



California Bill Proposes New COVID-19 Reporting Requirements for Employers

Insights

6.30.20

On June 29, 2020, California introduced a bill that would require employers within 24 hours to notify their employees, the Division of Occupational Safety and Health, and the State Department of Public Health, of any employee exposure to COVID-19 “that the employer knew of or should have reasonably have known of.” An employer’s failure to adhere to the proposed notification requirements would be a misdemeanor carrying a \$10,000 fine.

Aiming to Clarify Existing Reporting Requirements

The bill cites a lack of clarity to current reporting requirements which “has led to workers and members of the public living in fear for their own safety, unaware of where outbreaks may already be occurring.” According to the bill, because “the average age of those falling ill from COVID-19 has become younger,” it is “critical to track workplace exposure and to use that data to find ways to keep workers safe on the job.” Furthermore, the bill provides that because “infections and deaths [are] disproportionately high in the Latino, Black, and Asian-Pacific Islander communities, more information about workplace illness and industry clusters can inform policy makers in addressing healthcare disparities and protecting vulnerable workers.”

The Proposed Reporting Requirements

The bill would require employers to take *all* of the following actions within 24 hours after the employer knew or reasonably should have known of exposure to the employee:

1. Provide a notice to all employees at the worksite where the exposure occurred that they may have been exposed to COVID-19. This notification shall be, at a minimum, in writing in both English and the language understood by the majority of the employees. Employers shall also make every reasonable effort necessary to notify workers verbally.
2. Notify the exclusive representative, if any. This notification shall be, at a minimum, in writing in both English and the language understood by the majority of the employees. Employers shall also make every reasonable effort necessary to notify the exclusive representative verbally.
3. Notify all employees and the exclusive representative, if any, of options for exposed employees including COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave, or negotiated leave provisions.

4. Notify all employees and the exclusive representative, if any, on the cleaning and disinfecting plan that the employer plans to implement prior to resuming work.
5. Notify the Division of Occupational Safety and Health, pursuant to subdivision (b) of Section 6409.1, of the number of employees by occupation with a COVID-19 positive test, diagnosis, order to quarantine, or death that could be COVID-19 related.
6. Notify the California Department of Public Health and the appropriate local public health agency of the number of employees by occupation with a COVID-19 positive test, diagnosis, order to quarantine, or death that could be COVID-19 related.

The bill defines “Exposed to COVID-19” as exposure to a person with any of the following:

1. A positive COVID-19 test.
2. A positive COVID-19 diagnosis from a licensed health provider.
3. A COVID-19-related order to quarantine from a licensed health provider.
4. A fatality that was or could have been caused by COVID-19.

The bill would require the Division of Occupational Safety and Health (California OSHA’s state plan) and the State Department of Public Health to make reported information available on their respective websites to enable the public to track outbreaks, the number of COVID-19 cases reported by any workplace, and the occupation of employees involved. Additionally, the bill calls for the State Department of Public Health to also establish a procedure for employers to report COVID-19 cases and make this information available on its internet website.

Failure to provide any of the required notifications would be a misdemeanor punishable by a \$10,000 fine.

If enacted, a new Section 6406.9 would be added to the occupational safety provisions of the California Labor Code.

Conclusion

Although the bill purports to provide “clarity” to reporting requirements, the inclusion of vague language in the bill such as “knew or should have known” only further obfuscates the already daunting requirements placed on employers during the pandemic. But as record number of new COVID-19 infections are reported in places like Los Angeles, employers can expect public support for reporting measures like these. Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate.

For a more thorough analysis of the many issues you may encounter from a labor and employment perspective, we recommend you review our [FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers](#) and our [FP Resource Center For Employers](#).

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Patrick W. Dennison
Partner
412.822.6627
Email

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