



## Labor & Employment ADVISORY ■

**OCTOBER 6, 2020**

### California's New COVID-19 Legislation Creates New Requirements for Employers

On September 17, 2020, California Governor Gavin Newsom signed the following bills into law, expanding workers' protections related to COVID-19 exposure in the workplace.

#### **SB 1383 – Expansion of the California Family Rights Act**

Effective January 1, 2021, SB 1383 expands the California Family Rights Act (CFRA) to require businesses with five or more employees to provide 12 weeks of mandatory family leave per year. To be eligible for leave under the newly expanded CFRA, an employee must have at least 12 months of service with the employer and at least 1,250 hours of service with the employer during the previous 12-month period. SB 1383 also expanded the definition of "family members" to include leave: (1) to care for grandparents, grandchildren, siblings, and domestic partners with a serious health condition (in addition to existing leave to care for a parent or spouse); and (2) when needed because of a qualifying exigency related to covered active duty or call to covered active duty of an employee's spouse, domestic partner, child, or parent in the U.S. Armed Forces.

#### **Key takeaways for California employers**

After SB 1383 becomes effective on January 1, 2021, the CFRA will no longer be fully consistent with the federal Family Medical Leave Act (FMLA) (which will continue to only apply to employers of 50 or more employees). Because the expanded definition of "family member" under the CFRA will be broader than the FMLA's definition, California employers may be faced with situations in which employees request FMLA leave to care for a child or spouse after they have already taken leave pursuant to the CFRA to care for a sibling or grandparent in the same 12-month period. In such a case, a California employer may be required to provide the employee with 12 weeks under the CFRA and an additional 12 weeks under the FMLA.

With the expansion of the CFRA, family medical leave will now apply to much smaller employers, which have not been legally obligated to provide such leave before. The learning curve will be steep. Small employers should begin to prepare for January 1, 2021 by contacting employment counsel and HR personnel to develop compliant policies and procedures. Additionally, even those employers that were already covered by the CFRA should begin updating their personnel policies in anticipation of January 1, 2021 due to the expanded definition of "family member" in the law.

This advisory is published by Alston & Bird LLP to provide a summary of significant developments to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation. This material may also be considered attorney advertising under court rules of certain jurisdictions.

## **SB 1159 – COVID-19 Workers' Compensation Presumption**

Effective immediately and set to expire on January 1, 2023, SB 1159 creates a presumption that certain covered workers' illnesses or deaths from COVID-19 on or after July 6, 2020 through January 1, 2023 are work-related and entitles them to workers' compensation. The disputable presumption is raised under the following circumstances: (1) the employee tests positive for COVID-19 within 14 days after a day that the employee performed labor or services at the employee's place of employment; (2) the day on which the employee performed labor or services at the employee's place of employment at the employer's direction was on or after July 6, 2020; and (3) the employee's positive test occurred during a period of an outbreak at the employee's specific place of employment.

In addition to first responders and health care workers, the law also applies to those who test positive during a workplace outbreak. An "outbreak" exists if within 14 calendar days one of the following occurs: (1) if the employer has 100 employees or fewer at a specific place of employment, at least four employees test positive for COVID-19; (2) if the employer has more than 100 employees at a specific place of employment, 4 percent of employees who report to the place of employment test positive for COVID-19; or (3) a specific place of employment is ordered to close by a local public health department, the California Department of Public Health, the California Division of Occupational Safety and Health (Cal/OSHA), or a school superintendent due to a risk of infection with COVID-19.

SB 1159 also sets forth new and significant reporting obligations. When an employer "knows or reasonably should know" that an employee has tested positive for COVID-19, it must report the following information to its workers' compensation carrier within three business days: (1) an employee has tested positive; (2) the date the employee tests positive; (3) the specific address or addresses of the employee's place of employment during the 14-day period preceding the positive test; and (4) the highest number of employees who reported to work in the 45 days preceding the last day the employee worked in the workplace. SB 1159 provides the labor commissioner with the ability to impose up to a \$10,000 civil penalty against any employer that submits false or misleading information or that fails to submit information in violation of these reporting requirements. Additionally, SB 1159 mandates that employers must report any positive tests to their workers' compensation carriers dating back to July 6, 2020 by no later than October 17, 2020.

### **Key takeaways for California employers**

Employers must be aware of these significant developments because SB 1159 goes into effect immediately. The new law has significant reporting obligations, including the retroactive reporting requirements dating back to July 6, 2020. This means employers will need to begin reporting such information now because any retroactive reporting must be completed on or before October 17, 2020. If compliance questions arise about these new notice requirements, employers may wish to contact their workers' compensation insurance carriers or employment counsel to resolve them promptly.

## **AB 685 – Employer COVID-19 Reporting Obligations**

Effective January 1, 2021, AB 685 requires employers to provide workers with written notice within one business day of receiving notice of a potential exposure to COVID-19. The notices must include information about COVID-19-related benefits and options (e.g., workers' compensation, paid sick leave, supplemental paid sick leave, and the company's anti-retaliation and anti-discrimination policies) and the disinfection and safety plan that the employer plans to implement and complete according to Centers for Disease Control and Prevention (CDC) guidelines. Employers must maintain these records for at least three years. Employers must also notify local public health officials within 48 hours if the number of cases they have qualifies as an outbreak. The California Department of Public Health will publish

information that it receives for local public health departments on its website. This information will be provided to allow the public to track the number and frequency of COVID-19 outbreaks at a particular worksite.

Although Cal/OSHA already possesses the authority to close workplaces under certain circumstances related to COVID-19, AB 685 specifically provides that Cal/OSHA can prohibit operations when a worksite presents an “imminent hazard” for the transmission of COVID-19. This provision will remain in effect until January 1, 2023.

### **Key takeaways for employers**

California employers should review AB 685 and prepare to comply with the notice requirements by January 1, 2021. Employers should keep in mind that any outbreak in the workplace must be reported to their local public health agency and will be reflected on the California Department of Public Health’s website. The impact of these new reporting requirements may discourage customers from visiting a particular business if they assume that there is a current health hazard. Therefore, employers should work to combat any COVID-19 exposure in the workplace by vigilantly implementing CDC health and safety protocols. You can find a more detailed discussion of AB 685 [here](#).

Alston & Bird has formed a multidisciplinary [response and relief team](#) to advise clients on the business and legal implications of the coronavirus (COVID-19). You can [view all our work](#) on the coronavirus across industries and [subscribe](#) to our future webinars and advisories.

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If you have any questions or would like additional information please contact your Alston & Bird attorney or any of the following:

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