

Updates

November 22, 2022

California COVID-19 Employment Regulations Extended Through 2023

In 2022, California again passed assembly bills related to COVID-19. The recent legislation extended some employer obligations while easing others. Touching upon many topics, these bills address supplemental paid sick leave, testing requirements, workers' compensation, and notification requirements for positive cases.

Supplemental Paid Sick Leave

Supplemental paid sick leave for COVID-19 was set to expire on September 30, 2022, but has now been extended through December 31, 2022. Notably, however, AB 152 does not allot additional time for employees who have used all their COVID-19-related leave.

Testing and Supplemental Paid Sick Leave

For leave related to a positive COVID-19 test, employers were already permitted to request documentation of an initial positive test and a second test five days after the initial positive test. The second test must be provided at no cost to the employee. AB 152 now allows employers to request a third test at no cost to the employee within 24 hours of the positive second test. Employers may deny supplemental paid sick leave to employees who refuse to submit proof of the results of a requested COVID-19 test.

Employers should continue to provide COVID-19 supplemental paid sick leave and update COVID-19 testing policies to reflect the above requirements. Starting on January 1, 2023, when employers will no longer be obligated to provide COVID-19 paid sick leave, employers will also not be required to provide employees with a second or third COVID-19 test. However, employers may have to provide COVID-19 tests in other situations pursuant to the California Division of Occupational Safety and Health's (Cal/OSHA) Emergency Temporary Standards. More information on Cal/OSHA's testing requirements can be found [here](#).

Small Business and Nonprofit COVID-19 Relief Grant Program

AB 152 establishes the California Small Business and Nonprofit COVID-19 Relief Grant Program to help small businesses and nonprofits bear the costs associated with providing supplemental paid sick leave. Qualified businesses can recover costs up to \$50,000 for providing employees with supplemental paid sick leave. The grant will apply to employees who took supplemental paid sick leave between January 1, 2022, and December 31, 2022.

To qualify for the program, an organization must meet *all* of the following requirements:

- Incorporated as a C corporation, S corporation, cooperative, limited liability company, partnership, or limited partnership, or registered as a 501(c)(3), 501(c)(6), or 501(c)(19) organization.
- In operation before June 1, 2021.
- Currently in operation.
- Employs 26 to 49 employees.

Employers have until January 1, 2024, to qualify for the grant.

Qualifying employers should prepare the required documentation in anticipation of the California Governor's Office of Business and Economic Development (GO-Biz) application rollout.

AB 1751: Workers' Compensation for Contracting COVID-19

Until January 1, 2024, AB 1751 extends a rebuttable presumption of workers' compensation coverage for when employees contract COVID-19. Under this law, employees are presumed to have contracted COVID-19 on the job if there was an outbreak where they work. An employer may dispute this presumption.

For the presumption to apply, an employee must have tested positive for COVID-19 within 14 days of working at the place of employment, and the employee's positive test must have occurred during an outbreak at the employee's place of employment. An outbreak is defined as 4% or more of the employment site's workforce testing positive for COVID-19 within 14 calendar days. Another situation considered an outbreak is if government entities order a specific place of employment to close due to a risk of COVID-19 infection.

An employer can dispute the presumption with evidence of (1) measures in place to reduce the transmission of COVID-19, (2) the employee risks of contracting COVID-19 not related to the job, (3) an employee's statements, or (4) any other evidence that can dispute a work-related infection.

Employers should continue to follow federal, state, and local guidance regarding COVID-19. Also, employers must continue reporting positive COVID-19 cases to their claims administrator. Along with reporting cases, employers should document any information that could rebut the presumption of workers' compensation.

AB 2693: Notification Requirements

AB 2693 extends employers' obligations to notify employees about possible exposures to COVID-19 in the workplace until January 1, 2024. However, AB 2693 eases some requirements for employers. Employers will no longer be required to notify their local health department. Also, employers can provide a work site posting of potential COVID-19 exposure instead of individual written notification to employees.

Workplace Posting

If an employer decides to utilize a work site posting, the employer must prominently display the posting where other postings related to regulations are customarily posted, including employee portals. On the posting, an employer must include the following information:

- The dates an employee with a confirmed case of COVID-19 was at the work site.
- The location of the exposure.
- Contact information for employees to receive COVID-19-related benefits, which include workers' compensation, COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave, and negotiated leave provisions, as well as information regarding anti-retaliation protections.
- Contact information to request the employer's cleaning and disinfection plan.

The posting should remain displayed for at least 15 days and must be in English or a language that is understood by most employees, and the employer should keep records of the posting dates.

Individual Written Notification

If an employer chooses to provide notice to their employees in writing, the notice must be given to all employees who were at the same work site during the infectious period of a confirmed COVID-19 case. An infectious period begins two days before a symptomatic person has any symptoms or two days before a positive COVID-19 test for an asymptomatic person. Employers may provide this information in physical writing, email, or text message in English as long as the form of communication is consistent with how each employer usually distributes employment-related information. Notably, the written notification requirements are much less burdensome than those applicable to a work site posting.

Employers should decide whether they want to utilize a work site posting or continue to provide individual written notifications. Regardless of how employers notify their employees of potential exposure to COVID-19, employers should ensure they provide all the required information for the appropriate type of notification.

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