

**NEW LEGISLATION REQUIRING EMPLOYERS
TO NOTIFY EMPLOYEES AND THEIR UNIONS ABOUT POTENTIAL
COVID-19 EXPOSURE IN THE WORKPLACE**

On September 17, 2020, Governor Newsom signed Assembly Bill 685 (AB 685), legislation that requires employers to notify employees, and employers of subcontracted employees, who were present at a work place 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. **AB 685 went into effect on January 1, 2021.**

AB 685 creates Labor Code section 6409.6, which requires employers to take the following 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 “worksites” as the “qualifying individual” within the “infectious period” and therefore might have been exposed to COVID-19.

DEFINITIONS

Section 6409.6(d)(3) defines “notice of potential exposure” as:

- (A) Notice to the employer, or its representative, from a public health official or licensed medical provider that an employee was exposed to the qualifying individual at the worksite;
- (B) Notice from an employee or their emergency contact that the employee is a qualifying individual;
- (C) Notice through the employer’s testing protocol that an employee is a qualifying individual;
or
- (D) Notice from a subcontracted employer that a qualifying individual was onsite

Section 6409.6(d)(5) defines “worksites” as a “building, store, facility, agricultural field, or other location where a worker worked during the infectious period.”

Section 6409.6(d)(4) defines “qualifying individual” as any person who has:

- (A) A laboratory-confirmed case of COVID-19, or a diagnosis from a licensed health care provider;
- (B) Received an isolation order from a public health official; or
- (C) Died due to COVID-19

Section 6409.6(d)(2) defines “infectious period” as “the time a COVID-19-positive 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

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's Emergency Temporary Standards 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"

In addition to the various notices required in response to a potential exposure, Labor Code Section 6409.6(b) requires employers to notify the Local Health Department (LHD) within 48 hours of receiving notice of a COVID-19 "outbreak" as defined by the CDPH. 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 will 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 will need to customize the above notices and IIPP to include company-specific information about available benefits and safety procedures.

Item V also requires a separate notice.

The California Department of Public Health (CDPH) has provided additional guidance on their website. See the [Employer Q & A on AB 685](#), which includes links to [definitions used in AB 685](#) and detailed [guidance on responding to COVID-19 in the workplace](#).

For further guidance, please contact Roger Mason of Sweeney Mason at (408) 356-3000 or rmason@smwb.com.