of subcontracted employees, who were on the premises at the same worksite within the infectious period that they may have been exposed to COVID-19.

- “Infectious period” is the time a COVID-19-positive individual is infectious, as defined by the State Department of Public Health (CDPH). Currently, CDPH advises that the infectious period starts 48 hours before symptom onset or a positive COVID-19 culture test, and lasts a minimum of 10 days and up to 20 days or more after symptom onset or a positive test. (See also this guidance from the California Correctional Health Care Services: <https://cchcs.ca.gov/covid-19-interim-guidance/>).
- “Worksite” is defined as “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 COVID-19 positive or quarantined] individual did not enter.”

An employer's duty is triggered when they receive notice from an employee, or their emergency contact, from a public health official, medical provider, or from the employer's testing protocol that an employee tested positive for COVID-19, was placed under a COVID-19-related order to isolate, or died due to COVID-19. An employer's duty is also triggered when they receive notice that someone with COVID-19 was at a worksite.

Once an employer has notice of potential exposure, they must provide notice within one business day to all employees and employers of subcontracted employees who were on the premises at the same worksite as the individual during the infectious period of the following:

- That employees may have been exposed to COVID-19 at the worksite;
- 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, COVID-

19-related leave, company sick leave, state-mandated leave, supplemental sick leave, as well as antiretaliation and antidiscrimination protections; and

- The disinfection and safety plan that the employer plans to implement and complete per the guidelines of the federal Centers for Disease Control.

It is unclear whether the law requires sending the disinfection and safety plan to all employees, not only those who were at the same worksite during the infectious period. In an abundance of caution, we recommend sending your organization's disinfection and safety plan to all employees following notice of potential exposure to COVID-19 at any worksite.

Sample notices to employees are attached for your use. There are additional notice requirements for unions, if applicable.

Employers must maintain records of the written notifications sent out under this law for three years.

Notice to Local Health Department of Outbreak

If an employer or representative of the employer is aware of an outbreak at work (meeting the CDPH definition of outbreak), the employer must notify the local public health agency in the jurisdiction of the worksite within 48 hours of the names, number, occupation, and worksite of employees who tested positive for COVID-19, received an order to isolate, or died due to the virus.

Although "outbreak" for workers' compensation purposes discussed above is four or more (or 4% if over 100 employees), an "outbreak" under AB 685 is tied to the definition from the California Department of Public Health (CDPH). Currently, CDPH defines "outbreak" in a non-healthcare or non-residential setting workplace as three or more lab-confirmed cases of COVID-19 among employees from different households within a two-week period. (See <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Workplace-Outbreak-Employer-Guidance.aspx> .)

An employer must also report the business address and NAICS code of the worksite where the qualifying individuals work. An employer that has an outbreak must continue to give notice to their local health department of any subsequent laboratory-confirmed cases of COVID-19 at the worksite.

You can find your local health department information here:

<https://www.cdph.ca.gov/Pages/LocalHealthServicesAndOffices.aspx> .

COVID-19 Leaves Set to Expire December 31, 2020 (FFCRA and CA Supplemental Paid Sick Leave) – Set to Expire December 31, 2020

The Families First Coronavirus Response Act (FFCRA) includes Emergency FMLA leave (EFMLA) and Emergency Paid Sick Leave (EPS). EFMLA provides up to 12-weeks of protected leave (10 weeks are paid) for employees who are unable to work entirely (including working remotely) due to the need to care for the employee's son or daughter (under 18) because their son or daughter's school or child care service is closed due to COVID-19. EPS leave provides up to 80 hours of paid leave for coronavirus-related issues. In September, Governor Newsom passed AB 1867 which expanded the CA Supplemental Paid Sick Leave law to cover employers in California with over 500 employees that are not covered by the FFCRA. Our legal updates about the FFCRA can be found at <https://www.dpf-law.com/resources/>.

There is a possibility that these laws will be expanded or new laws will take their place, but as of right now, employers will no longer need to provide leave under the FFCRA or CA Supplemental Paid Sick Leave after

December 31, 2020. Additionally, Sonoma County's paid sick leave ordinance that is similar to the CA Supplemental Paid Sick Leave will also expire at the end of 2020.

COVID-19 Resources

California continues to use the Blueprint for a Safer Economy as a guide for reopening the State on a county by county basis. To check your County's status and see what business activities are allowed and not allowed you can access the State's website here: <https://covid19.ca.gov/safer-economy/>. Each County also has its own COVID resources page where you can find helpful FAQs for businesses, the status of each County within the blueprint for reopening, and the latest County health orders. We included the current tier level for each county below as of the date of this update.

- Sonoma County (Purple Tier): <https://socoemergency.org/emergency/novel-coronavirus/>
- Napa County (Orange Tier): <https://www.countyofnapa.org/2739/Coronavirus-COVID-19>
- Marin County (Orange Tier): <https://coronavirus.marinhhs.org/>
- Mendocino County (Red Tier): <https://www.mendocinocounty.org/community/novel-coronavirus>
- Contra Costa County (Red Tier): <https://www.coronavirus.cchealth.org/>
- Solano County (Red Tier): <https://www.solanocounty.com/depts/ph/ncov.asp>

We also encourage all employers to regularly check the CDC guidelines as the information related to COVID-19 is updated often. The CDC's COVID-19 homepage for businesses and employers can be accessed here: <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html>.

SAMPLE COVID-19 DISINFECTION NOTICE (AB 685)

Date: **[Within one business day of notice that potential exposure occurred]**

To: All Employees

Re: NOTICE OF DISINFECTION AND SAFETY PLAN

[Company name] is implementing the following measures to maintain safety of our employees during this time:

[Describe the company's disinfection and safety plan, following guidelines of CDC.]

If you are having symptoms or believe you may have contracted COVID-19 illness, please inform **[name & contact information in HR or management]** and contact your health care provider. **[Company name]** will maintain the confidentiality for all medical information unless disclosure is required by law.

For more information on COVID-19, including symptoms and treatment, visit the CDC website at www.cdc.gov and the California Department of Public Health at <https://www.cdph.ca.gov/>.

SAMPLE COVID-19 WORKPLACE EXPOSURE NOTICE (AB 685)

Date: [Within one business day of notice that potential exposure occurred]

To: Employees, Employers of subcontracted employees, and Employee unions (if applicable) [to be sent to those who were on the premises at the same worksite as the COVID-19 positive or exposed individual during the infectious period]

Re: NOTICE OF POTENTIAL EXPOSURE TO COVID-19

We have learned that an employee [tested positive for COVID-19 / was placed under a COVID-19 related order to isolate / was exposed to a person with COVID-19 in the workplace]. Employees working at [worksite(s)] may have been exposed to COVID-19 between [date range of potential exposure].

If you are having symptoms or believe you may have contracted COVID-19 illness, please inform [name & contact information in HR or management] and contact your health care provider. [Company name] will maintain the confidentiality for all medical information unless disclosure is required by law.

[Company name] is implementing the following measures to maintain safety of our employees during this time:

[Describe the company's disinfection and safety plan, following guidelines of CDC.]

We want to remind you of the following COVID-19-related benefits:

- Workers' compensation may apply to you [include information for filing a claim]
- [COVID-19-related leaves, if any applicable (note, current mandated COVID-19 leave laws expire 12/31/2020)]
- [Company sick leave policy]
- [Company] does not retaliate or discriminate against any employee as a result of COVID-19 exposure

For more information on COVID-19, including symptoms and treatment, visit the CDC website at www.cdc.gov and the California Department of Public Health at <https://www.cdph.ca.gov/>.