



Assembly Bill 685, OSHA Recordkeeping and COVID-19

Considerations for Employers

On September 17, 2020, California Governor Gavin Newsom signed Assembly Bill (AB) 685 into law, obligating employers to notify employees, the employees' representative (such as a union), and subcontractors, within one business day of an employer receiving notice of a potential COVID-19 workplace exposure from a "qualifying individual".

THIS NEWSLETTER WILL COVER THE REQUIREMENTS UNDER AB 685 IN CALIFORNIA INCLUDING CAL/OSHA IMPLICATIONS, as well as OSHA recordkeeping considerations for employers as they relate to COVID-19 within both California and Federal OSHA states.

AB 685

Under AB 685 employers must report a COVID-19 outbreak to local public health officials. Employers must also report known cases to employees who may have been exposed to COVID-19 within one business day. This bill strengthens Cal/OSHA's enforcement authority by providing clear authority to close a worksite due to a COVID-19 hazard and reducing the timeframe for COVID-19 citations.

WHEN DOES AB 685 BECOME EFFECTIVE?

January 1, 2021. The bill sunsets on January 1, 2023.

WHAT DOES AB 685 REQUIRE OF EMPLOYERS?

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

1. Provide a written notice to all employees, the employees' representative (such as a union), 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.
 - Notice should be provided in a manner the employer normally uses to communicate employment-related information, such as email, telephonically, handing it to them, via text message, etc.
 - Notice should be provided in a manner that 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.
2. Provide all employees who may have been exposed and the exclusive representative, if any, with 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, and options for exposed employees, including COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave, or negotiated leave provisions, as well as antiretaliation and antidiscrimination protections of the employee.
3. Notify all employees, and the employers of subcontracted employees and the exclusive representative, if any, on the disinfection and safety plan that the employer plans to implement and complete per the guidelines of the federal Centers for Disease Control.

If an employer or representative of the employer is notified of three or more laboratory-confirmed cases of COVID-19 (except for healthcare or congregate settings employers), within 48 hours, the employer shall notify the local public health agency in the jurisdiction of the worksite of the names, number, occupation, and worksite of employees who meet the definition of a qualifying individual. An employer shall also report the business address and NAICS code of the worksite where the qualifying individuals work. An employer that has an outbreak subject to this section shall continue to give notice to the local health department of any subsequent laboratory-confirmed cases of COVID-19 at the worksite.

The notice required shall contain the same information as would be required in an incident report in a Cal/OSHA Form 300 injury and illness log unless the information is inapplicable or unknown to the employer. This requirement shall apply regardless of whether the employer is required to maintain a Cal/OSHA Form 300 injury and illness log. Notifications required by this section shall not impact any determination of whether or not the illness is work related. [Please see following pages for Cal/OSHA recording and reporting requirements.](#)

How does AB 685 impact Cal/OSHA enforcement?

AB 685 authorizes Cal/OSHA to act when, “in its opinion”, employees are exposed to COVID-19 in such a manner as to create an imminent hazard by:

- Prohibiting entry or access to the worksite.
- Prohibiting performance of an operation or process at the worksite, or
- Requiring posting of an imminent hazard notice at the worksite.

Cal/OSHA regulations require a strict process for “serious violations”, in which Cal/OSHA creates a rebuttable presumption of a serious violation following an inspection, which is then shared with the employer and the employer is given a chance to rebut. The employer’s rebuttal may then be used in defense of the violation in an appeal or hearing on the matter. Typically, this procedure is satisfied by Cal/OSHA sending a standardized form containing descriptions of the alleged serious violation and soliciting information in rebuttal of the presumption to the employer at least 15 days before issuing the citation. For COVID-19 hazards and violations only, AB 685 streamlines this process by allowing Cal/OSHA to issue a citation alleging a serious violation without requiring the agency to solicit information rebutting the presumption of a serious violation. Accordingly, Cal/OSHA would not need to notify an employer 15 days before issuing a serious violation related to COVID-19.

Frequently Asked Questions

[WHO IS A “QUALIFYING INDIVIDUAL”?](#)

An employer must provide notice when a “qualifying individual” may have exposed the workplace to COVID-19. An individual “qualifies” when she or he falls within one of the following categories:

1. A laboratory has confirmed that the individual has a case of COVID-19.
2. A licensed health care provider has given a positive COVID-19 diagnosis to the individual.
3. A public health official has issued a COVID-19-related isolation order; or
4. The individual has died from COVID-19.

[WHEN DOES THE EMPLOYER RECEIVE A “NOTICE OF POTENTIAL EXPOSURE”?](#)

An employer receives notice of a potential exposure to COVID-19 in any of the following circumstances:

- A public health official or licensed medical provider notifies the employer “that an employee was exposed to a qualifying individual at the worksite”.
- An employee or the employee’s emergency contact notifies the employer that the employee is a “qualifying individual”.
- The employer’s COVID-19 testing process discloses that the employee is a “qualifying individual”; or
- A subcontracted employer notifies the employer that a “qualifying individual” was on the employer’s worksite.

WHAT DOES “WORKSITE” MEAN WHEN IT REQUIRES THAT AN EMPLOYER PROVIDE NOTICE TO ALL EMPLOYEES WHO WORKED ONSITE AT THE SAME WORKSITE AS THE QUALIFYING INDIVIDUAL?

The worksite would be the building, store, facility, agricultural field, or other location where a worker worked during the infectious period. In a multi-worksite environment, the employer need only notify employees who were at the same worksite as the qualified individual.

MAY THE EMPLOYER REVEAL THE NAME OF THE “QUALIFYING INDIVIDUAL”?

The employer must not reveal the name of the qualifying individual to employees or subcontracted employers. Both federal and state law protect that information. However, the employer must provide to the union, if applicable, with the same information that it would provide on a Cal/OSHA Form 300, including the qualifying individual’s identity.

MUST AN EMPLOYER MAINTAIN ANY RECORDS UNDER AB 685?

Yes, the employer must maintain records of the notices it provides for at least three years.

WHAT CAN EMPLOYERS DO TO PREPARE FOR AB 685?

Employers may wish to prepare by designating an individual or individuals to take responsibility for putting together a compliance process. Some of the items to be considered include:

- Ensure a comprehensive COVID-19 Infection Control Plan is in place, as is required by Cal/OSHA.
- Identifying the means by which they will notify employees, and the unions if applicable, of a potential workplace exposure.
- Compile a list of all federal, state, local, and collective bargaining agreement benefits for which an employee who potentially is exposed to COVID-19 is eligible.
- Decide upon and consider putting in writing the disinfection and safety plans they will implement in the event they receive notice that a “qualifying individual” may have exposed the worksite to COVID-19.
- Prepare for a potential Cal/OSHA inspection by having your COVID-19 Infection Control Procedures printed or easily accessible for printing. During an onsite inspection the employer should provide any and all documentation to preemptively rebut any possible findings that may lead to a “serious” violation given that Cal/OSHA does not have to provide a rebuttal period for COVID-19 related violations.

You can read the full text to AB 685 [here](#). Please contact your Lockton team should you have questions or require assistance with your COVID-19 safety protocols.



UNCOMMONLY INDEPENDENT

OSHA Recordkeeping and COVID-19

Considerations for Employers

Likely to be Work Related:

- When several cases develop among workers who work closely together and there is no alternative explanation.
- If COVID-19 is contracted shortly after lengthy, close exposure to a customer or coworker who has a confirmed case of COVID-19 and there is no alternative explanation.
- If the employee's job duties include having frequent, close exposure to the general public in a locality with ongoing community transmission and there is no alternative explanation.

Not Likely to be Work Related:

- If the employee is the only worker to contract COVID-19 in their vicinity and their job duties do not include having frequent contact with the general public, regardless of the rate of community spread.
- If, while away from the workplace, the employee closely and frequently associates with someone (e.g., a family member, significant other, or close friend) who (1) has COVID-19; (2) is not a coworker, and (3) exposes the employee during the period in which the individual is likely infectious.
- If any evidence of causation provided by medical providers, public health authorities, or the employee them self, indicates an alternative source.

Employers are responsible for determining if a confirmed case of COVID-19 meets the criteria for recordability and reportability under OSHA's recordkeeping standard.

RECORDING entails accounting for the injury or illness on the OSHA 300 log, and **REPORTING** involves reporting a serious incident or fatality to OSHA. A serious incident as it relates to COVID-19 is a work-related illness that results in a fatality or in-patient hospitalization.

All cases of COVID-19 in the workplace should be investigated by assessing the work environment, type of work, close proximity to the public or other employees, number of other cases reported, and other factors to determine if the virus could have been contracted while the employee was at work.

The following outlines considerations to assist with determining work relatedness, and whether the illness should be recorded and/or reported to OSHA.



T Questions if employee tested positive:

The following questions should be asked to determine work relatedness and to determine who may have been exposed:

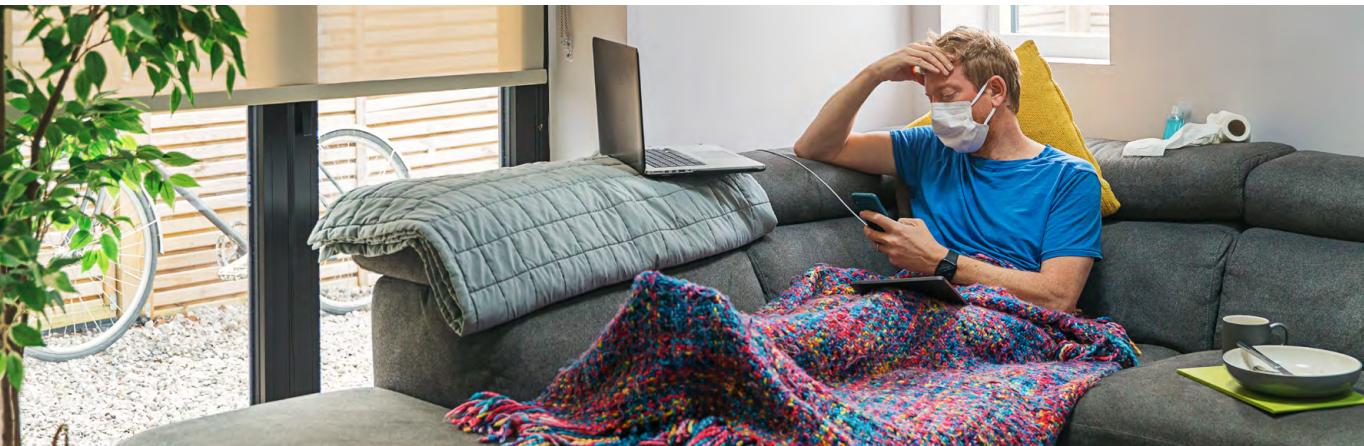
1. Confirm employee has tested positive for COVID-19.
2. Date of positive test?
3. Has a member of your household had symptoms of COVID-19 or tested positive for COVID-19?
 - If so, when did their symptoms first present or when were they diagnosed?
4. In the last month, have you had close contact with any person known to be infected with COVID-19?
 - If yes, what is the relationship of that person to you?
 - Where and when was the close contact made?
5. Have you or any member of your household traveled out of the country or to /from a domestic CDC designated hot spot in the past month?
 - If so, when and where?
 - What was the mode of transportation?
6. In the past month, have you traveled on public transportation (plane, train, Uber, Lyft, etc.) or carpooled with others outside of your household?
 - Was the travel business or personal?
7. In the past month, have you visited a gym or fitness center, or attended a party or group event such as a concert, rally, etc.?
 - If so, when and where?
8. Do you believe you contracted COVID-19 at work? If so, what were the specific work activities you believe caused you to contract COVID-19?
 - If yes, how frequently?
 - For what purposes (e.g. grocery shopping, gas, etc.)?
 - Did you always wear a face covering when you left your home/residence?
9. Have you left your home/residence for any purpose other than commuting to and from work in the last month?
 - If yes, how frequently?
 - For what purposes (e.g. grocery shopping, gas, etc.)?
 - Did you always wear a face covering when you left your home/residence?
10. Where did you work that has one or more people less than 6 feet from you for 10 or more minutes or where you have shared tools or materials?

Determine if and when there was a positive COVID-19 Diagnosis; Ask the questions outlined above

If it is determined work related, record the case on the OSHA 300 log if it meets the recordkeeping criteria

COVID-19 cases are recordable when they are work related and meet the recordkeeping criteria outlined below:

- Death
- Days away from work
- Restricted work or transfer to another job
- Medical treatment beyond first aid
- Loss of consciousness



Recordkeeping Criteria

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- Days away from work
- Restricted work or transfer to another job
- Medical treatment beyond first aid
- Loss of consciousness

Employees who test positive for COVID-19 will typically miss work and meet the days away from work criteria.

Frequently Asked Questions

Q. If an employee is exposed to someone with COVID-19 and as a result self-quarantines for 14 days should we count those days as days away from work on our OSHA log?

A. No, you will only record days away from work due to a positive diagnosis of COVID-19 that is deemed to have arisen out of the course and scope of employment.

Q. What day do you start counting days lost if there is a work related COVID-19 positive diagnosis?

A. You begin counting days away on the day after the illness began, therefore the day after they began feeling symptoms or received a positive COVID-19 diagnosis, whichever is earlier.

Q. If an employee was hospitalized due to COVID-19 but we have not determined it is work related, should we report it to OSHA?

A. Maybe. If an employee was admitted to the inpatient service of a hospital for care or treatment, the illness must be reported to OSHA within 24 hours for Federal OSHA states and within 8 hours in California, if there is substantial reason to believe that the employee was exposed in their work environment. (Where there is uncertainty about whether an employee contracted COVID-19 at work, the employer should err on the side of reporting the illness to OSHA , indicating that work-relatedness has not yet been determined, and that you will follow-up with OSHA as soon as your investigation has been completed to confirm if it is a reportable case or not.) Please note, state OSHA plans may require reporting of COVID-19 cases in shorter time frames than other serious injuries or illnesses. For example, New Mexico has implemented an emergency amendment requiring reporting of positive COVID-19 cases within four hours. Consult your OSHA state plans or reach out to your Lockton team should you have any questions or require assistance.