

Employment & Labor Alert

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California Governor Signs Legislation to Protect Employees During COVID-19

California Gov. Gavin Newsom recently signed three bills that will expand employee protections related to COVID-19. The bills modify the California Division of Occupational Safety and Health (Cal/OSHA) requirements, workers' compensation protections and employee rights under the California Family Rights Act.

Key Takeaways

- **Assembly Bill 685** clarifies the enforcement authority of Cal/OSHA, requires written notifications to employees in the event of a potential COVID-19 exposure and establishes reporting requirements to health authorities.
- **Senate Bill 1159** expands access to workers' compensation to include COVID-19-related illness or death for employers with five or more employees.
- **Senate Bill 1383** ensures job-protected leave for more California workers by including employers with five or more employees—down from the current 50 or more employees.

Assembly Bill 685

On Jan. 1, 2021, Assembly Bill 685 will effect three key changes: (1) enlarge Cal/OSHA's authority in workplaces relating to COVID-19; (2) provide specific employer notification requirements regarding COVID-19 at the worksite; and (3) establish a reporting requirement to local health authorities in the event of a COVID-19 "outbreak" at the worksite.

Cal/OSHA's Authority

This bill expands the authority of Cal/OSHA to prohibit entry into a place of employment, or the performance of operations or processes, when it determines that



employees' risk of exposure to COVID-19 constitutes an "imminent hazard."

The bill also requires Cal/OSHA to provide notice of the imminent hazard that must be posted in a "conspicuous" location at the worksite.

More information is available [here](#).

Notifications to Employees

Employers that receive notice of potential exposure to COVID-19 are required to:

- Provide written notification to employees and employers of any subcontractors of their potential exposure to COVID-19 within one business day after they learn of any potential exposure. "Written notice may include, 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 employees, employers of any subcontractors and any exclusive representatives notification of the disinfection and safety plan, based on the Centers for

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Disease Control and Prevention guidelines, that the employer has implemented or will undertake.

- Provide information regarding COVID-19 benefits the employee may be entitled to.
- Maintain all notification records for a period of three years.

Reporting Requirements for Outbreaks

Employers with a sufficient number of COVID-19-positive cases to meet the California Department of Public Health definition of a COVID-19 outbreak are required to inform the local public health agency in the jurisdiction of the worksite within 48 hours of learning of the outbreak.

The California Department of Public Health is required to provide information regarding outbreaks on its public website.

Note: The California Department of Public Health defines an outbreak as three or more laboratory-confirmed cases of COVID-19 within a two-week period among employees who live in different households.

Senate Bill 1159

Senate Bill 1159 expands access to workers' compensation and makes it easier for employees, including first responders, health care workers and people who test positive due to an outbreak at their worksite, to get the support they need until Jan. 1, 2023, by establishing new workers' compensation guidelines.

Effective immediately, the workers' compensation definition of "injury" is expanded to include illness or death resulting from the COVID-19 virus. The bill creates a disputable presumption that such injury occurred in the course of employment for:

- Employees with COVID-19-related illness when (1) they are diagnosed or test positive for the virus within 14 days of a day they worked at the employer's worksite at the direction of the employer; (2) the day they worked for the employer was on or after March 19, 2020, and on or before July 5, 2020; and (3) if they were diagnosed with COVID-19, it "was done by a licensed physician and surgeon holding an M.D. or D.O. degree or state licensed physician assistant or nurse practitioner, acting under the review or supervision of a physician and surgeon pursuant to standardized procedures or protocols within their lawfully authorized

scope of practice, and that diagnosis is confirmed by testing or by a COVID-19 serologic test within 30 days of the date of the diagnosis."

- Specified employees such as firefighters, peace officers and those who provide "direct patient care, or a custodial employee in contact with COVID-19 patients, who work at a health facility" when (1) they test positive for the virus within 14 days of a day they worked at the employer's worksite at the direction of the employer and (2) the day they worked for the employer was on or after July 6, 2020.
- Employees who test positive for COVID-19 during an "outbreak" at a worksite where the employer employs five or more employees when (1) they test positive for the virus within 14 days of a day they worked at the employer's worksite at the direction of the employer; (2) the day they worked for the employer was on or after July 6, 2020; and (3) they tested positive during an outbreak at the worksite.

These claims are compensable for specified dates of injury after 30 days or 45 days, rather than the current 90 days.

Employees must exhaust their paid sick leave benefits and meet certification requirements before receiving any temporary disability benefits payable. This also applies to benefits under Labor Code Section 4850 specifically regarding police officers, firefighters and other specified employees. A presumption of injury exists at worksites of five or more employees that experience specified levels of positive testing.

An outbreak exists if within 14 calendar days one of the following occurs at a specific place of employment:

- If the employer has 100 or fewer employees at a specific place of employment, four employees test positive for COVID-19.
- If the employer has more than 100 employees at a specific place of employment, 4% of the number of employees who reported to the specific place of employment test positive for COVID-19.
- A specific place of employment is ordered to close by a local public health department, the California Department of Public Health, Cal/OSHA or a school superintendent due to a risk of infection with COVID-19.

Senate Bill 1383

Under the California Family Rights Act and its federal counterpart (the Family and Medical Leave Act), employers at sites with 50 or more employees within a 75-mile radius are required to provide leave to eligible employees to bond with their child, take care of qualifying military exigencies, attend to their own serious illnesses or take care of immediate family members. In general, to be eligible, employees must have completed a year of service and must have worked at least 1,250 hours within the past year. Senate Bill 1383 subjects more employers to these requirements by reducing the threshold employee head count from 50 to five.

Effective Jan. 1, 2021, Senate Bill 1383 ensures job-protected leave for employees of smaller employers. It makes it unlawful for any employer with five or more employees to refuse to grant a request by a qualified employee to take up to 12 workweeks of unpaid protected leave during any 12-month period to bond with a newborn or care for their own illness or that of a family member.

The bill also expands the definition of “family member” to include a child, parent, grandparent, grandchild, sibling, spouse or domestic partner. Therefore, if employees or one of their family members are affected by COVID-19, they will be allowed to take time off, if needed. Employees who experience a “qualifying exigency” related to active duty in the military of their spouse, domestic partner, child or parent will now also be eligible to take job-protected leave.

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