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AB 685 – California Division of Occupational Safety and Health's Authority to Shut Down Operations and New Notice Requirements



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As part of his **worker protection package**, California Governor Gavin Newsom signed on September 17, 2020, Assembly Bill 685 (**AB 685**), which authorizes the Division of Occupational Safety and Health (“Cal OSHA” or “division”) to prohibit operations and processes, and prevent entry into workplaces that it has determined present a risk of infection of COVID-19 so as to constitute an imminent hazard to employees. AB 685 separately requires employers to provide specified notifications to employees within one business day of receiving notice of potential exposure to COVID-19. The law takes effect on January 1, 2021.

Enforcement

Under AB 685, when Cal OSHA determines that employees are exposed to risk of infection of COVID-19 so as to constitute an imminent hazard, it is authorized to:

1. Prohibit the performance of such operation or process;
2. Prohibit entry into such place of employment; and
3. Require the posting of a notice.

The division’s authority to prohibit use is limited to the immediate area in which the imminent hazard exists. In addition, this prohibition must not materially interrupt the performance of critical governmental functions essential to ensuring public health and safety functions or the delivery of electrical power or water. This section will be repealed on January 1, 2023.

Notice Requirements

If an employer receives a notice of potential exposure to COVID-19, the employer must take all of the following actions within one business day of the notice of potential exposure:

1. Provide a written notice to all employees, and the employers of subcontracted employees, who were on the premises at the same worksite as the qualifying individual within the infectious period that they may have been exposed to COVID-19;
2. Provide a written notice to the exclusive representative, if any, of employees.

Along with the notice, the employer must also provide: (a) information regarding COVID-19 related benefits to which the employee may be entitled under applicable federal, state, or local laws; and (b) information regarding the disinfection and safety plan that the employer plans to implement and complete per the guidelines of the federal Centers for Disease Control and Prevention (CDC).

Additionally, an employer has an obligation to notify the local health agency if the number of cases reported meets the definition of a COVID-19 outbreak, as defined by the State Department of Public Health. In such cases, within 48 hours, the employer must notify the local public health agency in the jurisdiction of the worksite of the names and number of qualifying employees and other relevant information. The employer should be mindful not to disclose any privacy-protected medical information. The employer must continue to cooperate with the local health agency on any subsequent laboratory-confirmed cases of COVID-19 at the worksite.

Streamlining of Rebuttable Presumption of a “Serious Violation”

Cal OSHA regulations establish a rebuttable presumption that a “serious violation” exists in a place of employment if the division demonstrates there is a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation. Generally, at least 15 days prior to issuing a citation, the division must make a reasonable attempt to determine the violation by delivering to the employer a standardized form and clearly soliciting the information rebutting the presumption. However, AB 685 streamlines this process by eliminating the 15-day period in which Cal OSHA has to issue a citation alleging a serious violation related to COVID-19. This means Cal OSHA will not notify an employer 15 days before issuing a serious violation related to COVID-19. This exemption will be repealed on January 1, 2023.

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