

Safety Zone: California AB 685: COVID-19 Legislation A Guide for Employers

With the COVID pandemic continuing to evolve, businesses and employers across the country are struggling with the economic fallout and the uncertainty of changing regulations.

In an effort to better manage the ongoing crisis in California, Governor Gavin Newsom signed [Assembly Bill 685](#) into law on Sept. 17, 2020. The law goes into effect on January 1, 2021 and expires two years later on January 1, 2023.

This guide will provide California employers with an overview of the new law, including the enhanced enforcement authority of Cal/OSHA and the responsibilities of employers under the law. For definitions of the terms in **bold** below, see the end of this guide.

What's included in the new law?

AB685 gives Cal/OSHA greater authority to enforce COVID-19 infection prevention requirements, including issuing Orders Prohibiting Use (OPU) and citations for serious violations related to COVID-19. For employers, the law includes new requirements for tracking COVID-19 cases and providing notification to employees and local health agencies.

What enhanced enforcement powers does Cal/OSHA have under AB685?

AB685 will be in effect from January 1, 2021 until January 1, 2023. During that time, Cal/OSHA can issue an Order Prohibiting Use to shut down an entire **worksite** or a specific worksite area that exposes employees to an **imminent hazard** related to COVID-19. The OPU is intended to protect workers from an imminent hazard by prohibiting entry into the workplace or prohibiting the use of something in the workplace that constitutes an imminent hazard.

During this timeframe, Cal/OSHA can also issue citations for serious violations related to COVID-19 without giving employers the usual 15-day notice. Inspections can result in citations, and citations can result in costly fines. These citations classify each violation based on the severity of the hazard, and Cal/OSHA classifies the hazard as serious when they can demonstrate there is a realistic possibility that death or serious physical harm could result from the hazard.

What are your responsibilities as an employer?

Under AB685, when an employer receives a **Notice of Potential Exposure** to COVID-19 involving a **qualifying individual** at the **worksite**, that employer must issue notices within one business day. To comply with this requirement, employers must:

1. Provide notice to employees who were at the same worksite as the qualifying individual within the **infectious period**, letting them know they may have been exposed to COVID-19. The notice must include possible benefits the employees may be entitled to under federal, state, or local laws; COVID-19-related anti-retaliation and anti-discrimination language; and the employer's disinfection and safety plan.
2. Provide notice to the employer of any subcontractors at the worksite during the infectious period.
3. Notify the exclusive representative of the employees receiving notice. In addition to the information provided to employees, this notice should include the same information that would be required in an incident report for a Cal/OSHA Form 300 injury and illness log.
4. Track COVID-19 cases among qualifying individuals at the worksite to determine if an **outbreak** has occurred.
5. Notify the local public health agency in the jurisdiction of the worksite within 48 hours if an outbreak occurs. The notice must include names, phone numbers, occupations and worksite of qualifying individuals, address of the worksite, and the [NAICS code](#).

These rules partially overlap with Cal/OSHA's COVID-19 Emergency Temporary Standards, which went into effect November 30, 2020. See our [Emergency Temporary Standards Guide](#) for more details.

As the COVID-19 pandemic continues to evolve, it's crucial for employers to stay up to date on changing laws and regulations. Working together, we can all help keep our workplaces and our employees safe.

Definitions

These definitions are taken from California labor code or from the California Department of Public Health (CDPH).

Close contact. Someone who has spent 15 minutes or more within six feet of an individual with COVID-19 during the infectious period.

Imminent hazard. Any condition or practice posing a hazard that could reasonably be expected to lead to death or serious physical harm.

Infectious period. A period that includes, at minimum, the 48 hours before the individual developed symptoms.

Notice of potential exposure. This may occur when:

- A public health official or licensed medical provider notifies the employer or representative that an employee was exposed to a qualifying individual at the worksite;
- An employee or emergency contact notifies the employer or representative that the employee is a qualifying individual;
- The employer learns through its testing protocol that the employee is a qualifying individual; or
- A subcontractor employer notifies the employer or representative that a qualifying individual was on the worksite of the employer receiving the notification.

Outbreak. For non-healthcare and non-residential workplaces, an outbreak is defined as three or more laboratory confirmed cases of COVID-19 among employees who live in different households within a two-week period.

Qualifying individual. Any person who:

- Has a laboratory confirmed case of COVID-19;
- Has a positive diagnosis from a licensed health care provider;
- Is under a COVID-19 order to isolate that was provided by a public health official; or
- Died due to COVID-19, if determined by a county health official or included in COVID-19 statistics for the county.

Worksite. The building, store, facility, agricultural field, or other location where an employee worked during the infectious period. It doesn't apply to buildings, floors, or other employer locations a qualified individual didn't enter. In a multi-worksite environment, the employer only needs to notify employees who were at the same worksite as the qualified individual.

For additional information and resources on this topic and other safety and risk management subjects be sure to visit the [Loss Control](#) section on our website.

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