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COVID-19 Enhanced Enforcement & Employer Reporting Requirements

On September 17, 2020, Governor Newsom approved Assembly Bill 685, which imposes enhanced notice and recordkeeping obligations on employers and expands Cal/OSHA's enforcement powers. These provisions are **set to expire January 1, 2023**.

Employers are required to provide written notice to all employees, as well as employers of subcontracted employees who were on the premises at the same worksite as the person who was infectious with COVID-19 or was subject to a COVID-19-related quarantine order. The infectious period may be determined by counting backward from 2 days before symptoms appeared or 2 days before a positive test result.

The notice must be provided to exposed employees within **one business day** in a form that the employer normally uses to communicate employment related information. This may include in-person communication, overnight mail, email, or text messages. The notice should be sent in both English and the language understood by the majority of the employees. Employers should ensure that the method of delivery can be reasonably anticipated to be received by the employee within one business day.

The notice should include information regarding COVID-19-related benefits to which the employee may be entitled to under applicable federal, state, or local laws, including any company provided sick leave. The notice should also include the employer's CDC-compliant disinfection and safety plan.

In the case of outbreaks (defined as at least 3 probable or confirmed COVID-19 cases in a 2 week period), employers should notify the State Department of Public Health **within 48 hours**. Employers should include the names, phone numbers, occupations, and worksite of employees who may have COVID-19 or who are under a COVID-19 isolation order from a public health official, along with the business address and North American Industry Classification System ["NAICS"] industry code of the worksite where the individuals worked.

Employers must maintain records of the written notifications required for a period of at least three years. This information must be kept in a confidential manner.

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From January 1, 2021, until January 1, 2023, Cal/OSHA may issue an Order Prohibiting Use [OPU] to shut down an entire worksite that exposes employees to an imminent hazard to COVID-19. An OPU may prohibit entry into a place of employment or prohibit the use of a machine, device, apparatus, or equipment which constitutes an imminent hazard.

Until January 1, 2023, Cal/OSHA may also issue citations for serious violations related to COVID-19 without providing employers 15-day notice prior to issuance.

With the short notification period, record keeping requirements, and Cal/OSHA's expanded enforcement powers, employers should implement a notification procedure that would allow it to quickly notify employees of potential exposures, ensure the employee's receipt of notification, and efficiently document all efforts of written notification.

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