



Q: Will an employer be required to notify their Workers Compensation carrier even if the employee who tested positive for COVID-19 was working remotely? Also did not affect any other staff members?

A: Under SB 1159, cases have to report to the claims administrator. This is for outbreak tracking.

Q: Why do you think mfg. is higher than retail in the industry impact?

A: Most likely, close contact and static positioning of the employees (i.e. assembly lines, etc.). It may also be due to lack of air circulation in some cases.

Q: Do you have best practices for the symptom screening for a manufacturing environment (no computer access)?

A: I would refer to the DIR website. They have great Guidelines for all the various industries, providing the best way to employ a screening process

Q: Does the CPP need to be implemented separately from the IIPP

A: It can be implemented within the existing IIPP, or separate. Whichever the employer chooses

Q: My company works contract cleaning service, so my employees work at different sites and follow the property guidelines. How does this affect us as a company?

A: Each worksite where the qualifying individual worked during the infectious period (2 days prior to positive test and 10 days after) should be separately evaluated as far as those other workers at each site who may have been exposed. As the employer of such employees, you would need to be notified if an employee at those worksites was a qualifying individual and your employee was potentially exposed by them.

Q: How can an employee have testing available if the testing kits are limited, and we cannot make appointments on the employee's behalf, especially if we do not have their health information?

A: The employer will have to either contract with a provider or assist the employee with being able to set up an appointment. There is not a lot of clarity right now, so hopefully OSHA will define this better, but the best practice would be for an employer to find a provider they can send their employees to.

Q: Can you refer the employee to the county provided COVID testing or through their healthcare? Will this comply?

A: Sending them to the county's free testing center [but paying for time off and mileage], may work. Having them do it through their own health care may not be allowed, due to the fact employers are mandated to provide testing. If you're forcing them through their own healthcare, the employee bears the cost, since it is through their own program

Q: I thought testing was free? Should my employee just go to one of those testing sites or will I need to find a company who does the testing?

A: This again is not clear. If an employer can find a testing site that is free and they can get tested within a reasonable amount of time, then it may be allowed. Again, this is all new territory, and we aren't clear on this, but the regulations mandates the employer shall provide the testing, so if you cannot get an employee into a free testing center quickly, then the employer has to arrange other options.

Q: Are employers required to pay for employees COVID test if they are exposed outside of work site, but come to work?

A: The employers will have to offer testing to any employee that comes into contact with a "COVID-19 CASE" as defined by the regs., so that's anyone with a positive test. It does not state that it has to be an employee, but if your employees have "potential exposure" to that COVID-19 case, that's when the employer's obligations begin. If you have a positive employee coming in, you wouldn't have to pay for that employee's test [they obviously were already tested, since they are positive], but you'd have to pay for the exposed employees' testing.

Q: What if the COVID case is determined not to have been contracted at work?

A: Not sure what this refers to, but if the COVID-19 case has no connection to employment, then reporting to OSHA changes potentially.

Q: Does exposure also mean that people were not masked?

A: It doesn't matter if they were wearing a mask or not, they still could have been potentially exposed if they were within 6 feet of a COVID-19 case for more than 15 minutes within a 24 hour period.

Q: Is there a list of offices for the Department of Health where one can report outbreaks?

A: I think this could be a resource to use: <https://www.naccho.org/membership/lhd-directory?searchType=standard&lhd-state=CA#card-filter>

Q: I thought I saw on an official website that says the reporting to the health department would be provided by the hospital, etc.

A: No. Employers must do the reporting to the LHD. Hospitals have their own reporting requirements apart from the employer's obligations under the regulations and legislation.

Q: If one employee test positive and we close that site down. Can other employees refuse to test if they were in close contact?

A: An employer cannot compel an employee to test. However, employers at a site that has an outbreak are required to make testing available to all employees at that worksite who worked with the positive employee. If an employee has been exposed to COVID they should be directed to isolate at least 10 days and may return to work following that period if they remain asymptomatic the entire time. During that period of time they may be entitled to supplemental sick leave under FFCRA / AB1867.

Q: What is the definition of an outbreak? If I only have 1 employee, does that still trigger reporting requirements?

A: Definition of an outbreak per CDPH and Emergency Regulations is 3 confirmed cases within a 14 day period. This triggers the reporting requirement [within 48 hours per Regs to the Local Health Department. If you have only one case, this does not trigger the reporting requirement to LHD officials. You still have to report the COVID-19 case to any employee, independent contractor, and other employers who were on the worksite during the high risk period within one business day.

Q: Does it need to be a specific type of test?

A: COVID-19 test” means a viral test for SARS-CoV-2 that is:

(1) Approved by the United States Food and Drug Administration (FDA) or has an Emergency Use Authorization from the FDA to diagnose current infection with the SARS-CoV-2 virus and

(2) Administered in accordance with the FDA approval or the FDA Emergency Use Authorization as applicable.

Q: Do we have to report all cases of COVID previously experienced from 2020 or is this only effective as of 1/1/2021

A: Emergency regs took effect 11/30/2020, so all reporting requirements start from that day forward for any reporting requirements under AB 685. AB 685 begin 1/1/2021

Q: Is it assumed that any COVID-19 cases will be caused by the employer, regardless of where the employee may have contracted the virus? Is this a correct assumption?

A: It sure feels that way.

Q: This would only apply if they have been in the workplace, not remote correct?

A: Yes, but be careful to really distinguish those employees who are 100% remote vs those who sometimes come in.

Q: Do you have any recommendations on best technologies or solutions for tracking people who come onto worksite?

A: That is something the employer needs to do within its COVID Prevention Plan. It lays out screening procedures and measures to take to make sure the employer track who comes onto the worksite and how to track them.

Q: Our County Office of Education has template letters for us to distribute when there is a case or have been exposed. Will this be given to an employee on a separate letter which includes all of the CAL OSHA requirements?

A: Yes, and other leave options including Workers' Compensation as well.

Q: It seems like the notice of benefits might be really long. I'm confused where to start. There are a ton of benefits like FFCRA leave, free testing during an outbreak. What are the additional federal and State benefits to which you are referring?

A: Workers' Compensation benefits are also included as well, along with FFCRA and other federal and state supplemental leave benefits such as under AB 1867, which extended FFCRA at the State level to public and private employers. Yes. The notice of potential benefits is going to be lengthy, or at least have a lot of attachments. The good news is that other than the supplemental sick leave available due to COVID, most of these benefits and leave options should already be available attachments you have in HR.

Q: Under AB685, do you have to notify **ALL** employees at the worksite if there is a positive exposure or only those who were within 6 feet for 15 minutes or more?

A: It depends on whether there was an outbreak. If no outbreak best practices are to report and notify those who were potentially exposed and notify them of their right to testing. However, if there's an outbreak at the worksite, then ALL employees at the worksite are to be provided free testing.

Q: What if employees report (on a Monday) that they were exposed to a confirmed COVID case during the weekend when they were not at the worksite? Does the employer still need to inform employees in their department?

A: Employers only need to inform other employees if those other employees has potential exposure to a positively confirmed COVID-19 case, so until that person tests positive, you don't need to notify.

Q: If the employee is quarantined pending his test results, should we notify the exposed people and ask them to quarantine or do we need to wait until we get the test results

A: I think it would be a good practice. Although it is not mandated by the emergency regulations. If that test comes back positive, then the employer needs to identify who had potential exposure to that positive case, and to inform them within one business day.

Q: You mentioned an employee can't tell you they're positive, that it has to be a positive test result. How do we facilitate this? We require a letter/notice?

A: You may choose to accept a verbal report and that may be "knowledge" of a positive case. However, the employee needs to provide a lab-confirmed test result in order to trigger the Workers' Compensation presumption and for purposes of the Cal/OSHA emergency regs.

Q: Would you suggest giving the qualifying individual a workers comp claim form when we are first notified even though they may not want to report a claim?

A: A workers' compensation claim form (DWC-1) is owed when the employee requests one or when the employer is on notice of a work-related injury. Absent a presumptive injury or outbreak (per SB 1159: 4/4% or shutdown site), you are not on notice of an injury just because someone tests positive, so the duty to provide a claim form is not yet triggered. If the Qualifying Individual asks for a claim form or for WC benefits, then yes. If you become aware of an outbreak or presumptive injury then I would also recommend providing a claim form.

Q: How do you document that you cleaned the facility in compliance with CDC guidelines? A simple written report of time/date/tasks?

A: Yes. Also consider periodic safety meetings and distribution of information and materials to the safety person at each worksite.

Q: Can our company continue to enforce a 72 hour symptom free policy? An employee may be trying to return to work and citing CDC says 24 hours or if employee is out of FFCRA 80 hrs, and we still need symptoms to be gone 72 hours per policy.

A: The CDC 24-hour standard is specifically with regard to being fever-free without fever-reducing medications. However, a return to work for someone who had symptoms is 10 days after their symptoms started.

Q: Is it 10 business days or 10 days including weekends?

A: For defining the high risk exposure period, it is 2 days before a positive test or when symptoms arise, and 10 days after that. 10 days means 10 days, not specifically business days. For return to work, it is 10 days after the symptoms arose or from the date the specimen was collected resulting in the positive test (if asymptomatic).

Q: What are the requirements for employers to compensate employees while out with covid-19 or pending testing?

A: In general, though, the employee who is quarantining (eg: no actual exposure to a COVID patient and simply waiting for verification), then the employee will likely qualify for supplemental sick leave pursuant to FFCRA or AB 1867, up to 80 hours depending on their prior work hours.

Q: If a company utilizes a Staffing Temp Agency and one of their employee's shows symptoms in the eyes of CAL OSHA, are they looked as a Dual Employer. I would assume the staffing agency should be notified immediately and report the positive COVID to their WC carrier and the insured should conduct their own investigation on tracing of their employees who may have come into contact with that staffing employee. What are the obligations for the insured to comply with? Should they have all their employees who came into contact with this person tested? ? If any of these employees come back positive then they report into their carrier portal. How is it looked upon as of 1/1/2021 AB635 Outbreak exposure?

A: Yes, absolutely advisable. An analogy might be made to the notice provisions in AB685 requiring an employer to notify the employers of subcontractors who worked at the site with the qualifying individual and were potentially exposed. I foresee a lot more care being taken in the future with regard to temp agencies / PEO's and subs hired out to GCs. In particular, I would suggest that these kind of issues be discussed and a game plan / phone tree be put in place for notice / reporting to ensure that someone is accountable.

Q: A negative test cannot be asked from an employee to return to work, but do they need to be released by a doctor?

A: That is one way to be cleared. The passage of time without symptoms is another.

Q: Can we ask the employee to provide us with a doctor's release note that the employee may return to the office?

A: As long as it is in conformity with the emergency regulations' mandate for return to work. This is that 24 hours have passed since fever of 100.4 or higher, and covid symptoms have improved, and 10 days have passed since COVID symptoms first appeared.

Q: Can an employer ask for a copy of a negative COVID test, but not demand a copy?

A: It can be requested, but not as a condition of returning to work. I would be careful with this, because the employee's perception of how the request is delivered (rather than the employer's intent) is what will control.

Q: What is a best practice for Employers when allowing an employee back from leave for COVID if they shouldn't/can't require a negative test?

A: As long as it is in conformity with the emergency regulations' mandate for return to work. This is that 24 hours have passed since fever of 100.4 or higher, and covid symptoms have improved, and 10 days have passed since covid symptoms first appeared.

Q: Do you have a list of the COVID related benefits that employees are entitled to receive?

A: Primarily FFCRA or AB1867, but potentially also any union / negotiated leave. There will also likely be an overlap with existing leave laws, but this is outside our specialty, and I suggest you speak with an employment law specialist.

Q: Does the employee must show you proof of positive case to pay their payroll for time out for COVID positive

A: The regulations are silent on whether that person needs a positive test. There may be some employees that need to be excluded from the work place if they had exposure too, so they may not have a positive test. That is why I don't think the regulation mandates a positive test, so to answer your question, no, a positive test is not required.

Q: Once the employee used up all of their paid sick leave and still out due to COVID, does the employer need to pay their time off? If so, for how many hours?

A: Per the regulations, it mandates that any excluded employee has to have their earnings maintained.

Q: If I am working from home and I test positive for COVID, am I required to notify my employer? If so, under what law?

A: I don't believe there is any mandate under the regulations for any employee to notify the employer of a positive test.

Q: If COVID is determined not to have been contracted at work, is it still OSHA recordable?

A: That is one part of the question to answer. To report to OSHA, the case has to be "Connected to Employment," but the other is that it is a serious injury/illness or fatality. Serious illness means being hospitalized for more than just a diagnostic or first aid reason, so if there is no hospitalization, or no connection to work, then you do not have to report to OSHA

Q: While an employee is waiting for their test results (our testing turnaround is 3-5 days) what is the requirement for paying the employee while waiting? Normal pay, sick, vacation, non-pay?

A: if that employee is excluded for testing, they must have had potential exposure, and the emergency regulations mandate that their "Earnings" be maintained, so I would suggest that they have their full wages compensated while they are out, if sick leave doesn't measure up to full earnings.

Q: At what point to do offer the DWC? Does the employee have to state it is work related?

A: A Workers' Compensation claim form (DWC-1) is owed when the employee requests one or when the employer is on notice of a work-related injury. Absent a presumptive injury or outbreak (per SB 1159: 4/4% or shutdown site), you are not on notice of an injury just because someone tests positive, so the duty to provide a claim form is not yet triggered. If the Qualifying Individual asks for a claim form or for WC benefits, then yes. If you become aware of an outbreak or presumptive injury then I would also recommend providing a claim form.

Q: When do we need to report positive cases to OSHA?

A: To report to OSHA, the case has to be "Connected to Employment, but the other is that it is a serious injury/illness or fatality. Serious illness means being hospitalized for more than just a diagnostic or first aid reason, so if there is no hospitalization, or no connection to work, then you do not have to report to OSHA

Q: I have 3 employees at different locations that tested positive for COVID-19. Two of the three were working remotely but the one was in the office. I issued a notice to the potentially exposed employees for the one working in the office and notified our W/C carrier. Is this considered an outbreak? I have a total of 72 employees.

A: I do not believe it would be considered an outbreak due to the fact that the other two cases did not occur on the worksite within the 14 day period, but everything else you have done so far is in conformity with the regulation's mandate for a positive covid-19 case so far.

Q: Based on the current shelter in place orders, do essential workplaces mean all employees are considered an essential worker? I work at a school and we have employees that usually go door to door, canvassing and recruiting for students. I don't think that is "essential" for the operation of a school.

A: "Essential" is somewhat vague and will vary by location in some cases. You can go to COVID 19, but please don't wait on that. Everyone is asking on the PPT19.ca.gov for a local update on which businesses are allowed to remain open (and to what degree), as Governor Newsom's recent Stay At Home Orders are regional and depend on ICU bed capacity. He did allow most schools that were already open to remain open at the discretion of the local health department.

Q: What should employers do if an employee is symptomatic, but chooses not to tests?

A: The employee cannot be forced to test, but can be excluded from the worksite and asked to quarantine. Supplemental sick leave due to COVID under FFCRA, AB1867 or other leave laws may allow benefits during that time.

Q: A negative test cannot be asked from an employee to return to work, but do they need to be released by a doctor?

A: Being released from a doctor is one method, the other is simply passage of sufficient time following the positive test (10 days if asymptomatic) or 24 hours fever free without medications plus 10 days after last symptoms (if symptomatic).