

# HR COMPLIANCE BULLETIN



## California Authorizes Stop-Work Orders and Requires Worker Exposure Notices for COVID-19

On Sept. 17, 2020, California enacted a new law ([AB 685](#)) that authorizes the California [Division of Occupational Safety and Health](#) (the Division) to issue stop-work orders for facilities or operations that pose an imminent COVID-19 hazard to workers.

The new law also requires employers to:

- Notify workers when they have potentially been exposed to the coronavirus in the workplace; and
- Notify local public health agencies when a worksite has a COVID-19 outbreak.

AB 685 becomes effective on Jan. 1, 2021. The provisions specific to COVID-19 will remain in effect until Jan. 1, 2023. At that point, provisions regarding “imminent hazard” situations will continue to apply more broadly to other hazards.

### Action Steps

Given the significant impact a stop-work order could have on an employer’s business, employers should take time to review the new law and plan for how they would respond to one of these orders if an outbreak should take place at their worksites.

Employers should also take time to study their new obligations under the law and begin developing worker and agency notification processes.

### Highlights

- The Division may issue limited stop-work orders whenever workers face an imminent hazard in the workplace.
- Employers must notify workers that they may have been exposed to COVID-19 **within one business day** after receiving notice of any potential exposure.
- Employers must notify public health agencies of COVID-19 outbreaks **within 48 hours**.
- Employers may not retaliate against employees for disclosing a positive COVID-19 test, a COVID-19 diagnosis, or an order to quarantine or isolate.

### Important Dates

#### Sept. 17, 2020

California enacted AB 685.

#### Jan. 1, 2021

AB 685 becomes effective.

#### Jan. 1, 2023

COVID-19-related provisions of AB 685 expire, but the procedures for imminent hazard remain in place.



JP Griffin Group



## COVID-19 Stop-Work or Closure Orders

### Affected Entities

California's AB 685 applies to any place of employment, operation or process that exposes workers to the risk of infection by COVID-19, if that risk constitutes an "imminent hazard."

### Limited Orders

When an imminent hazard is found in the workplace, the Division is authorized to prohibit the operation, process or entry into the space that poses the imminent hazard. These types of prohibitions are commonly referred to as "stop-work orders."

The Division will notify affected employers in writing when stop-work orders are issued. Employers that receive these orders must display them prominently in a conspicuous place at each location affected. The orders must remain on display until the place of employment, machine, device, apparatus or equipment is made safe and all required safeguards or safety appliances or devices are provided. Only Division personnel are authorized to remove a stop-work order notification once it has been displayed.

Stop-work orders are generally limited to the immediate area where the threat exists. The written order will specify all affected areas, processes and operations.

The Division will not issue stop-work orders that materially interrupt the performance of critical governmental functions essential to public health and safety, or the delivery of electrical power or water.

## Worker COVID-19 Notifications

The new law also requires employers to notify workers whenever they have been potentially exposed to an imminent hazard.

### Notice of Potential Exposure

The worker notification requirement is triggered any time an employer (or its representative) receives a notice of potential exposure. "Notice of potential exposure" includes any notification from:

- A public health official or licensed medical provider, indicating that an employee was exposed to a qualifying individual at a worksite;
- An employee, or his or her emergency contact, indicating that the employee is a qualifying individual;
- An employer's testing protocol, indicating that an employee is a qualifying individual; or
- A subcontracted employer, indicating that a qualifying individual was on the employer's worksite.

### IMMINENT

A threat is imminent or immediate if it is believed that death or serious physical harm could occur within a shorth time (for example, before Cal/OSHA can investigate the problem).

### HAZARD

Must present a threat of death or serious physical harm.

- Serious physical harm means that a part of the body is damaged so severely that it cannot be used very well.
- For a health hazard, there must be a reasonable expectation that toxic substances are present and exposure to them will shorten life or cause significant reduction in physical or mental efficiency.

### QUALIFYING INDIVIDUAL

A "qualifying individual" is a person who:

- Has a laboratory-confirmed COVID-19 case;
- Has a positive COVID-19 diagnosis from a licensed health care provider;
- Is subject to a COVID-19 order to isolate issued by a public health official; or
- Has died due to COVID-19, as determined by a county public health department (or has been included in the COVID-19 county statistics).



## Worker COVID Notification

Employers that receive a notice of potential exposure to COVID-19 must provide a written notice to all potentially affected workers **within one business day**. These notifications will not impact the determination of whether the illness is work related. Employers are required to maintain records of these notifications for **at least three years**.

The notice must be distributed to affected workers using the same channels and media that the employer normally uses to provide employment-related communications. At minimum, the notice must:

- ☑ Indicate that the worker may have been exposed to COVID-19.
- ☑ Inform the worker of any benefits and protections available under:
  - Applicable federal, state and local laws (such as workers' compensation);
  - Options for exposed employees (such as COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave or negotiated leave provisions); and
  - Antiretaliation and antidiscrimination laws.
- ☑ Explain the disinfection and safety plan that the employer plans to implement and complete per the guidelines of the federal Centers for Disease Control.

The required notice must be given to all individuals who were at the same worksite as a qualifying individual within the infectious period (as defined by the [California Department of Public Health](#)). These include employees, subcontracted employees and any exclusive employee representatives. The notice provided to exclusive employee representatives must include 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 applies regardless of whether the employer is required to maintain a Cal/OSHA Form 300 injury and illness log.

## Public Health Agency Notification

The new law also requires employers to notify local public health agencies, **within 48 hours**, any time the number of cases within a work site meets [California's definition of a COVID-19 outbreak](#). Ongoing notifications are also required for any subsequent laboratory-confirmed cases of COVID-19 at the worksite. This requirement does not apply to health facilities.

The required notices to a public health agency must include the names, numbers, occupations and worksites of employees who meet the definition of a qualifying individual. Employers must also report their business addresses and the NAICS codes of the worksites where the qualifying individuals work.

## Privacy

To bolster existing privacy protections for employees, the new law specifies that personally identifiable employee information is not subject to California Public Records Act (or similar) requests and must not be posted on a public internet website or shared with any other state or federal agency.

## Retaliation

Finally, the new law prohibits employers from retaliating against any worker for disclosing a positive COVID-19 test, a COVID-19 diagnosis or an order to quarantine or isolate. Workers who believe they have been retaliated against may file a complaint with the Division of Labor Standards Enforcement.

This Compliance Bulletin is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice. Design ©2020 Zywave, Inc. All rights reserved.