

Assembly Bill 685: A Toolkit for Hospitals

Complying with COVID-19 Infection Prevention Reporting Requirements

December 2020

Background

CHA has created this overview to help member hospitals and health systems implement Assembly Bill (AB) [685](#), which requires employers to provide employees notice that they may have been exposed to COVID-19 in the workplace. The law goes into effect January 1, 2021, and is enforced by Cal/OSHA.

This law is particularly challenging to operationalize in the dynamic, 24/7 environment of a hospital, where employees often move across a large campus, and where existing infection control and employee safety protocols may complicate compliance. Since the bill was signed, developments such as the state’s recommendation for weekly testing — and other health care-specific guidance from both state and federal agencies — may also make implementation of the law more difficult.

CHA convened a member workgroup to develop this overview, addressing the law’s most relevant components and issues. It is not, however, legal advice, and hospitals are encouraged to consult with counsel on any questions or concerns.

CHA has also developed an [on-demand educational video](#) that provides a summary of the law.

Key Provisions

Definition of “Potential Exposure”

- The law does not define “potential exposure” for purposes of the notice obligation.
- [Cal/OSHA FAQs](#) provide the following:

Q: Whom must employers now notify of their potential exposure to COVID-19?

A: 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.

- Hospitals may consider adopting the definition of exposure in the [OSHA](#) or [Centers for Disease Control and Prevention \(CDC\) guidance](#).
- Labor Code 6409.6(i) specifically excludes any potential exposure incident involving an employee who, as part of their duties, conducts COVID-19 testing or screening or provides direct patient care or treatment to individuals who are known to have tested positive for COVID-19, are persons under investigation, or are in quarantine or isolation related to COVID-19, unless the exposure incident involved a COVID-19 co-worker.

Thus, AB 685 does not cover situations where there may be a personal protective equipment (PPE) breach involving an employee caring for a patient known to have COVID-19. However, the notice may be required when an employee is exposed to a patient who is not known to have tested positive or is not a person under investigation. In any event, in both circumstances notice is likely required by California’s Aerosol Transmissible Disease Standard.

Method for Providing Notice

- The law states that employers must, “Provide a written notice ... in a manner the employer normally uses to communicate employment-related information. Written notice may include, but is not limited to, personal service, email, or text message if it can reasonably be anticipated to be received by the employee within one business day of sending and shall be in both English and the language understood by the majority of the employees.”
- Many hospitals are posting the notice on their intranet site and/or sending emails to employees.
- Hospitals may consider providing advance notice to employees where the information will be available — using a newsletter, paystub, etc.— with advice that information will be updated as needed.
- [A sample employee notice can be found here.](#)

Notice to Labor Representatives

- Two provisions in the law require notice to be provided to labor representatives:
 - Labor Code 6409.6(a)(2) requires “written notice to the exclusive representative ... of employees under paragraph (1).” This appears to require the hospital to provide notice of potential exposure to the labor representative of employees who are provided notice under subsection 6409.6(a)(1). As such, it is recommended that hospitals provide to labor unions whatever notice is provided to their represented employees.
 - Labor Code 6409.6(c) requires the notice to “contain the same information as would be required in an incident report in a Cal/OSHA Form 300 injury and illness log unless the information is inapplicable or unknown to the employer.” This provision is unclear, as the notice required under subsection (a)(1), above, pertains to potential exposure and not an injury or illness, which is the information collected on the Log 300. CHA is consulting with CalChamber for more information, and this document will be updated with clarification if received.

Recordkeeping

- Notices to employees, subcontracted employees, and labor representatives must be kept for three years.
- There is no specific requirement for how the records are to be kept. If hospitals post the notice on their intranet sites, they may want to keep a copy of it, along with the date of posting or determine some other method for maintaining the record of posting.
- For example, a hospital sending notice by email has created a dedicated email address from which to send the notice as that will allow for tracking notices.

Overview Workgroup

CHA thanks the following hospitals/health systems for providing their expertise to assist with this document:

AHMC Healthcare, Inc.

Avanti Hospitals/Pipeline

Cedars-Sinai

Enloe Medical Center

Huntington Hospital

Prospect Medical Holdings, Inc.

Providence St. Joseph Health

Salinas Valley Memorial Healthcare System

Santa Barbara Cottage Hospital

Shriners Hospitals for Children - Northern California

Torrance Memorial