



Background & Summary

On January 1, 2021, legislation ([AB 685](#)) went into effect that requires employers to notify employees, and employers of subcontracted employees, who were present at a workplace or jobsite with an infected or potentially infected individual that may have been exposed to COVID-19. In addition, a contractor must provide written notice of the exposure or potential exposure to any union(s) representing the employees who received notice. As of October 5, 2021, some of the provisions of AB 685 were modified by [AB 654](#). On September 29, 2022, the notice requirements were simplified and extended until January 1, 2024 ([AB 2693](#)).

Labor Code section 6409.6, which was created by this legislation, requires employers to take actions **within one (1) business day** after receiving notice of potential exposure.

Employers who receive “notice of potential exposure” must provide written notice to all employees, and subcontractors, who were at the same “worksite” as the “qualifying individual” within the “infectious period” and therefore might have been exposed to COVID-19. This applies to I-IV of the written notice requirements listed starting on the following page.

DEFINITIONS

Section 6409.6(d)(5) defines “notice of potential exposure” as:

- (A) Notification to the employer or representative from a public health official or licensed medical provider that an employee was exposed to a qualifying individual at the worksite;
- (B) Notification to the employer or representative from an employee, or their emergency contact, that the employee is a qualifying individual;
- (C) Notification through the testing protocol of the employer that the employee is a qualifying individual; or
- (D) Notification to the employer or representative from a subcontracted employer that a qualifying individual was on the worksite of the employer receiving notification.

Section 6409.6(d)(7) defines “worksite” as a “building, store, facility, agricultural field, or other location where a worker worked during the infectious period.”

Section 6409.6(d)(6) defines “qualifying individual” as any person who has any of the following:

- (A) A laboratory-confirmed case of COVID-19, as defined by the State Department of Public Health;
- (B) A positive COVID-19 diagnosis from a licensed health care provider;
- (C) A COVID-19-related order to isolate provided by a public health official; or
- (D) Died due to COVID-19, in the determination of a county public health department or per inclusion in the COVID-19 statistics of a county.

Section 6409.6(d)(4) defines “infectious period” as “the time a qualifying individual is infectious, as defined by the State Department of Public Health.” The most recent California Department of Public Health (CDPH) guidance states that the infectious period is 10 days after the onset of symptoms or, for asymptomatic cases, 10 days after exposure.

WRITTEN NOTICE REQUIREMENTS

As of September 29, 2022, employers can satisfy the notification requirements by posting a public notice within one (1) business day for 15 calendar days in all places where notices to employees concerning workplace rules or regulations are customarily posted. This notice must include the dates on which an employee with a confirmed case of COVID-19 was on the worksite premises within the infectious period and the location of the exposure. The employer would need to keep a log of all dates the notice was posted and provide access to those records to the Labor Commissioner upon request.

*The new **Cal/OSHA COVID-19 Prevention Non-Emergency Regulations** also allows employers to either post a public notice as described above or provide individual notifications. This may be subject to change if any future legislation changes the notification requirements. UCON will continue to monitor and update this guide if there are any changes.*

I. Written Notice of Exposure to Potentially Infected Employees & Subcontractors

The written notice to employees must be in both English and the language understood by the majority of the employees. It is recommended that the written notice be provided to employees in the same fashion the employer generally uses to communicate with employees. This may include email or text message or hand delivery. The intent of the statute is that the notice be received by the employee within one (1) business day of being sent.

In accordance with the California Civil Code section protecting the confidentiality of employee medical information, employers must not reveal the name of the qualifying individual when notifying the potentially exposed employees or the subcontractors.

II. Written Notice of Exposure to the Union(s) Which Represent(s) Potentially Infected Employees

Contractors must provide a written notice to the union(s) representing all potentially infected employees. The notice to the union must contain the same information as is required in a [Cal/OSHA Form 300](#) Log, regardless of whether the employer is required to maintain a Form 300 Log. The Form 300 Log requests the employee's name, job title, date of onset of illness, where the illness occurred, description of the illness, days away from work, and whether the employee died.

There appears to be a conflict between Labor Code Section 6409.6(c) and Cal/OSHA regulations regarding the sharing of personal identifying information about the qualifying individual (i.e., COVID-19 Case) to the unions. To avoid possible claims of HIPAA violations, UCON recommends not providing the affected employee's name in the notice to the unions; we also strongly recommend that you review this with your legal counsel.

III. Written Notice to the Potentially Infected Employees and Their Union(s) Regarding COVID-19 Related Benefits

Contractors must provide all employees who may have been exposed, and their union, with information regarding COVID-19 related benefits to which the employees may be entitled. These will include workers' compensation benefits, and any available paid sick leave. In addition, the contractor must include notice regarding the company's anti-retaliation and anti-discrimination policies as they relate to employees who are infected by, or exposed to, COVID-19.

IV. Written Notice to All Employees and Their Union(s) of the Employer's COVID-19 Safety Plan

All employees, their union and all subcontractors must receive notice regarding the company's COVID-19 disinfection protocols and safety plan which the company plans to implement, per CDC guidelines, to prevent further exposures.

V. Notice to Local Public Health Department in the Event of an “Outbreak”

NOTE: This requirement was removed by AB 2693 as of September 29, 2022.

In addition to the notices listed above required in response to a potential exposure, Labor Code Section 6409.6(b) requires employers to notify the Local Health Department (LHD) of a COVID-19 “outbreak” as defined by the CDPH, **within 48 hours or one business day (whichever is later)** of receiving notice. The current definition of an “outbreak” is “three or more laboratory-confirmed cases of COVID-19 among workers who live in different households within a two-week period.” This notice to the LHD must identify the number of qualifying individuals, the name, occupation, and worksite for those individuals, the employer’s business address and the worksite NAICS code.

VI. CONCLUSION – EMPLOYER PREPARATION & ACTION

Employers are advised to prepare templates for each of the required notices before they are needed. **You have only one (1) business day to react.**

To assist with this process, UCON has created the following templates:

- [Notice to Employees](#)
- [Notice to Subcontractors](#)
- [Notice to Unions](#)
- Sample [Policy Against COVID-19 Related Discrimination, Harassment & Retaliation](#)
- [COVID-19 Prevention Plan IIPP](#)

You need to customize the above notices and IIPP to include company-specific information about available benefits and safety procedures.

You can find details on where to send the notices to the unions UCON has agreements with [here](#).