

WORKERS' COMPENSATION COMPLIANCE

Summary of legislative and regulatory changes

October 2020

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California

Assembly Bill 685

On Sept. 17, 2020, California Gov. Gavin Newsom signed [Assembly Bill 685](#) into law. **The provisions of the bill take effect on Jan. 1, 2021 and expire on Jan. 1, 2023.** AB 685 impacts how employers track COVID-19 cases, notifies impacted employees and includes Cal/OSHA enforcement enhancements.

EMPLOYER RESPONSIBILITIES

Under the bill, employers will have an obligation to issue notices within one business day when they receive a **notice of potential exposure** to COVID-19 about a **qualifying individual** at the **worksite**. (Definitions of the terms in bold are provided below.) Employers will need to take the following steps to comply with this notice requirement:

1. Provide a notice to:
 - Employees (via personal service, email or text) who were on the premises at the same worksite as the qualifying individual within the **infectious period**, letting them know they may have been exposed to COVID-19. The notice must be provided in English and the majority language of the workforce at the worksite. The notice must include:
 - Possible benefits to which employees may be entitled under federal, state or local laws;
 - COVID-19-related anti-retaliation and anti-discrimination language; and
 - The employer's disinfection and safety plan.
 - The employer of any sub-contracted workers at the worksite during the infectious period. This notice does not need to include benefit, anti-retaliation or anti-discrimination information.
 - The exclusive representative of the employees receiving notice. In addition to the information provided in the notice to employees, this notice should include the same information as would be required in an incident report in a Cal/OSHA Form 300 injury and illness log.
 - While not specifically stated in the bill, employers will also want to determine which employees may have had **close contact** with the qualifying individual. Those close contacts should isolate for 14 days.
2. Additionally, employers are required to track cases among qualifying individuals at a particular worksite to determine if an **outbreak** has occurred. An [outbreak](#) is defined by the California Department of Public Health for non-health care or non-residential congregate setting workplaces as three or more laboratory confirmed cases of COVID-19 among employees who live in different households within a two-week period.
3. If an outbreak does occur, employers must notify the [local public health agency](#) in the jurisdiction of the worksite. The notice must include:
 - Names, number, occupation and worksite of the qualifying individuals;
 - Address of the worksite; and
 - [NAICS code](#).

This notice is required within 48 hours of the outbreak. Once an outbreak has occurred, the employer must also inform the local public health agency if there are any subsequent laboratory confirmed cases of COVID-19 at that worksite.

DEFINITIONS

The following are definitions under California labor code or from the California Department of Public Health (CDPH):

- **Close contact:** As defined by the CDPH, a close contact is someone who spent 15 minutes or more within six feet of an individual with COVID-19 during the infectious period.
- **Imminent hazard:** Defined as any condition or practice posing a hazard that could reasonably be expected to lead to death or serious physical harm.
- **Infectious period:** As defined by the CDPH, the infectious period includes, at minimum, the 48 hours before the individual developed symptoms.
- **Notice of potential exposure:** This may occur when:
 - A public health official or licensed medical provider notifies the employer or representative that an employee was exposed to a qualifying individual at the worksite;
 - An employee or emergency contact notifies the employer or representative that the employee is a qualifying individual;
 - The employer learns through its testing protocol that the employee is a qualifying individual; or
 - A sub-contractor employer notifies the employer or representative that a qualifying individual was on the worksite of the employer receiving the notification.
- **Outbreak:** For non-health care and non-residential workplaces, an outbreak is defined as three or more laboratory confirmed cases of COVID-19 among employees, who live in different households, within a two-week period.
 - **Note that this definition differs from outbreak as defined in SB 1159. Refer to this [SB 1159 legislative overview](#), which includes the bill's outbreak definition.**
- **Qualifying individual:** A person who:
 - Has a laboratory confirmed case of COVID-19;
 - Has a positive diagnosis from a licensed health care provider;
 - Is under a COVID-19 order to isolate that was provided by a public health official; or
 - Died due to COVID-19, if determined by a county health official or included in COVID-19 statistics for the county.
- **Worksite:** The building, store, facility, agricultural field or other location where an employee worked during the infectious period. It does not apply to buildings, floors or other employer locations that a qualified individual did not enter. In a multi-worksite environment, the employer need only notify employees who were at the same worksite as the qualified individual.

More information on AB 685's employer reporting requirements can be found on the [Cal/OSHA website](#).

Michigan

The Michigan legislature enacted a package of four bills that establish liability standards revolving around exposure to COVID-19 and protection of employees from retaliation or dismissal for following public health protocols related to COVID-19. Passage of each bill was required for all to become effective Oct. 22, 2020.

References in the following bills to regulations or orders with the qualifier "that have not been denied legal effect" are in response to the Michigan Supreme Court's decision to invalidate some of Gov. Gretchen Whitmer's COVID-related executive orders.

House Bill 6030

[House Bill 6030](#) enacted the "COVID-19 Response and Reopening Liability Assurance Act" to establish standards for immunity from liability for certain tort claims alleging COVID-19 exposure. This legislation does the following:

- Specifies that a person who complies with all COVID-19-related federal, state and local statutes, rules, regulations, executive orders and agency orders that had not been denied legal effect at the time of the conduct or risk that allegedly caused harm is immune from liability for a COVID-19 claim.
- Specifies that an isolated, de minimis deviation from strict compliance with the statutes, rules, regulations, executive orders and agency orders unrelated to the plaintiff's injuries does not deny a person immunity as described above.
- Specifies that the bill applies retroactively to any claim or cause of action that accrued after March 1, 2020.

This measure does **not** do any of the following:

- Create, recognize or ratify a claim or cause of action of any kind.
- Eliminate a required element of any claim, including, but not limited to, causation and proximate cause elements.
- Affect rights, remedies or protections under the Workers' Disability Compensation Act.
- Create a defense to liability in an administrative proceeding or civil action brought by a state or local government prosecutor or agency to enforce state statutes and regulations, executive orders or state agency orders, applicable to COVID-19.

House Bills 6031 and 6101

House Bills 6031 and 6101 together amend the Michigan Occupational Safety and Health Act (MIOSHA) to establish conditions for immunity from civil liability for an employer whose employee is exposed to COVID-19.

[House Bill 6031](#) amended MIOSHA to do the following:

- Specify that an employer is not liable under the Act for an employee's exposure to COVID-19 if the employer was operating in compliance with all COVID-19-related federal, state and local statutes, rules and

regulations, executive orders and agency orders that had not been denied legal effect at the time of the exposure.

- Specify that an isolated, de minimis deviation from strict compliance with the statutes, rules, regulations, executive orders and agency orders unrelated to the employee's exposure to COVID-19 does not deny an employer the immunity described above.
- Specify that the bill applies retroactively to an exposure to COVID-19 that occurs after March 1, 2020.

This measure does **not** do any of the following:

- Create, recognize or ratify a claim or cause of action of any kind.
- Eliminate a required element of any claim, including, but not limited to, causation and proximate cause elements.
- Amend, repeal, alter or affect any other immunity, limitation or liability.
- Affect a right, remedy or protection under the Workers' Disability Compensation Act.

[House Bill 6101](#) amended the Michigan Occupational Safety and Health Act to define "COVID-19."

House Bill 6032

[House Bill 6032](#) created a new Act that protects employees from retaliation or dismissal for following specified necessary public health protocols related to COVID-19. This bill provides that an employer must not discharge, discipline or otherwise retaliate against an employee who does any of the following:

- Adheres to the requirement in this bill that the employee not report for work because they:
 - Display the principal symptoms of COVID-19 described in the bill and later tests negative for COVID-19;
 - Tests positive for COVID-19; or
 - Has close contact with an individual who tests positive for COVID-19, until certain conditions are met.
- Opposes a violation of this Act.
- Reports health violations related to COVID-19.

Under this legislation, an employee may bring a civil action for appropriate injunctive relief or damages, or both, in the circuit court for the county where the alleged violation occurred or for the county where the employer against whom the action is filed is located or has its principal place of business. A court must award a plaintiff who prevails in such action damages of not less than \$5,000.

COVID-19 Emergency Rule re: first response employees

The director of the Michigan Department of Labor and Economic Opportunity (LEO) has issued [emergency rules](#) providing “COVID-19 first response employees “ confirmed as having COVID-19 on or after March 18, 2020, either by a physician or test, a rebuttable presumption that a “personal injury” was suffered as that term is defined in the Workers’ Disability Compensation Act.

"COVID-19 first response employee" means an employee whose job responsibilities require them to have regular or prolonged contact with COVID-19 in the course of their employment. For purposes of these rules, the following individuals are COVID-19 first response employees:

- A person who is required to report to work in one of the following workplaces as defined by the Michigan public health code:
 - An ambulance operation, including advanced mobile emergency care services.
 - A county medical care facility.
 - An emergency response service.
 - A home for the aged.
 - A hospice.
 - A hospital.
 - A nursing home.
 - A home health agency or a visiting nurse association who is required to provide in-person medical care to patients.
- A person working as a physician, physician assistant, licensed practical nurse, registered professional nurse, medical first responder, nurse, emergency medical technician, emergency medical technician specialist, paramedic or respiratory therapist who is required to provide in-person medical care to patients.
- A law enforcement officer to the extent the law enforcement officer is required to report to work and interact with the general public.
- A motor carrier officer within the Michigan Department of State Police.
- A firefighter.
- A member of an emergency rescue team to the extent that the member is required to report to work and interact with the general public.
- A volunteer civil defense worker to the extent that the worker is required to report to work.
- An on-call member of a life support agency to the extent the member is required to report to work.
- A state or local government employee that is required to work within the secured perimeter of a penal institution, including but not limited to correctional facilities, jails and detention centers.

These emergency rules filed Oct. 16, 2020 replace the protections for first response employees previously afforded by Executive Order 2020-128, which is no longer effective as a result of the Michigan Supreme Court’s finding that the Emergency Powers of the Governor Act of 1945 is unconstitutional. The rules are effective immediately through March 20, 2021.

Emergency Rules re: COVID-19 safety requirements

The director of the Michigan Department of Labor and Economic Opportunity (LEO) has issued [emergency rules](#) to establish requirements for employers covered in the Michigan Occupational Safety and Health Act (MIOSHA) to control, prevent and mitigate the spread of COVID-19 among employees.

Under the emergency rules, businesses that resume in-person work must, among other things:

- Develop and implement a written COVID-19 preparedness and response plan consistent with the current guidance for COVID-19 from the U.S. Centers for Disease Control and Prevention (CDC) and recommendations in “Guidance on Preparing Workplaces for COVID-19” developed by the Occupational Health and Safety Administration (OSHA).
- Establish workplace infection-control practices.
- Conduct daily health surveillance.
- Provide employees with the types of personal protective equipment for protection from COVID-19 appropriate to the exposure risk associated with the job.
- Train employees on COVID-19 in the primary language common in the employee population that covers:
 - Workplace infection-control practices.
 - The proper use of personal protective equipment.
 - Steps the employee must take to notify the business or operation of any symptoms of COVID-19 or a suspected or confirmed diagnosis of COVID-19.
 - How to report unsafe working conditions.

In addition to the MIOSHA emergency rules for all Michigan businesses, there are also specific requirements for Industries including manufacturing, construction, retail, libraries, museums, restaurants and bars, health care, in-home services, personal-care services, public accommodations, sports and exercise facilities, meat and poultry processing, casinos, restaurants and bars.

These rules are effective Oct. 14, 2020.

A set of online resources at Michigan.gov/COVIDWorkplaceSafety provides businesses with the guidelines they and their employees must follow. It also includes a sample COVID-19 preparedness and response plan and a reopening checklist to help businesses put safeguards in place. Businesses can also find posters for employees and customers, factsheets and educational videos.

New Jersey

Assembly Bill 4134/Senate Bill 2722

On Oct. 30, 2020, Gov. Phil Murphy signed into law [legislation](#) that provides clarification regarding Assembly Bill 1110/Senate Bill 782 enacted Jan. 21, 2020. A summary of the legislation can be found in the [January 2020 Workers' Comp Law update](#).

This bill was enacted to clarify that the provisions of the law “applies to all claims pending, but not yet settled or filed on or after the date of enactment,” which was Jan. 21, 2020. Additionally, this legislation states that the law will not be applicable to cases that have been reopened by an Application to Modify a Formal Award.

This legislation also includes a provision that increases the burial and funeral expense allowance for a compensable workplace accident or occupational disease from \$3,500 to \$5,000. The burial and funeral allowance increase that went into effect on Jan. 21, 2020 only applied to those circumstances in which an individual died while receiving workers' compensation benefits, but that the death was not the result of the work injury.

The bill became effective immediately.

Claims that were resolved after Jan. 21, 2020, but were pending at the time the increases in disability were enacted, included language giving the petitioner the right to take advantage of these increases in anticipation of this new clarification of the law. Affected claimants can file a motion with the court to amend the settlement order for the additional benefits.

Oregon

WCD COVID-19 and workers' compensation informational flier

The Oregon Workers' Compensation Division published an [industry notice](#) announcing the development of an [informational flier](#) to address COVID-19 and workers' compensation. This flier is available in [English](#), [Spanish](#) and [Russian](#) and highlights important facts for workers and employers and lets them know who to contact for more information.

It is important to note that this information is not a substitute for required notice of compliance or Oregon OSHA postings. If you need more information or have questions, call the DWC toll-free at 800.452.0288.

Pennsylvania

Senate Bill 94

On Nov. 3, 2020, Gov. Tom Wolf approved this legislation that was signed in the Senate and House October 2020. [Senate Bill 94](#) amends the Workers' Compensation Act to expand the definition of employee to include volunteers performing duties at a fire company, ambulance corps or rescue squad member. The definition clarifies that a member of a volunteer fire department or ambulance corps includes:

- An active volunteer responding to emergency calls.
- A member of a fire police unit affiliated with a volunteer fire department or company.
- An officer or director of a volunteer fire department or company.
- A member who provides necessary operational support, including maintaining the station and equipment, acting as trustee, organizing fundraisers, providing information technology support, assisting with recruitment or other administrative tasks conducted on a regular basis for the benefit of a volunteer fire department or company as approved at the beginning of each year.

The definition does not include a social member of a volunteer ambulance corps.

This legislation was reportedly a result of a Senate Veterans Affairs & Emergency Preparedness Committee hearing during the 2017-2018 regular session where it was learned that the State Workers Insurance Fund (SWIF) was denying coverage to these volunteers.

Editorial changes were also made to correct the names of state agencies. **Senate Bill 94 became effective immediately.**

The Information contained within this document is intended to provide summary level information on proposed or enacted laws related to workers' compensation. It is not intended to provide guidance on the application of these legal requirements or as an update to your Company's workers' compensation policies. We recommend you consult with Legal Counsel to determine what changes, if any, should be applied to Company Policy.
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