

AB 685 Overview

AB 685 was signed into law by Gov. Newsom on September 17, 2020 and goes into effect on January 1, 2021. In preparation for January 1, 2021, companies must review the regulation to understand their obligations under the newly enacted Labor Code (LC) 6409.6 and the modifications to LC 6325, and LC 6432 as can be found written into the bill. To access the bill please click on [Bill Text - AB-685 COVID-19: imminent hazard to employees: exposure: notification: serious violations](#). You can read the modifications by accessing the “Today’s Law as Amended” tab. The new language will be in blue lettering. The COVID-19 provisions made to LC 6325 and LC 6432 will be in effect from January 1, 2021 until January 1, 2023.

There are two important components to this law. One is the enhanced notification requirements and the second is the new temporary authority it gives Cal/OSHA to shut down a worksite for COVID-19 related concerns while also enhancing its ability to issue a “serious violation” citation for related issues.

Enhanced Notification Requirements

As codified under the recently enacted Labor Code 6409.6, in part, AB 685 requires that when an employer or representative of the employer receives a notice of potential exposure to COVID-19, the employer shall:

“(1) Provide a written notice to all employees, and the employers of subcontracted employees, who were on the premises at the same worksite as the qualifying individual within the infectious period that they may have been exposed to COVID-19 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 and shall be in both English and the language understood by the majority of the employees.

(2) Provide a written notice to the exclusive representative, if any, of employees under paragraph (1).

(3) Provide all employees who may have been exposed 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, 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 anti-retaliation and anti-discrimination protections of the employee.

(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 (CDC).

(b) If an employer or representative of the employer is notified of the number of cases that meet the definition of a COVID-19 outbreak, as defined by the State Department of Public Health (CDPH), within 48 hours, the employer shall notify the local public health agency in the jurisdiction of the worksite of the names, number, occupation, and worksite of employees who meet the definition in subdivision (d) of a qualifying individual. An employer shall also report the business address and NAICS code of the worksite where the qualifying individuals work. An employer that has an outbreak subject to this section shall continue to give notice to the local health department of any subsequent laboratory-confirmed cases of COVID-19 at the worksite.

(c) The notice required pursuant to paragraph (2) of subdivision (a) shall 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 shall apply regardless of whether the employer is required to maintain a Cal/OSHA Form 300 injury and illness log. Notifications required by this section shall not impact any determination of whether or not the illness is work related.” Please read the bill for additional important information. [Bill Text - AB-685 COVID-19: imminent hazard to employees: exposure: notification: serious violations.](#)

For the State Department of Public Health/CDPH Employer Guide on AB 685 Definitions please see [Employer Guidance on AB 685: Definitions \(ca.gov\)](#)

Enhanced temporary Cal/OSHA authority to issue an Order Prohibiting Use and a Serious Violation.

The second component of this new law is that it provides Cal/OSHA expanded authority specific to potential COVID-19 related exposures. The expanded authority runs from January 1, 2021 to January 1, 2023. It empowers Cal/OSHA to:

- A. Shut down a specific part of a worksite or an entire worksite for COVID-19 related exposure. See **LC 6325 (b)** below. (This can in effect shut down the worksite in question.)
- B. Issue a Serious Violation for COVID-19 related exposures bypassing the normal 15-day notification to the employer of their intent to issue a serious violation. See **6432 (a)** below.

LC 6325 (b) has been added and reads in part “When, in the opinion of the division, a place of employment, operation, or process, or any part thereof, exposes workers to the risk of infection with severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) so as to constitute an imminent hazard to employees, the performance of such operation or process, or entry into such place of employment, as the case may be, may be prohibited by the division, and a notice thereof shall be provided to the employer and posted in a conspicuous place at the place of employment.”

6432 (a) “There shall be a rebuttable presumption that a “serious violation” exists in a place of employment if the division demonstrates that there is a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation.” “(h) Paragraph (2) of subdivision (b) and subdivision (d) shall not apply to a citation alleging a serious violation relating to the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).” This change allows Cal/OSHA to issue the “serious violation” citation and proposed penalties for COVID-19 related issues, by bypassing the 15-day notification period advising the employer of their intent to do so prior to issuing the citation.

Given the current COVID-19 situation, prevention is more important than ever before. Thus, employers should examine and understand their relevant exposures and the controls they can implement. Following are some helpful resources: Cal/OSHA COVID-19 Employer Playbooks for A Safe Reopening, [COVID-19 Employer Playbook Supporting Safer Environments for Workers and Customers \(ca.gov\)](#) ; the CDPH and Cal/OSHA Industry Specific Guidance and Checklist [Industry guidance to reduce risk - Coronavirus COVID-19 Response \(ca.gov\)](#) ; the [Cal/OSHA Interim Guidelines for General Industry on 2019 Novel Coronavirus Disease \(COVID-19\)](#) and the Cal/OSHA COVID-19 Written Prevention Program requirements <https://www.dir.ca.gov/oshsb/documents/COVID-19-Prevention-Emergency-txtbrdconsider.pdf>. Additionally, employers need to understand and plan to implement the notification requirements of AB 685. Employers need to prepare themselves now to be ready to respond immediately if and when they receive notice of a potential exposure to COVID-19 as described in AB 685.