

New COVID-19 Reporting Requirements

On September 17, 2020, Governor Gavin Newsom approved Assembly Bill (“AB”) 685 which imposes new reporting obligations on employers related to COVID-19. School administrators have had many questions regarding their legal obligations in response to COVID-19 cases connected to their school sites. AB 685 addresses those questions by establishing specific reporting requirements which take effect on January 1, 2021 and mandate that all public and private employers in California report potential exposures and COVID-19 outbreaks to the local public health department.

Specifically, employers must take the following reporting actions within one (1) business day of receiving a “notice of potential exposure” to COVID-19 in the workplace:

1. Provide written notice to all employees, and 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. Such notice must be provided in a manner the employer normally uses to communicate employment-related information, such as via hand delivery or email. Notice must be in both English and the language understood by the majority of the employees;
2. Provide written notice to any exclusive representative (union) of employees;
3. Provide all employees who may have been exposed and any exclusive representative with information regarding COVID-19-related benefits to which the employees may be entitled under applicable law, including, but not limited to, workers’ compensation, COVID-19-related leave, sick leave, state-mandated leave, supplemental sick leave, or negotiated leave provisions, as well as antiretaliation and antidiscrimination protections applicable to the employees; and
4. Notify all employees, and the employers of subcontracted employees and any exclusive representative, on the disinfection and safety plan that the employer plans to implement and complete per the guidelines of the CDC.

The above reporting actions are triggered by a “notice of potential exposure,” which is defined as any of the following:

- Notification from a public health official or licensed medical provider that an employee was exposed to a qualifying individual at the worksite;
- Notification from an employee, or their emergency contact, that the employee is a qualifying individual;
- Notification through the school’s testing protocol that the employee is a qualifying individual; or
- Notification from a subcontracted employer that a qualifying individual was on the school site.

A “qualifying individual” is defined as any person who has any of the following:

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

To provide additional clarification, the term “infectious period” means the time a COVID-19-positive individual is infectious, as currently defined by the CDPH (e.g., ten [10] days). The term “worksite” is defined as the building, store, facility, agricultural field, or other location where a worker worked during the infectious period, but excludes buildings, floors, or other locations of the employer that a qualified individual did not enter. Moreover, for employers with multiple locations, the employer need only notify employees who were at the same worksite as the qualified individual.

If an employer is notified of the number of cases that meet the definition of a COVID-19 outbreak, as currently defined by the CDPH, the employer must notify the local public health agency, within forty-eight (48) hours, of the names, number, occupation and worksite of employees who meet the definition of a qualifying individual. The latest CDPH guidance provides that an outbreak is defined as three (3) or more laboratory-confirmed COVID-19 cases in different households within a fourteen (14) day period with COVID-19 compatible symptoms. To be compatible with COVID-19, the cases must include “[a]t least two of the following symptoms: fever (measured or subjective), chills, rigors, myalgia, headache, sore throat, new olfactory and taste disorder(s); or at least one of the following symptoms: cough, shortness of breath, or difficulty breathing.”

While the aforementioned reporting requirements will create new obligations for schools effective January 1, 2021, they are narrow and generally focused on potential exposures and outbreaks occurring at the workplace. Reporting is not triggered under this new law when a household member (or other “close contact” of a school employee) is diagnosed with COVID-19, unless that person has been to the worksite. However, we recommend that all schools adopt formal policies for addressing COVID-19 in the workplace, through amendments to the school’s “Injury and Illness Prevention Plan” and adoption of an “Infection Control Plan” for COVID-19. Please contact our office if you need any assistance with those or other related policies.

Should you have any questions about this Legal Alert, please contact Chastin H. Pierman (cpierman@mycharterlaw.com), Sarah J. Kollman (skollman@mycharterlaw.com) or Gregory A. Forest (gforest@mycharterlaw.com) at (916) 646-1400. You can also [view past Legal Alerts here](#).

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