

(Without Reference to File)

CONCURRENCE IN SENATE AMENDMENTS

AB 685 (Reyes)

As Amended August 25, 2020

Majority vote

SUMMARY:

Requires employers to provide written notice and instructions to employees who may have been exposed to COVID-19 at their worksite and enhances the Division of Occupational Health and Safety's (Cal/OSHA) ability to enforce health and safety standards to prevent workplace exposure to and spread of COVID-19.

The Senate Amendments:

Delete the previous provisions of this bill.

Notice of Potential Exposure to COVID-19

- 1) Define "COVID-19" as severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).
- 2) Define "infectious period" as the time a COVID-19-positive individual is infectious, as defined by the State Department of Public Health (CDPH).
- 3) Define "notice of potential exposure" as any of the following:
 - a) Notification to the employer from a public health official or licensed medical provider than an employee was exposed to a qualifying individual at the worksite.
 - b) Notification to the employer from an employee that the employee is a qualifying individual.
 - c) Notification through the testing protocol of the employer that the employee is a qualifying individual.
 - d) Notification to an employer from a subcontracted employer that a qualifying individual was on the worksite of the employer receiving notification.
- 4) Define "qualifying individual" as any person who has any of the following:
 - a) A laboratory-confirmed case of COVID-19, as defined by CDPH.
 - b) A positive COVID-19 diagnosis from a licensed health care provider.
 - c) A COVID-19-related order to isolate provided by a public health official.
 - d) Died due to COVID-19.
- 5) Define "worksite" as the building, store, facility, agricultural field, or other location where a worker worked during the infectious period and not to buildings, floors, or other locations of the employer that a qualified individual did not enter.

- 6) Provide that an employer must take all of the following actions within one business day of receiving a notice of potential exposure:
 - a) Provide 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.
 - b) Provide written notice to the exclusive representative of the employees who were on the premises at the same worksite as the qualifying individual which shall contain the same information as would be required in a Cal/OSHA Form 300 injury and illness log.
 - c) Provide all employees who may have been exposed and their exclusive representative with information regarding COVID-19-related benefits to which the employee may be entitled, including, but not limited to, workers' compensation, COVID-19-related leave, company sick leave, state-mandated leave, or supplemental sick leave.
 - d) Notify all employees, the employers of subcontracted employees, and the exclusive representative on the disinfection and safety plan the employer intends to implement.
- 7) Provide that if an employer or representative of the employer is notified that the number of cases meet the definition of a COVID-19 outbreak, as defined by CDPH, within 48 hours, the employer shall notify the local public health agency of the names, number, occupation, and worksite of employees who are qualifying individuals.
- 8) Provide that an employer shall not retaliate against a worker for disclosing a positive COVID-19 test or diagnosis or order to quarantine.
- 9) Provide that these provisions apply to private and public employers.
- 10) Provide that these provision do not apply to:
 - a) A health facility as defined in Section 1250 of the Health and Safety Code.
 - b) An employee who, as part of their duties, conduct COVID-19 testing or screening or provide direct patient care or treatment who are known to have tested positive for COVID-19.

11) Provide that Cal/OSHA shall enforce these provisions by using its citation procedures.

Imminent Hazard Provisions

- 1) Provide that Cal/OSHA may prevent entry to a place of employment or prohibit an operation or process if it determines that the place of employment, operation or process exposes workers to the risk of infection with COVID-19 so as to constitute an imminent hazard.
- 2) Provide that any prohibition of use by Cal/OSHA shall be limited to the immediate area in which the imminent hazard exists.
- 3) Provide that the prohibition shall be executed in a manner so as not to materially interrupt the performance of critical governmental functions essential to ensuring public health and safety or the delivery of electrical power or water.

- 4) Provide that these provisions are in effect only until January 1, 2023 and are repealed as of that date.

Citations Alleging a Serious Violation Regarding COVID-19

- 1) Provide that a citation alleging a serious violation relating to the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) may be issued by Cal/OSHA before considering any mitigating factors that may be presented by the employer, including the employer's explanation of the circumstances surrounding the alleged violative events, why the employer believes a serious violation does not exist, and why the employer believes its actions related to the alleged violative events were reasonable and responsible.
- 2) Provide that these provisions are in effect only until January 1, 2023 and are repealed as of that date

COMMENTS:

On June 16, 2020, CDPH issued guidance to local health departments (LHD), which included a checklist for LHDs assisting workplaces experiencing an outbreak of COVID-19. The guidance recommended that an employer "notify all employees who were potentially exposed to individuals with COVID-19." Despite this guidance, a number of businesses throughout California have experienced serious outbreaks of COVID-19, including a poultry processing plant where eight workers died of COVID-19 and at least 358 of the plant's employees tested positive for the virus, three food distribution facilities in Los Angeles County, and six outbreaks among employers who employ guest workers, infecting more than 350 workers with the virus. This bill adopts some of the guidance provided by CDPH on notifying employees of exposures to COVID-19 and reporting outbreaks.

According to the Author:

"If we are serious about getting this pandemic under control, we must get serious about creating a comprehensive reporting framework that will allow worker protection agencies, workers themselves, and the public to combine forces and minimize collective risk.

AB 685 creates clear simple guidelines for what an employer should do when he or she is informed that someone at the worksite has tested positive or been diagnosed with Covid-19. It allows one business day to notify workers who were on the premises with the person who has Covid-19. That notice should tell workers what type of sick leave they may be eligible for and the disinfection plan for the worksite.

If three workers test positive within 14 days, which is the Public Health definition of an outbreak, the employer must report to local public health department. That is the extent of the employer obligations. Two simple requirements to limit worksite spread and prevent workers from bringing the virus home to vulnerable family members."

Arguments in Support:

The California Labor Federation, a sponsor of the bill, argues "[a]s the virus continues to devastate workers, the public, our economy, and everything else, we are realizing that many areas of state law designed to handle normal circumstances and usual hazards are wholly inadequate to the demands of COVID-19. Nowhere are these deficiencies more evident than in worker safety and health standards.

For example, while relevant sections of safety and health regulations offered some direction to employers focused on minimizing worker exposure to this terrible virus, control measures and personal protective equipment (PPE) specific to COVID-19 did not exist, so Cal/OSHA and CDPH had to act quickly to adopt dozens of industry-specific guidances. These documents are enforceable by both agencies and have often been used to help keep workers safe. However, no prevention measures are entirely effective, and thus thousands of workers have suffered COVID-19 exposure on the job. Many, tragically, have lost their lives. . . .

In addition, the lack of clearly outlined law or regulation requiring employers to report all COVID-19 cases creates confusion among the employer community. Most would like to keep workers safe, but some are not aware of how critically important COVID-19 reporting is towards achieving this goal; others are not sure which agency collects such information or how to go about doing so. The end result is a near total lack of reporting, virtually no knowledge of where positive cases have occurred, and the inevitable current nightmare scenario of skyrocketing case numbers with no end in sight."

Arguments in Opposition:

A coalition of employer organizations, including the California Chamber of Commerce, argue in opposition "we support the goal of the bill and have provided multiple rounds of amends. However, the present text still contains numerous substantive and technical issues which are unacceptable and will expose even good employers to substantial fines and Cal/OSHA enforcement. These remaining issues include:

- 1) Includes publication of COVID-19 cases by worksite ([Labor Code (LC)] Section 6409.6(g)) which will:
 - a) Provide no safety value because the data will be weeks old by the time it is posted, and the exposed employees will have already received notice. Moreover, COVID-19 spread is not surface-based pursuant to recent research.
 - b) Public shame even businesses for social spread – even if they are fully compliant with state and local requirements and had no control of the infections among their staff.
- 2) Numerous technical errors and vague obligations, including:
 - a) Doesn't differential between testing of active COVID-19 cases versus testing for prior infections
 - b) Utilizes three contradictory definitions of who must receive notice, including a vague requirement of providing notice to all who 'may have been exposed.' ([LC] Section 6409.6(a)(1), (3), (4)).
 - c) Unclear obligations to provide 'information' on a variety of policies. ([LC] Section 6409.6(a)(3))
 - d) Requires large companies to send daily, state-wide emails repeatedly detailing cleaning policies. ([LC] Section 6409.6(a)(4))."

FISCAL COMMENTS:

Unknown

VOTES:

ASM HUMAN SERVICES: Vote Not Relevant

YES:

ASM JUDICIARY: Vote Not Relevant

YES:

ASM APPROPRIATIONS: Vote Not Relevant

YES:

ASSEMBLY FLOOR: Vote Not Relevant

YES:

ABS, ABST OR NV:

SENATE FLOOR: 26-9-5

YES: Allen, Archuleta, Atkins, Beall, Bradford, Caballero, Durazo, Galgiani, Lena Gonzalez, Hertzberg, Hill, Hueso, Jackson, Leyva, McGuire, Mitchell, Monning, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener

NO: Bates, Borgeas, Dahle, Grove, Melendez, Moorlach, Morrell, Nielsen, Wilk

ABS, ABST OR NV: Chang, Dodd, Glazer, Hurtado, Jones

ASM LABOR AND EMPLOYMENT: 5-2-0

YES: Kalra, Carrillo, Gonzalez, Jones-Sawyer, Luz Rivas

NO: Flora, Diep

UPDATED:

VERSION: August 25, 2020

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