

COVID-19 Infection Prevention Requirements (AB 685) Enhanced Enforcement and Employer Reporting Requirements

Assembly Bill 685 (Reyes) enhances Cal/OSHA's enforcement of COVID-19 infection prevention requirements by allowing for Orders Prohibiting Use and citations for serious violations related to COVID-19 to be issued more quickly. The law also requires employers to notify all employees who were at a worksite of all potential exposures to COVID-19 and notify the local public health agency of outbreaks. The changes will be in effect from January 1, 2021 until January 1, 2023.

1. What did Assembly Bill 685 change?

- Orders Prohibiting Use (OPU): Cal/OSHA can issue an OPU to shut down an entire worksite or a specific worksite area that exposes employees to an imminent hazard related to COVID-19.
- Citations for serious violations: Cal/OSHA can issue citations for serious violations related to COVID-19 without giving employers 15-day notice before issuance.
- Employers are now required to notify all employees at a worksite of potential exposures, COVID-19-related benefits and protections, and disinfection and safety measures that will be taken at the worksite in response to the potential exposure.
- Employers are now required to notify local public health agencies of all workplace outbreaks, which are defined as three or more laboratory-confirmed cases of COVID-19 among employees who live in different households within a two-week period.

2. What is an Order Prohibiting Use (OPU)?

An OPU allows Cal/OSHA to protect workers from an imminent hazard by prohibiting entry into a place of employment or prohibiting the use of something in a place of employment which constitutes an imminent hazard.

An imminent hazard is defined as any condition or practice which poses a hazard to employees, which could reasonably be expected to cause death or serious physical harm immediately, or before the imminence of such hazard can be eliminated through normal enforcement procedures.

3. What changed about Cal/OSHA's authority to issue OPUs related to COVID-19?

The law makes it clear that Cal/OSHA can now shut down an entire worksite or specific worksite area that exposes employees to an imminent hazard related to COVID-19 infection. Cal/OSHA can exercise its authority at any place of employment where risk of exposure to COVID-19 constitutes an imminent hazard, and would remove employees from the risk of harm until the employer can effectively address the hazard.

4. What is a citation for a serious violation and why does it take longer to issue?

Cal/OSHA's inspections may result in citations with monetary penalties. The citations classify each violation based on the severity of the hazard. Citations are classified as serious when Cal/OSHA demonstrates there is a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation.

Prior to AB 685, when Cal/OSHA planned to issue citations for a serious violation, it would first provide a form to the employer with at least 15 days of notice prior to issuing a citation with a serious violation.

5. What changed about how Cal/OSHA can issue citations for a serious violation related to COVID-19?

Cal/OSHA can now more quickly issue citations for serious violations related to COVID-19. AB 685 removed the possibility of a negative inference being drawn if [Cal/OSHA does not send a pre-citation notice to the employer at least 15 days prior to issuing a citation for a serious violation](#) related to COVID-19.

6. Whom must employers now notify of their potential exposure to COVID-19?

The law now clearly states that employers must provide a written notice to all employees, and the employers of subcontracted employees, who were on the premises at the same worksite as the person who was infectious with COVID-19 or who was subject to a COVID-19-related quarantine order.

After becoming aware of a potential exposure because someone at the worksite was infectious with COVID-19 or is ordered by a public health official to isolate due to COVID-19 concerns, employers must immediately (within one business day) provide the written notice to the employees and the employers of subcontracted employees.

7. What must employers notify workers of when informing them of their potential exposure?

The law requires an employer to notify employees, and employers of subcontracted employees, of their potential exposure and provide them with certain information regarding COVID-19-related benefits and options. Employers must also notify employees and employers of subcontracted employees of the disinfection and safety plan that the employer plans to implement and complete per the guidelines of the federal Centers for Disease Control and Prevention.

8. What is a workplace outbreak of COVID-19?

The California Department of Public Health defines an outbreak in non-healthcare or non-residential congregate setting workplaces as three or more laboratory-confirmed cases of COVID-19 among employees who live in different households within a two-week period.

9. How do employers have to report outbreaks?

Employers must notify local public health agencies of outbreaks within 48 hours of becoming aware of the number of cases that meets the definition of an outbreak. The employer must notify the local public health agency in the jurisdiction of the worksite of the names, phone number, occupation, and worksite of employees who may have COVID-19 or who are under a COVID-19 isolation order from a public health official. Employers must also report the business address and NAICS industry code of the worksite where the infected or quarantined individuals work. An employer that has an outbreak subject to these provisions must continue to give notice to the local health department of any subsequent laboratory-confirmed cases of COVID-19 at the worksite.

10. How long will the changes from AB 685 be in effect?

The changes will be in effect from January 1, 2021 until January 1, 2023.