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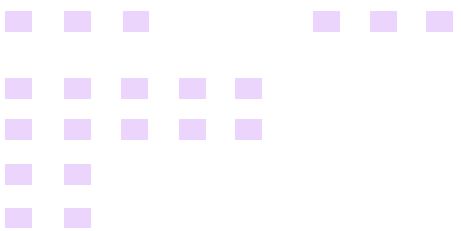


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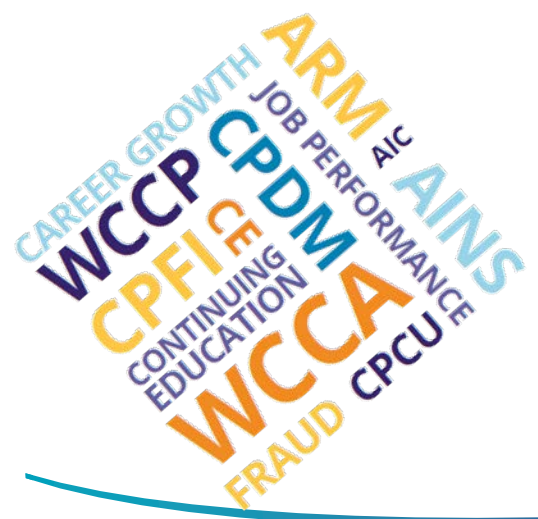
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2021 LEGAL UPDATE

Eric H. De Wames and Daniel J. O’Neil-Ortiz



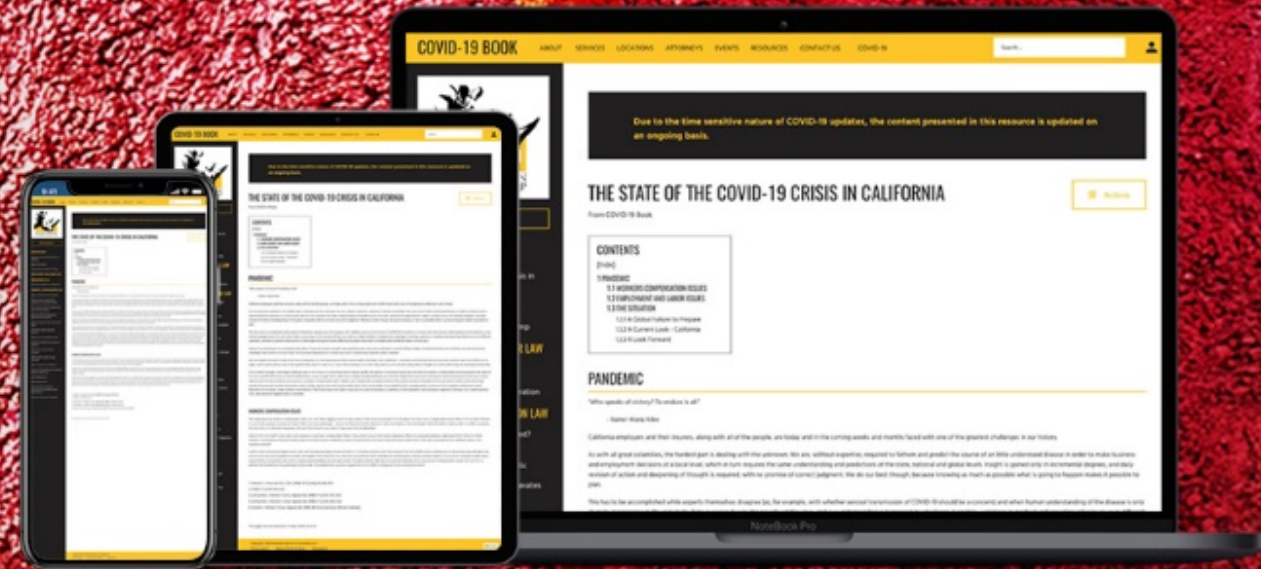


About Michael Sullivan & Associates LLP

- The firm provides high-quality litigation in defense of workers' compensation claims, employment issues, immigration law and insurance litigation.
- Offices in El Segundo, Fullerton, San Diego, Westlake Village, Ontario, Fresno, Emeryville, Sacramento and San Jose.
- Author of "Sullivan on Comp," which covers the complete body of California workers' compensation law.

Navigating COVID-19:

A Legal Guide for California Employers



Visit <https://covid19.sullivanattorneys.com> for more information.



COVID-19 Webinar Series

View the series at:

<https://www.sullivanattorneys.com/covid-19-webinars/>

Plan for Today

- New Laws Enacted by the California Legislature in 2020
- COVID-19 Legislation, including Notice and Reporting Requirements
- COVID-19 OSHA and Workers' Compensation Requirements
- Practical Applications

AB 3075

Successor Liability

- Provides that a successor to a judgment debtor shall be liable for any wages, damages, and penalties owed to any of the judgment debtor's former workforce pursuant to a final judgment


Corporate Disclosures

- Applies to organizations registered with the California Secretary of State
- January 1, 2022: Requires the statement of information contain a statement indicating whether any officer, director, member or manager, has an outstanding final judgment issued by the DLSE or a court of law for the violation of any wage order or provision of the Labor Code

SB 973 — Pay Data Reporting Requirements

- Requires private employers with 100 or more employees to submit annual EEO-1 pay data report to the DFEH
 - Adds Government Code § 12999, et seq.
 - Required to submit on or before March 31 each year.
 - Employees are individuals on the employer's payroll
 - Requires employers to submit a report for each establishment and a consolidated report that includes all employees

SB 973 — Pay Data Reporting Requirements

- Requires employers to report the number of employees by race, ethnicity, and sex by job category.
- Requires employers to report the number of employees by race, ethnicity, and sex by pay.
- Requires employers to submit information that is searchable and sortable, e.g., an excel file
- Submission of the federal EEO-1 Report complies with California requirements
- Employers can submit their data through an online portal 

SB 973 — Pay Data Reporting Requirements

- Authorizes DFEH to receive, investigate, conciliate, mediate, and prosecute complaints related to unequal pay based on race, ethnicity, and sex
 - Amends Government Code § 12930
- DFEH shall coordinate activities with the DLSE to enforce Section 1197.5 of the Labor Code, which prohibits gender pay discrimination
 - Labor Code Section 1197.5 requires equal pay for jobs that “require[] equal skill, effort, and responsibility, and which are performed under similar working conditions, except where the payment is made pursuant to a seniority system, a merit system, a system which measures earnings by quantity or quality of production, or a differential based on any bona fide factor other than sex.”



AB 2537 — Personal Protective Equipment

- General acute care hospitals are required to provide employees who provide direct patient care or provide services that directly support personal care with the personal protective equipment
 - Requires employer to ensure that the employees use the personal protective equipment supplied to them
- Beginning April 1, 2021, general acute care hospitals must maintain a supply of specified equipment in an amount equal to 3 months of normal consumption



AB 2537 — Personal Protective Equipment

- Requires an employer to establish and implement effective written procedures for periodically determining the quantity and types of equipment used in its normal consumption.
- Requires employers to provide an inventory of its stockpile and a copy of its written procedures to CAL/OSHA upon request.
- Authorizes CAL/OSHA to impose a civil penalty of up to \$25,000 for each violation to maintain the required stockpile

AB 2588 — Reimbursement for Education

- Applies to employees providing direct patient care or an applicant for direct patient care at general acute care hospitals
- Employers are required to reimburse employees for the expense or cost of employer-provided or employer-required educational programs or trainings
- Includes:
 - Residencies, orientations, or competency validations necessary for direct patient care employment.
- Excludes:
 - Requirements for a license, registration, or certification necessary to legally practice in a specific employee classification to provide direct patient care.
 - Education or training that is voluntarily undertaken by the employee or applicant solely at their discretion.
- Deems these expenses or costs a necessary expenditure incurred by the employee in direct consequence of the discharge of the employee's duties



SB 1384 — Labor Commissioner Representation

- Allows Labor Commissioner to represent an employee in a de novo proceeding, whether in court or in arbitration, upon the Commissioner's determination that the claim has merit and that the employee is financially unable to afford counsel.

AB 736 — Exemption for College/University Faculty

- Expands the professional exemption from California's wage and hour requirements to include part-time faculty at private colleges and universities, provided certain requirements are met.
 - Applies to individuals who provide either course or laboratory instruction
 - Applies to private institutions that offer undergraduate or graduate degrees

AB 736 — Exemption for College/University Faculty

- Employee must satisfy both a duties and salary component to be exempt:
 - Duties Component:
 - Must primarily be engaged in a learned or artistic profession; and
 - Customarily and regularly exercise discretion and independent judgment in the performance of duties related to learned or artistic profession
 - Salary Component
 - Must be paid twice the minimum wage for full-time employment, or
 - Must be paid a certain rate for each classroom hour
 - Hourly rate increases each year

AB 2723 — Insurance Agents Signing of Agreement

- Allows attorneys and designated insurance agents of an insurance company to sign settlement agreements on behalf of parties, and to request that a court retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

AB 2143: No Re-Hire Provisions in Agreements

- Permits settlement agreements to contain no rehire provisions where the employer has documented in good faith that the employee has engaged in criminal conduct (in addition to sexual harassment) prior to the employee filing a claim against the employer

AB 1867 — Handwashing for Food Employees

- Requires that food employees working in a food facility be permitted to wash their hands every 30 minutes and additionally as needed.
 - “Food facility” includes:
 - Retail facilities that prepare, serve, or vend food
 - Nonpermanent food facilities, such as mobile food trucks, farmers’ markets, and catering operations
 - Certain facilities are excluded such as child day care facilities, residential care facilities for the elderly or chronically ill, wholesale vendors, churches

Hiring During the COVID-19 Pandemic

- Employers may make disability-related inquiries of applicants after a conditional offer of employment if job-related and consistent with business necessity
- For example, inquiries about a weak/compromised immune system are disability-related.
- To be job-related and consistent with business necessity, the employer must have a reasonable belief, based on objective evidence that:
 - An employee will pose a direct threat due to a medical condition; or
 - An employee's ability to perform essential job functions will be impaired by a medical condition
- Employer's reasonable belief that an employee with a weak/compromised immune system would impair the employee's ability to perform the essential functions of the position or would pose a direct threat to other non-vaccinated individuals during the COVID-19 pandemic would likely justify the employer making disability-related inquiries

Hiring During the COVID-19 Pandemic

- Employers can screen applicants for COVID-19 symptoms only after a conditional offer of employment has been made
- Employers can delay the start date of applicants with COVID-19 symptoms

AB 2257 — Independent Contractor Classification

- Amends Business to Business Exception
 - Actually Contracts vs. Ability to Contract
 - Previous version required that the business service provider actually contracts with other businesses to provide the same or similar services and maintains a clientele without restrictions from the hiring entity
 - New version only requires the ability to contract with other businesses to provide the same or similar services and maintain a clientele without restrictions from the hiring entity.

AB 2257 — Independent Contractor Classification

- Amends Business to Business Exception
 - Previous version required that business service provider provide services directly to the contracting business and not to contracting business' customers
- Requirement that business service provider provides services directly to contracting business itself and not to its customers does not apply if business service provider is solely performing the services under the contract under the name of the business service provider and the business service provider regularly contracts with other businesses.

AB 2257 — Independent Contractor Classification

- New Exceptions to the ABC Test for:
 - Persons who provide underwriting inspections, premium audits, risk management or loss-control work for the insurance and financial service industries;
 - Musicians or musical groups for the purpose of a single-engagement live performance event;
 - Individuals engaged in any creative, production, marketing, or independent music publicist services related to sound recordings or musical composition
 - Individual performance artists;
 - Freelance translators and copy editors;
 - Licensed landscape architects;
 - Registered professional foresters;
 - Home inspectors;
 - Manufactured housing salespersons;
 - Persons engaged in conducting international and cultural exchange visitor programs;
 - Competition judges with a specialized skill set or expertise;
 - Specialized performer hired to teach a master class for no more than one week; and
 - Individuals providing feedback to data aggregators.

Prop 22 — Exempts App-Based Transp. Companies

- Exempts application-based transportation companies and delivery companies from providing employee benefits to certain drivers.
- Created a special exception to AB 5 by classifying their drivers as “independent contractors.”
- Requires rideshare and delivery companies to provide certain benefits
- Limits local government ability to set additional rules

Prop 22 — Exempts App-Based Transp. Companies

- Requirements:
 - Earnings Minimum. This measure requires companies to pay 120 percent of the local minimum wage for each hour a driver spends driving, but not time spent waiting.
 - Health Insurance Stipend. For drivers who normally work more than 15 hours per week (not including waiting time), this measure requires that companies help pay for health insurance.
 - Pay For Costs When a Driver Gets Hurt on the Job. This measure requires that companies pay medical costs and replace some lost income when a driver is injured while driving or waiting.
 - Rest Policy. This measure prohibits drivers from working more than 12 hours in a 24-hour period for a single rideshare or delivery company.
 - Other Requirements. This measure prohibits workplace discrimination and requires that companies: (1) develop sexual harassment policies, (2) conduct criminal background checks, and (3) mandate safety training for drivers.

AB 2992 —Leave for Victims of Crime or Abuse

- Allows employees who are victims of crime or abuse, in addition to victims of domestic violence, sexual assault, and stalking, to take time off to obtain relief
- Expands reasons to take permissible time off
- Allows employees to request time off to obtain relief in connection with an immediate family member who is deceased as a result of a crime

Families First Coronavirus Response Act

- Employers have the option of providing employees with:
 - Two weeks (up to 80 hours) of paid sick leave
 - 10 Weeks under EFMLEA

California COVID-19 Supplemental Paid Sick Leave

- Expired on December 31, 2020, upon the expiration of the FFCRA

Los Angeles City COVID-19 Supp. Paid Sick Leave

- Remains in effect until two calendar weeks after expiration of COVID-19 local emergency period.
- An employee who has been employed with the same employer from February 3, 2020 through March 4, 2020, is entitled to supplemental paid sick leave.
- The employee must perform any work within the geographic boundaries of the City for the employer.
- Allows COVID-19 supplemental paid sick leave for:
 - Employees of business with 500 or more employees within the City of Los Angeles
 - Employees of business with 2,000 or more employees within the United States



Local COVID-19 Supp. Paid Sick Leave Ordinances

- Sacramento County extended the Sacramento County Worker Protection, Health and Safety Act of 2020 through March 31, 2021.
- City of Sacramento extended the Sacramento Worker Protection, Health and Safety Act of 2020 through March 31, 2021
- San Francisco Board of Supervisors extended the Public Health Emergency Leave Ordinance (PHELO) through February 10, 2021.
- San Jose City Council passed an emergency ordinance on January 5, 2021 extending COVID-19 Supplemental Paid Sick Leave until June 30, 2021



SB 1383 — Expansion of the CFRA

- Expands the California Family Rights Act to cover employers with 5 or more employees (instead of 50 employees)
- Increases reasons that employees may take 12-weeks of unpaid, protected leave
 - To care additional family members with a serious health condition:
 - Adult children, grandparents, grandchildren, siblings, domestic partners or children of domestic partners (in addition to parents, minor and adult dependent children, and spouses.)
 - To bond with a new child of the employee
 - Because of a qualifying exigency related to the covered active duty or call to covered active duty of an employee's spouse, domestic partner, child, or parent in the Armed Forces of the United States

SB 1383 — Expansion of the CFRA

- As a result of changes to the CFRA, employees have more opportunities to “stack” leave under the FMLA and CFRA for different qualifying reasons
 - For example, an employee could take 12 weeks of leave to care for a grandchild under the CFRA followed by an additional 12 weeks of leave to care for a parent under the FMLA.

SB 1383 — Revisions to the CFRA

- Eliminates the “key employee” exception, which permitted an employer to refuse to reinstate an employee returning from CFRA leave under certain circumstances
- Eliminates the New Parent Leave Act
- Eliminates the provision that if two spouses are employed by the same employer, the employees are entitled to a combined total of 12 workweeks of unpaid protected leave to bond with a new child



CAL/OSHA Imposes COVID-19 Safety Regulations on Businesses

- On November 19, 2020, Cal/OSHA approved safety regulations imposing new requirements on employers in an effort to keep employees safe from the coronavirus.
- The regulations strengthen and expand many employer safety requirements already in place and provide detailed, mandatory requirements on employers in an attempt to keep employees safe in the workplace. The temporary regulations can be found here:
- <https://www.dir.ca.gov/oshsb/documents/COVID-19-Prevention-Emergency-txtbrdconsider.pdf>
- Effective December 1, 2020 & Stays in effect 180 days.

CAL/OSHA Imposes COVID-19 Safety Regulations on Businesses

There are nine categories - each employer must:

1. Draft and implement a COVID-19 Prevention Program and provide training;
2. Identify COVID-19 hazards with the help of employees and correct them;
3. Investigate COVID-19 cases, notify and provide testing to potentially exposed employees;
4. Require physical distancing and mask wearing, improve ventilation, and maximize outdoor air;

CAL/OSHA Imposes COVID-19 Safety Regulations on Businesses

5. Don't allow employees back into the workplace until quarantine ends, pay employees throughout quarantines;
6. Record, report and allow access the information as required by AB 685 and the new regulations
7. Report all outbreaks to the public health department, provide continuous testing to employees;
8. Employer provided housing must space beds, eliminate bunk beds, and disinfect daily; and
9. Employer provided transportation requires screening workers before boarding, distance sitting and face masks requirements.

Scope & Definitions

The regulations apply to all employees and businesses except businesses with:

- one (1) employee that doesn't have contact with other people;
- employees working from home; and
- Those covered by California's Aerosol Transmissible Disease (ATD) standards including employees of various health facilities, emergency responders and other care organizations.
- See: <https://www.dir.ca.gov/title8/5199.html>

Scope & Definitions

The following are important definitions used throughout the regulations:

COVID-19 Case: Means a person who:

- Has a positive “COVID-19 test” as defined in these regulations;
- Is subject to COVID-19 related order to isolate issued by a local or State Health Official; or
- Has died due to COVID-19, in the determination of a local Health Department or is reported per inclusion in the COVID-19 statistics of a County.
- **COVID-19 Exposure:** Means being within 6 ft of a COVID-19 case for a cumulative total of 15 minutes or greater in any 24-hour period within or overlapping with the “high risk exposure period” as defined in the regulations. This definition applies regardless of the use of face coverings.

Scope & Definitions

Exposed Workplace: Means any work location, working area, or common area at work used or accessed by a COVID-19 case during the high-risk period, including bathrooms, walkways, hallways, isles, break or eating areas, and waiting areas. The exposed workplace does not include buildings or facilities not entered by a COVID-19 case.

Effective January 1, 2021, when AB685 provisions become effective, the “exposed workplace” will also include, but not be limited to the “work site” of the COVID-19 case as defined by Labor Code §6409.6(d)(5).

Scope & Definitions

High Risk Exposure Period: Means the following time period:

- For a person to develop COVID-19 symptoms: From two days before they first developed symptoms until 10 days after symptoms first appeared, and 24 hours have passed with no fever, without the use of fever-reducing medications and symptoms have improved; or
- For a person to test positive who never developed COVID-19 symptoms: From two days before until 10 days after the specimen for their first positive test for COVID-19 was collected.

COVID-19 Prevention Program

The regulations require that businesses draft and maintain an effective written COVID-19 prevention program. The document can be either integrated into the employer's injury and illness prevention program (IIPP) or can be maintained as a separate document. See MSA website for template.

Investigating and Responding To COVID-19 Cases in the Workplace

Investigation must include the following:

1. Determine the day and time the COVID-19 case was last present and, if possible, the date of the positive COVID-19 test and/or diagnosis, and the date the COVID-19 case first had one or more COVID-19 symptoms.
2. Determine who may have had a COVID-19 exposure. Employers must evaluate where the COVID-19 case was within the workplace, the activities of the COVID-19 case and all locations at the workplace which may have been visited during the high-risk exposure.

Investigating and Responding To COVID-19 Cases in the Workplace

3. Give notice of the potential COVID-19 exposure, within one business day, in a way that does not reveal any personal identifying information of the COVID-19 case, to the following:

- a) All employees who may have had COVID-19 exposure and they are authorized representatives.
- b) Independent contractors and other employers present at the workplace during the high-risk exposure.

Investigating and Responding To COVID-19 Cases in the Workplace

4. Offer COVID-19 testing at no cost to employees during their working hours to all employees who must be quarantined and excluded from the workplace with COVID-19 related benefits to which they may be entitled under federal, state and local laws.
5. Investigate when whether any workplace condition could have contributed to the risk of COVID-19 exposure and what could be done to reduce exposure to COVID-19 hazards.
6. Employers must enact procedures to correct in a timely manner any unsafe or unhealthy conditions. These conditions can include not only physical conditions but policies and methods of performing job duties.

Investigating and Responding To COVID-19 Cases in the Workplace

Training and Instruction

- Employers must provide “effective training and instruction” to employees.
- There are no requirements regarding the length of the training or who can perform the training.

Exclusion of COVID-19 Cases from Workplace During Quarantine

The stated purpose of this subsection is to “limit transmission of COVID-19 in the workplace.” It imposes affirmative duties on employers when handling COVID case and requires:

- Employers must ensure that COVID-19 cases are excluded from the workplace until the return-to-work requirements are met.
- Employers must exclude employees with COVID-19 exposure from the workplace for 14 days after the last known “COVID-19 exposure to a COVID-19 case.”
 - Amended to reduce to 10 days for those who do not develop symptoms.
 - 7 days under certain conditions for essential healthcare.

Exclusion of COVID-19 Cases from Workplace During Quarantine

- For employees excluded from work and otherwise able and available to work, “employers shall continue and maintain an employee’s earnings, seniority, and all other employee rights and benefits, including the employee’s right to their former job status, as if the employee had not been removed from their job.” “Employers may use employer-provided employee sick leave for this purpose and consider benefit payment from public sources in determining how to maintain earnings, rights and benefits, where permitted by law and when not covered by offers compensation.” Exceptions to this include:
 - The subsection does not apply to any period of time during which the employee is “unable to work for reasons other than protecting persons at the workplace from possible COVID-19 transmission.”
 - This subsection does not apply where the employer demonstrate that the COVID-19 exposure is not work-related.

Exclusion of COVID-19 Cases from Workplace During Quarantine

- Employers are entitled to have benefits that provide for greater protections to the employees, including benefits provided by collective bargaining agreement.
- At the time the employee is excluded from work, the employer shall provide the employee the information on benefits available to them including state and local paid sick leave, and leaves of absence, employer provided paid leave and information related to workers compensation. NOTE: This requirement mirrors that of AB685.

Exception: “Employees who have not been excluded or isolated by the local health department need not be excluded by the employer, if they are temporarily reassigned to work where they do not have contact with other persons until the return-to-work requirements are met.

Exclusion of COVID-19 Cases from Workplace During Quarantine

- COVID-19 cases with COVID-19 symptoms shall not return to work until:
 1. At least 24 hours have passed since a fever of 100.4 or higher has resolved without the use of fever-reducing medication;
 2. COVID-19 symptoms have improved; and
 3. At least 10 days have passed since COVID-19 symptoms first appeared.

Exclusion of COVID-19 Cases from Workplace During Quarantine

- COVID-19 cases who tested positive but never developed COVID-19 symptoms shall not return to work until a minimum of 10 days have passed since the date of specimen collection of their first positive COVID-19 test.
- A negative COVID-19 test shall not be required for an employee to return to work.
- If there are no violations of local or state health officer orders for isolation or quarantine, Cal/OSHA (also called the Division) may, upon request, allow employees to return to work on the basis that the removal of an employee would create undue risk to a community's health and safety.

Multiple COVID-19 Infections & COVID-19 Outbreaks & Major Outbreaks

- Infections identified by a local health department as the location of a COVID-19 outbreak or there are three or more COVID-19 cases in an exposed workplace within a 14 day period are covered under this section. Moreover, this section will continue to apply until no new COVID-19 cases are detected in a workplace for a 14 day period.
- If a worksite is identified as a one with multiple infections or outbreaks, the employer must provide COVID-19 testing to all employees at the exposed “except for employees who were not present during the period” of an outbreak.

Multiple COVID-19 Infections & COVID-19 Outbreaks & Major Outbreaks

The regulations explicitly require the following COVID-19 testing:

1. All employees in the exposed workplace shall be tested then retested one week later. Negative COVID-19 test results “shall not impact the duration of any quarantine period required by, or orders issued by, the local health department.”
2. After the first two COVID-19 tests shall provide continuous COVID-19 testing of employees who remain at the workplace at least once per week, or more frequently if recommended by the local health department.

AB 685 – What It Is

- Provides for three things when an employee has a positive test:
 1. Notice to employees and others at work (new LC 6409.6)
 2. Reporting to requirements to local health authorities, and
 3. Expanded enforcement authority by OSHA
- Took effect Jan. 1, 2021
- Like SB 1159, it is repealed as of Jan. 1, 2023

AB 685 – What It Is

- The requirements:
 - applies regardless of whether COVID is contracted in the workplace
 - in addition to other Cal/OSHA and OSHA requirements
 - applies to all employers, public and private
- Not Applicable To:
 - Employees who “as part of their duties” conduct COVID-19 testing or screening or provide direct patient care or treatment to individuals who are known to have tested positive for COVID-19, unless the qualifying individual is an employee at the same worksite.

AB 685 – Employer Notice Requirements

- When the employer “receives notice of potential exposure to COVID-19” notices are required. This means notification from:
 - A public health official or a licensed medical provider that an employee was exposed to a “qualifying individual” at the worksite.
 - An employee or their emergency contact that the employee is a “qualifying individual”
 - “Through the testing protocol of the employer” that the employee is “qualifying individual”
 - From a subcontracted employer that a “qualifying individual” was on the worksite of the employer.

Employer Notice Requirements

- When the employer has the required notice it must:
 - Within one business day
 - Of a positive confirmed case of COVID-19 by a “qualified individual”
- Employer provides written notice to:
 - All employees and employers of subcontracted employees, who were **on the premises** at the same **worksite** as the qualifying individual within the **infectious period**, and
 - The **exclusive representative** of employees if any

Notice Content (3 Provisions)

- Subsection (1): “that they may have been exposed to COVID-19.”
- Subsection (3): “Provide **all employees who may have been exposed** and the exclusive representative, if any, with **information** regarding COVID-19 related benefits 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.”

Notice Content (Continued)

- “Subsection (4): “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.”

Senate Bill 1159 - Overview

- SB 1159 adds three new Labor Code sections:
 - Labor Code § 3212.86 – codifies Gov. Newsom's Executive Order (N-62-20).
 - Labor Code § 3212.87 – presumption for front-line workers (peace officers, firefighters, health-care providers, home care workers and IHSS workers).
 - Labor Code § 3212.88 – presumption for employees who contract COVID-19 due to a workplace outbreak.
- SB 1159 establishes new reporting requirements for employers and new claims administration requirements.
- Signed and effective September 17.
- The presumptions remain in effect until Jan. 1, 2023, and as of that date would be repealed.

Labor Code § 3212.88 – Reporting and Administration Requirements

- Section 3212.88 establishes COVID-19 reporting requirements for employers.
- Must report to claims administrator when it knows or reasonably should know that an employee has tested positive for COVID-19.
- The report must be made writing via electronic mail or facsimile within three business of knowledge.

Mandating COVID-19 Vaccinations of Employees

- The EEOC Guidance suggests employers can require employees to obtain COVID-19 vaccinations
 - Careful: EEOC also does not specifically state it is lawful AND CA State law is so far silent on the issue.
 - ALSO, unclear applies to EUA vaccine.
- No requirement that vaccines be job-related and consistent with business necessity, because vaccines are not considered 'medical examinations' under the ADA.
 - A vaccine is not a medical examination because it does not seek information about an individual's impairments or current health status

Mandating COVID-19 Vaccinations of Employees

- Employees may request an accommodation from a mandatory vaccination requirement based on:
 - a disability that prevents the employee from taking the vaccine, or
 - an employee's sincerely held religious beliefs, practices, or observances
- Employers and employees should engage in an interactive process to identify workplace accommodation options that do not constitute an undue hardship.
 - This process should include determining whether it is necessary to obtain supporting documentation about the employee's disability and considering the possible options for accommodation given the nature of the workforce and the employee's position.



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