

New COVID-19 Reporting Requirements Take Effect January 1, 2021 (AB 685)

[AB 685](#) was passed in September and provides for a new Cal/OSHA COVID-19 reporting requirement as well as granting Cal/OSHA a new emergency police power called an Order Prohibiting Use (OPU).

Effective January 1st, the law identifies and defines two jobsite COVID-19 triggering events and provides notification requirements specific to each. The events are a **positive confirmed case or potential exposure** and an **outbreak**.

The new OPUs can be used to shut down jobsites absent normal due process requirements of notice and a hearing if Cal/OSHA determines that such workplaces pose a risk of an **"imminent hazard."** The imminent hazard provision is set to lapse on January 1, 2023.

TRIGGER EVENT NO. 1 - POSITIVE CONFIRMED CASE NOTIFICATIONS

If a contractor is notified of a "potential exposure" on the jobsite, AB 685 requires a contractor to send the following notifications to all entities listed in this section within one business day of receiving notice of the potential exposure. Notification to the employer may come from the employee/s, public health official, emergency contact, a testing protocol, etc. All notices sent out must be in written form and a copy must be kept in the contractor's records for at least 2 years. The notice sent to the Union must contain the same information as would be required in a Cal/OSHA Form 300 incident report unless the information is inapplicable or unknown.

The following notices must be sent by the contractor in the event a potential exposure:

- ✓ All **employees**, and **employers of subcontracted employees**, who were at the worksite with the suspected employee within the **infectious period** (see below) who may have been exposed to COVID-19.
- ✓ All **Unions** that have their represented employees at the jobsite at the time of exposure.
- ✓ In addition, the contractor is required to provide written notice to employees regarding **COVID-19-related benefits** that employee(s) may receive including worker's compensation benefits, COVID leave, paid sick leave, and the company's anti-discrimination, anti-harassment, and anti-retaliation policies; and
- ✓ Provide notice to employees regarding the company's **disinfection protocols and safety plan** to eliminate any further exposures, per CDC guidelines.

The [infectious period](#) is defined as beginning two days before first development of symptoms and ends after all of the following have been met:

- ✓ Ten days have passed since symptoms first appeared.
- ✓ Twenty-Four hours have passed without fever.
- ✓ Other symptoms have improved.

For individuals who tested positive, but without symptoms, the infectious period for COVID-19 begins two days before the specimen for their first positive COVID-19 test was collected and ends ten days after the specimen for their first positive COVID-19 test was collected.

TRIGGER EVENT NO. 2 - OUTBREAK NOTIFICATIONS

An [outbreak](#) on a jobsite has been defined as at least three probable or confirmed cases within a fourteen day period in people who are:

- ✓ Epidemiologically linked (a risk cohort) in the setting.
- ✓ Are from different households.
- ✓ Are not identified as close contacts of each other in any other case investigation.

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Contractors must notify public health agencies of outbreaks within forty-eight hours after becoming aware of the number of cases that meets the definition of an outbreak. The notification to the public health agency employees who may have COVID-19 or who are under a COVID-19 isolation order must include:

- ✓ Name.
- ✓ Phone Number.
- ✓ Occupation.
- ✓ Worksite Location.

Contractors must also report the business address and the NAICS industry code of the worksite where the infected or quarantined individuals work. Outbreak notification is an ongoing process, and the contractor is legally required to update the public health agencies of new infections.

ORDERS PROHIBITING USE (OPU) OR STOP WORK ORDERS

From January 1, 2021 until January 1, 2023, Cal/OSHA can shut down an entire worksite or specific worksite area that exposes employees to an imminent hazard related to COVID-19 infection. Furthermore, Cal/OSHA may cite the contractor and impose heavy monetary penalties.

Labor Code Section 6432 creates a rebuttable presumption in favor of Cal/OSHA as it removes normal violation notice requirements and written evidentiary disclosures for "serious citations."

If a contractor is hit with a Cal/OSHA COVID-19-citation, it is highly recommended to retain counsel as there are statutes of limitation for appealing the citation. Lastly, adhering to the prescribed notifications in the sections above will help the contractor overcome the rebuttable presumption of a serious violation.

