

## e-Alert

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# Two New California Laws Make Significant Changes to Employer Safety and Health Obligations

## Background

Two California bills recently signed into law include amendments to the state's workplace safety regulations. [Assembly Bill \(AB\) 654](#) revises employers' COVID-19 reporting and notification requirements. [Senate Bill \(SB\) 606](#) creates new classes of violations and dramatically increases liability for noncompliance with written workplace safety and health programs.

## Summary

### Assembly Bill 654

Effective October 5, 2021, AB 654 amended several terms of California's [AB 685](#), which outlined COVID-19 exposure notification and reporting requirements. While most of the changes ease the administrative burden, employers should remain diligent in their compliance efforts. Major changes include:

- The new law clarifies the reporting of COVID-19 exposure notifications to bargaining representatives and pares down the group of individuals that should be notified.

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- The outbreak reporting timeline is now one business day or 48 hours, whichever is later. Employers are also not required to provide notice on weekends and holidays.
- Health care centers, community clinics, community care facilities, and childcare facilities have been added to the list of entities *exempt* from reporting.
- For the purposes of exposure notifications, the definition of “worksite” has been revised to specifically exclude telework. Additionally, employers with multiple locations are required to only notify employees who were at the same worksite.
- The notification requirement for COVID-19 benefits has been refined to now include only employees who *were on the premises at the same worksite as the qualifying individual during the infectious period*.
- The list of individuals who need to be notified of cleaning and disinfection plans has been simplified to include only the employees, employers of subcontracted employees, and exclusive employee representatives who were on the premises at the same worksite as the qualifying individual within the infectious period. This list is more specific than the prior requirement.

### **Senate Bill 606**

Effective January 1, 2022, SB 606 will include two new categories of employer violations as well as additional Cal/OSHA enforcement tools.

The first new category of Cal/OSHA violations is considered “egregious violations,” which means one or more of the following is true:

- The employer intentionally — through conscious, voluntary action or inaction — made no reasonable effort to eliminate a known violation;
- Violations resulted in worker fatalities, three or more hospitalizations, or many injuries, illnesses, or exposures caused by a workplace hazard or condition.
- Violations resulted in consistently high rates of worker injuries or illnesses;
- The employer has an extensive history of prior violations;
- The employer has intentionally disregarded its health and safety responsibilities;
- The employer's conduct amounts to clear bad faith in the performance of its duties; or
- The employer has committed a large enough number of violations to significantly undermine the effectiveness of any existing safety and health programs.

The law requires that each instance an employee is exposed to the violation be considered a separate violation, which could result in impressively large fines and penalties.

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The second new category of Cal/OSHA violations is considered “enterprise-wide.” This category creates a rebuttable presumption that an employer has committed an “enterprise-wide” violation if either of the following is true:

- The employer has a noncompliant written policy or procedure, or
- Cal/OSHA has evidence of a pattern or practice of the same violation committed by the employer at one or more of its worksites.

If an employer is unable to rebut the presumption and show that other worksites have different and compliant policies and procedures, Cal/OSHA may issue an enterprise-wide citation, requiring a corporate-wide abatement with heightened penalties up to a maximum of \$124,709. The new rule also allows Cal/OSHA to subpoena if the employer fails to provide requested policies and procedures promptly.

## Employer Next Steps

- California employers should review their notification processes to ensure compliance with the law.
- Multi-site employers should review their written policies and procedures and make their programs location-specific where possible to ensure they do not violate specific occupational health and safety provisions.
- If you are a Full-Service or Virtual HR client and have questions about this e-alert, please [email us](#).

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