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Cal/OSHA Amends Notice and Reporting Requirements for COVID-19

On Oct. 5, 2021, California approved [Assembly Bill 654](#) (AB 654) to amend California's Occupational Safety and Health Administration (Cal/OSHA) COVID-19 notice and reporting regulations. The bill became effective upon adoption on Oct. 5, 2021.

The bill requires employers to give notice of COVID-19 outbreaks to:

- Qualifying individuals or employees exposed to qualifying individuals within one business day; and
- Local public health agencies within 48 hours or one business day, whichever is later.

The bill also expands the employers that are exempt from the COVID-19 outbreak reporting requirements to various licensed entities, including:

- Community clinics;
- Adult day health centers;
- Community care facilities; and
- Child day care facilities.

Finally, the bill adds the delivery of renewable natural gas to the list of utilities that cannot be interrupted if a total or partial workplace shutdown is required because of a COVID-19 outbreak.

Action Steps

Employers should become familiar with Cal/OSHA's COVID-19 reporting and notice requirements, including the latest amendments approved through AB 654.

Qualifying Individual Definition

A qualifying employee includes any person who has:

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

Important Dates

Oct. 5, 2021

Approval and effective date of AB 654

Jan. 1, 2023

AB 654 will remain in effect until this date or when it is repealed.



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AB 654 COVID-19 Notice Requirements

If employers or their representatives receive a notice of potential exposure to COVID-19, employers must take all of the following actions **within one business day**:

- Provide a **written notice** to all employees and the employers of subcontracted employees who were on the premises at the same worksite as the qualified employee (confirmed or diagnosed with COVID-19) within the infectious period that they may have been exposed to COVID-19. The notice must be in a manner the employer normally uses to communicate employment-related information. Written notice may include but is not limited to personal service, email or text message if it can reasonably be anticipated to be received by the employee within one business day of sending it. The notice must be in both English and the language understood by the majority of employees.
- Provide a written notice to the exclusive representative, if any, of qualifying individuals who had close contact with the employee with COVID-19.
- Provide all employees who were on the premises at the same worksite as the qualifying individual within the infectious period and the exclusive representative, if any, with information regarding COVID-19-related benefits to which the employee may be entitled under applicable federal, state or local laws, including workers' compensation. Options for exposed employees should include COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave or negotiated leave provisions, as well as antiretaliation and antidiscrimination protections for the employee.
- Notify 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, if any, of the cleaning and disinfection plan that the employer is implementing per the guidelines of the federal Centers for Disease Control and Prevention (CDC) and the COVID-19 prevention program per the Cal/OSHA COVID-19 Emergency Temporary Standards (ETS).

If the number of cases reported meets the definition of a COVID-19 outbreak as defined by the State Department of Public Health, employers or their representatives must also notify their local public health agency **within 48 hours or one business day, whichever is later**. The outbreak notification must include the employee's:

- Name;
- Phone number;
- Occupation; and
- Worksite.

Employers must also report the business address and NAICS code of the worksite where qualifying individuals work. Employers that have an outbreak subject to these requirements must continue to notify the local health department of any subsequent laboratory-confirmed cases of COVID-19 at the worksite.

The notice requirement for exclusive representatives must contain 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 must apply regardless of whether the employer is required to maintain a Cal/OSHA Form 300 injury and illness log. Notifications required by this rule must not impact any determination of whether or not the illness is work-related.

The notice requirement must not apply 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, are persons



under investigation, or are in quarantine or isolation related to COVID-19 unless the qualifying individual is an employee at the same worksite.

Employees must not be required to disclose medical information unless otherwise required by law. Employers must also not retaliate against a worker for disclosing a positive COVID-19 test or diagnosis or order to quarantine or isolate. Workers who believe they have been retaliated against may file a complaint with the Division of Labor Standards Enforcement, and the complaint will be investigated.

The State Department of Public Health will make workplace industry information received from local public health departments available on its internet website in a manner that allows the public to track the number and frequency of COVID-19 outbreaks as well as the number of COVID-19 cases and outbreaks by industry reported by any workplace. Local public health departments and Cal/OSHA must provide a link to [AB 654](#) on their internet websites to help employers understand their responsibilities. For this reason, employers are reminded that they should protect personally-identifying information. Employee information that is personally identifiable must not be made to the public or posted.

Outbreak Reporting Exceptions

AB 654 applies to both private and public employers. However, the requirement that employers must notify the local public health agency and what is to be included in that notification do not apply to:

- ☑ “Health facilities,” as defined in [Section 1250](#) of the Health and Safety Code.
- ☑ “Community clinics,” as defined in [Section 1204](#) of the Health and Safety Code.
- ☑ Intermittent clinics exempt from licensure under [Section 1206](#) of the Health and Safety Code.
- ☑ Tribal clinics exempt from licensure under [Section 1206](#) of the Health and Safety Code.
- ☑ Outpatient settings conducted, maintained or operated by a federally recognized “Indian tribe,” “tribal organization” or “urban Indian organization,” as defined in [Section 1603](#) of Title 25 of the United States Code.
- ☑ “Rural health clinics,” as defined in [Section 1395](#) Title 42 of the United States Code.
- ☑ “Federally qualified health centers,” as defined in [Section 1395](#) Title 42 of the United States Code.
- ☑ “Chronic dialysis clinics,” as defined in [Section 1204](#) of the Health and Safety Code.
- ☑ Employers that provide health care services and have employees licensed pursuant to [Division 2](#) of the Business and Professions Code.
- ☑ “Adult day health centers,” as defined in [Section 1570.7](#) of the Health and Safety Code.
- ☑ “Home health agencies,” as defined in [Section 1727](#) of the Health and Safety Code.
- ☑ “Pediatric day health and respite care facilities,” as defined in [Section 1760.2](#) of the Health and Safety Code.
- ☑ “Hospices,” as defined in [Section 1746](#) of the Health and Safety Code.
- ☑ Community care facilities, as described in the California Community Care Facilities Act (Chapter 3 of Division 2 of the Health and Safety Code), including adult residential facilities for persons with special health care needs, as described in [Section 1567.50](#) of the Health and Safety Code.
- ☑ Residential care facilities for persons with chronic, life-threatening illness, as described in [Chapter 3.01](#) of Division 2 of the Health and Safety Code.
- ☑ Residential care facilities for the elderly, as described in the [California Residential Care Facilities for the Elderly Act](#).

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- Child day care facilities, as described in the [California Child Day Care Facilities Act](#).

Employers must maintain records of the written notifications required for a period of at least three years. Cal/OSHA will enforce the notice requirements through its citation process.