



January 5, 2021

### **Important AB 685 Notice Update**

There has been a critical change to the shared AB 685 notices as we have received additional clarification from the California Department of Public Health (CDPH).

AB 685 (new Labor Code Section 6409.6) requires all employers to provide a written notice to their signatory union that represents any exposed employees and also requires that the notice to the union contain the same information as is required in a Cal/OSHA Form 300 Log, which includes the employee's name. However, many contractors have expressed concerns about possible HIPAA violations in disclosing the full identity of the individual infected with COVID-19.

In addition, CDPH has amended its [AB 685 Compliance Guidance](#) to advise that employers provide "the exclusive labor representative" (the union) with the same information as is provided to exposed employees and subcontractors, and goes on to clarify that employers should "not share information that could identify the affected individual."

In light of this new information, we have attached amend draft notices. Please ensure contractors use the attached notice documents for AB 685 compliance moving forward.

### **Reminder - New California Employment Laws Take Effect January 1<sup>st</sup>**

While we have previously provided a summary of all new California state laws that will impact the construction industry in our 2020 End of Year Legislative Report, we want to remind contractors to be particularly aware of a few significant new employer laws that will take effect on January 1, 2021. Below is a brief summary of those key new employment laws.

#### **COVID-19 Workplace Exposure Notice and Reporting**

[AB 685 \(Reyes\)](#) created COVID-19 notice and reporting obligations for all California employers. The new law will require contractors, within one business day, to provide written notice of a potential COVID-19 workplace exposure to all employees, employees' exclusive representative (the union), and any subcontractors who were at the same worksite as a "qualifying individual" within the "infectious period." A "qualifying individual" is defined as any individual who (1) has a positive viral test for COVID-19, (2) is diagnosed with COVID-19 by a licensed health care provider, (3) is ordered to isolate for COVID-19 by a public health official, or (4) has died due to COVID-19. "Infectious period" means the time a COVID-19-positive individual is infectious, as defined by the State Department of Public Health which is currently 10 days. If a qualifying individual has been at the employer's worksite during the infectious period, the employer must provide the potential COVID-19 workplace exposure notice. Contractors may communicate this written notice by e-mail, text message, or memorandum. The notice must include information regarding COVID-19 benefits under federal, state, or local laws that are available to employees as well as information regarding the employer's disinfection and safety plan that it plans to implement and complete per the guidelines of the Centers for Disease Control and Prevention. Employers are required to maintain records of notifications for at least three years.

The law further imposes the obligation for employers to report when there has been an “outbreak” in their workforce. Specifically, if an employer is notified that there have been three or more laboratory-confirmed cases of COVID-19 among workers who live in different households within a two-week period, the employer must, within 48 hours, notify the local public health agency of the names, number, occupation, and worksite of employees who meet the definition of a “qualifying individual.”

These COVID-19-specific changes to the Labor Code will remain in effect until January 1, 2023. In preparation to meet these new requirements, contractors should prepare a template COVID-19 notice that is ready to distribute, make a list of all employees, unions, or subcontractors that may need to be notified, prepare a disinfection or safety plan, and create training and checklists for supervisors and managers covering the new requirements. It is essential for contractors to prepare in advance so that they can meet the 24-hour notice requirement in the event there is an exposure event. **In an effort to assist with this, we have attached draft notices for your use.**

### **Expansion of the California Family Rights Act**

[SB 1383 \(Jackson\)](#) expanded the coverage of the California Family Rights Act (CFRA). Currently, employers with 50 or more employees are subject to CFRA and its federal equivalent, Family Medical Leave Act (FMLA). Both provide employees with up to 12 weeks of unpaid leave. When SB 1383 goes into effect on January 1, 2021, CFRA will be expanded from employers with 50 or more employees to employers with 5 or more employees.

In addition, the bill expanded the scope of family members for whom the employee can take leave. CFRA currently allows employees to take unpaid leave for several purposes, including to care for a “family member” with a serious health condition. CFRA currently defines “family member” to include a minor child (unless the child is dependent), a spouse, or a parent. Beginning in 2021, the list of family members will be expanded to include grandparents, grandchildren, or siblings. In addition, the definition of a child will be expanded to cover all adult children, regardless of whether they are dependent.

Smaller contractors who are unfamiliar with CFRA will need to develop policies and procedures for these new leave requirements and should consult with employment counsel to ensure compliance.

### **Equal Pay Reporting**

[SB 973 \(Jackson\)](#) requires pay data reporting by employers in an effort to encourage and ensure wage parity for women and minorities. The new law requires employers with 100 or more employees who currently, under federal law, must file an annual Employer Information Report (EEO-1), to submit similar information to the California Department of Fair Employment and Housing (DFEH). The annual report to the DFEH requires the number of employees (and hours they worked): (1) by race, ethnicity, and sex; (2) in each of the job categories in the federal EEO-1 Report; (3) whose annual earnings fall within each of the pay bands used by the U.S. Bureau of Labor Statistics in the Occupational Employment Statistics survey. Employers who already file the annual EEO-1 Report under federal law can comply by filing a copy of the EEO-1 report with DFEH.

*(Type on your company letterhead)*

Date

**NOTICE OF POTENTIAL WORKPLACE EXPOSURE TO COVID-19**

To: \_\_\_\_\_ [Name of Union]

Subject: XYZ Co., Inc.'s \_\_\_\_\_ jobsite/worksite:

XYZ Co., Inc. ("XYZ") has been notified that an individual infected with COVID-19 was present at the jobsite/facility. Therefore, your members may have been exposed to this virus.

Your members may be entitled to COVID-19 benefits under applicable federal, state, or local laws, including, but not limited to, workers' compensation, COVID-19 related leave, company sick leave, state-mandated leave, supplemental sick leave, or negotiated leave provisions. In addition, attached is a copy of XYZ's Policy Against COVID-19 Related Harassment and Discrimination.

Also attached is a copy of the Disinfection Protocols and Safety Plan XYZ intends to implement and complete per the guidelines of the federal Centers for Disease Control ("CDC").

In accordance with California Labor Code Section 6409.6(c), XYZ provides you with the following information:

1. The qualifying individual worked as a [\_\_\_\_\_];
2. The date of the onset of the illness is [\_\_\_\_\_];
3. The qualifying individual is determined to be positive for COVID-19;
4. The qualifying individual has been away from work for \_\_\_\_ days; and
5. The qualifying individual did not die.

Pursuant to California Labor Code Section 6409.6(c), any information left blank is inapplicable or unknown to XYZ.

In addition, there appears to be a conflict between Labor Code Section 6409.6(c) and Cal/OSHA's Emergency Temporary Standards regarding the sharing of personal identifying information about the qualifying individual (i.e., COVID-19 Case) to the union. We did not include the name of the qualifying individual and, if known, prefer (in accordance with California Department of Public Health Guidance) not to provide this information for reasons of medical confidentiality. If you believe you should be provided the name of the COVID-19 Case, please contact us.

*(Type on your company letterhead)*

Date

**TO ALL EMPLOYEES OF XYZ Co., Inc.**

**NOTICE OF POTENTIAL WORKPLACE EXPOSURE TO COVID-19**

XYZ Co., Inc. (“XYZ”) has been notified that an individual infected with COVID-19 was present at the \_\_\_\_\_ jobsite/facility. Therefore, you may have been exposed to this virus. This person was last present at the jobsite on \_\_\_\_\_.

According to the CDC, the COVID-19 virus is thought to spread mainly between people who are in close or “direct” contact with one another through respiratory droplets produced when an infected person coughs or sneezes. Close or direct contact is generally intended to mean within about 6 feet of the subject employee for a period of 15 consecutive minutes or more with the subject individual.

Please understand that you may be entitled to COVID-19 benefits under applicable federal, state, or local laws, including, but not limited to, workers’ compensation, COVID-19 related leave, company sick leave, state-mandated leave, supplemental sick leave, or negotiated leave provisions, as well as the protections afforded by XYZ’s Policy Against COVID-19 Related Harassment and Discrimination. A copy is attached as Exhibit “A”.

Also attached is a copy of the Disinfection Protocols and Safety Plan that XYZ plans to implement and complete per the guidelines of the federal Centers for Disease Control (“CDC”).

For more information on COVID-19, including symptoms and treatment, visit the CDC website at [www.cdc.gov](http://www.cdc.gov).

*(Type on your company letterhead)*

Date

**NOTICE OF POTENTIAL WORKPLACE EXPOSURE TO COVID-19**

**To All Subcontractors on XYZ Co., Inc.'s \_\_\_\_\_ Jobsite:**

XYZ Co., Inc. ("XYZ") has been notified that an individual infected with COVID-19 was present at the jobsite. Therefore, your employees may have been exposed to this virus. This person was last present at the jobsite on \_\_\_\_\_.

Attached is a copy of the Disinfection Protocols and Safety Plan XYZ intends to implement and complete per the guidelines of the federal Centers for Disease Control ("CDC").

According to the CDC, the COVID-19 virus is thought to spread mainly between people who are in close or "direct" contact with one another through respiratory droplets produced when an infected person coughs or sneezes. Close or direct contact is generally intended to mean within about 6 feet for a period of 15 consecutive minutes or more with the subject employee.

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