

SB 1159 & AB 685

Guidance on complying with these
COVID reporting requirements





Presentation Housekeeping



WORKER'S COMP FOCUS



SAFETY / CAL-OSHA
COMPLIANCE



FRAMEWORK FOR COVID
RISK MANAGEMENT



Q&A TO FOLLOW VIA
EMAIL AFTER WEBINAR

PRESENTERS



ABE JABHAN

JD

SR. CLAIMS ADVOCATE

ESM INSITE



ANTHONY POSTON

ARM, AIM

CEO / RISK MANAGER

ESM INSITE



SINEAD SCROSOPPI

CUSTOMER SUCCESS

ESM INSITE

TEAM



COVID-19 WEBINAR SERIES: SUPPORTING OUR CUSTOMER'S NEEDS THROUGH THIS PANDEMIC JOURNEY

1

MARCH
Exposure
Control Plan

2

APRIL
Remote Work
Program

3

MAY
Managing
Claims during
the pandemic

4

JUNE
Executive
Order:
COVID claims
are covered

5

JUL-AUG
Return To
Work
(Re-entry)

6

AUG-SEPT
COVID's here,
now what?

7

OCTOBER
SB 1159
&
AB 685

Today's Topics

- CA COVID Update
- Cal-OSHA Case Study (cont.)
- SB 1159
- AB 685
- Employer Case Study



COVID Update



Every county in California is assigned to a tier based on its rate of new cases and positivity.

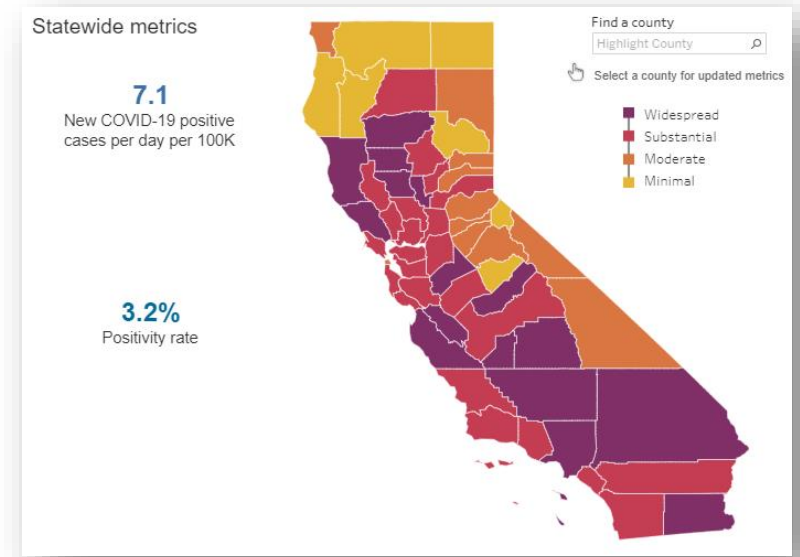
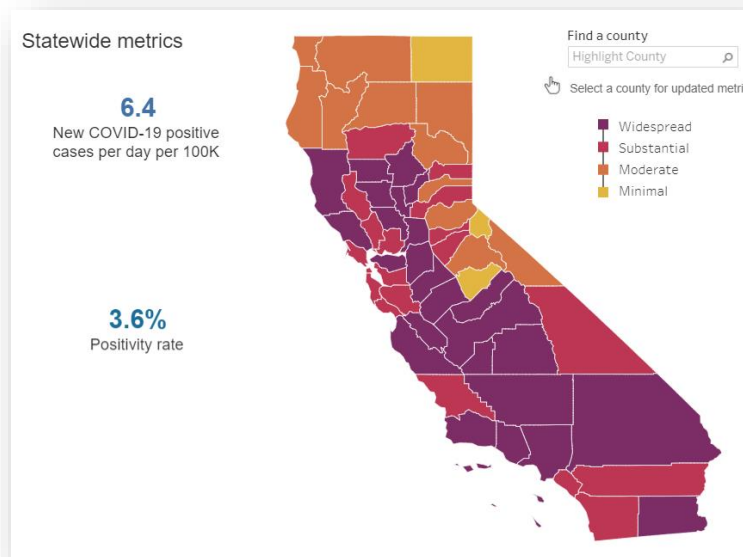
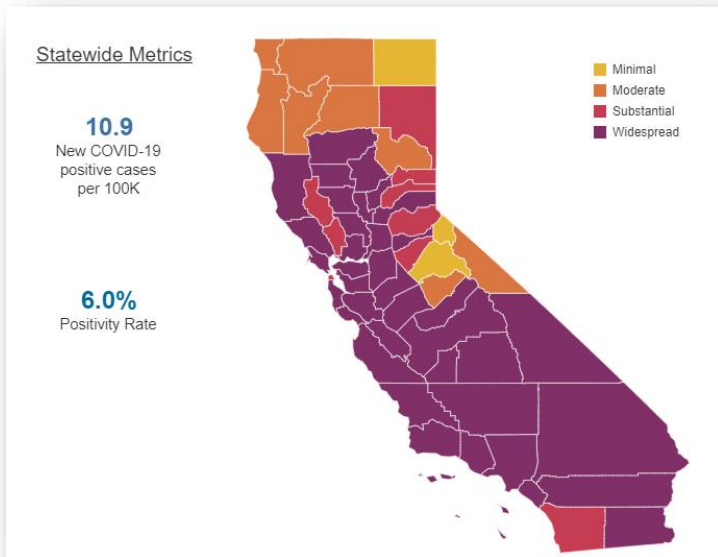
Effective 8/31/20

<https://covid19.ca.gov/safer-economy>

1. At least 21 days to expand activities beyond the initial tier
2. Mandatory metrics: case rates and test positivity
3. A uniform state framework, with four categories
4. A more nuanced way of allowing activity: Instead of open vs. closed, sectors can be partially opened and progressively add to their operations
5. An “emergency break” for tightening back up again

County risk level	New cases	positive tests
WIDESPREAD Many non-essential indoor business operations are closed	More than 7 daily new cases (per 100k)	More than 8% positive tests
SUBSTANTIAL Some non-essential indoor business operations are closed	4 - 7 daily new cases (per 100k)	5 - 8% positive tests
MODERATE Some indoor business operations are open with modifications	1 - 3.9 daily new cases (per 100k)	2 - 4.9% positive tests
MINIMAL Most indoor business operations are open with modifications	Less than 1 daily new cases (per 100k)	Less than 2% positive tests

1st Month in New Tier System



Blueprint Activity & Business Tiers

SECTORS	Widespread Tier 1	Substantial Tier 2	Moderate Tier 3	Minimal Tier 4
Critical Infrastructure	Open with modifications	Open with modifications	Open with modifications	Open with modifications
Limited Services	Open with modifications	Open with modifications	Open with modifications	Open with modifications
Hair Salons & Barbershops	Open Indoors with modifications	Open indoors with modifications	Open indoors with modifications	Open indoors with modifications
All Retail (including critical infrastructure, except standalone grocers)	Open Indoors with modifications <ul style="list-style-type: none"> • Max 25% capacity 	Open Indoors with modifications <ul style="list-style-type: none"> • Max 50% capacity 	Open Indoors with modifications	Open Indoors with modifications

Minimal	Moderate	Substantial	Substantial	Substantial	Widespread
Modoc	Del Norte	Lake County	Riverside	Marin	All 16 other counties
Alpine	Mono	Napa	Orange	Butte	(39 Counties 9/1/20)
Mariposa	El Dorado	San Francisco	SLO	Yolo	
Plumas	Nevada	Calaveras	Inyo	Sacramento	
Humboldt	Lassen	El Dorado	Santa Cruz	Contra Costa	
Trinity	Sierra	Nevada	San Mateo	San Joaquin	
Siskiyou	Amador	Sierra	Alameda	Fresno	
	Calaveras	Lassen	Solano	Santa Barbara	
	Inyo	San Diego	Santa Clara	Placer	
	Tuolumne		Tehama	Yuba	
			Ventura	Fresno	
			Shasta	Merced	

<https://covid19.ca.gov/safer-economy/>

Cal-OSHA letter on alleged COVID conditions

- Employer does not communicate trainings and safety meetings to employees in a language they understand. T8 CCR 3203(a)(3)
- Employer is not following their internal COVID-19 policies. T8CCR 3203 (a)(4)&(6)
- Employer does not enforce a 6-foot physical distancing policy at work. T8CCR 3203 (a)(4)&(6)
- Employer has not installed partitions at all of the assembly tables. T8CCR 3203 (a)(4)&(6)
- Employer has not implemented portable high-efficiency air cleaners or modifications to increase outside air flow. T8CCR 3203 (a)(4)&(6)

Results

- **Recap:**
 - Disgruntled EE compliant to Cal-OSHA
 - Letter of alleged conditions sent to employer
 - Required 5 day response timeframe (typically 15-30)
 - ESM/Employer prepared a response letter
 - Employer prepared supporting documentation including ESM's Exposure Control Plan, images, training and communications that discredited each allegation
 - Response sent to Cal-OSHA within 5 day requirement
- **Result:**
 - Cal-OSHA closed the case within 3 weeks
 - No further inspection, which would have generated more compliance activity
 - Avoided potential civil penalties related to COVID and other OSHA standards (\$5K - \$50K)
 - No public record of the inspection, which could be evaluated by the carrier's underwriter

Citations & Penalties

Job Openings Cal/OSHA Inspector

Cal/OSHA is hiring Assistant Safety Engineers throughout California.

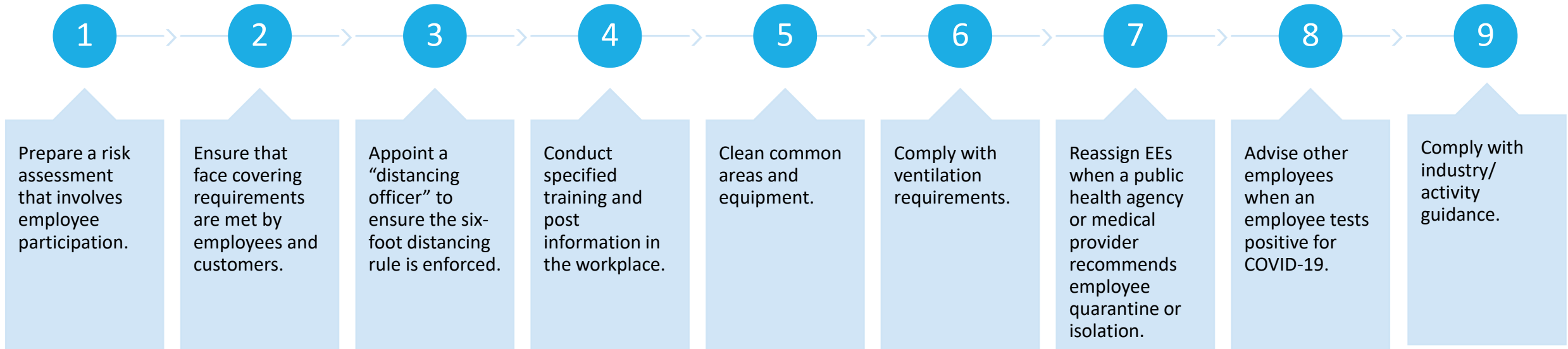
These are field positions that conduct compliance inspections in many different settings and consult with employers on a wide range of health and safety issues. Cal/OSHA inspectors help improve health and safety conditions in workplaces and make a positive difference in the lives of California workers.

Learn more about [Cal/OSHA](#), [the application process](#), and Cal/OSHA [inspector](#) positions.



- Overhill Farms: \$222,075
 - Non-COVID related: \$14,450
- Jobsource: \$214,080
- Ralphs: \$87,880
- Food 4 Less; \$16,500
- DL Poultry: \$51,190
- AutoZone: \$9,694
- Uni-Kool: \$5,850
- Gateway Care: \$21,935
- Non-profit: \$13,000

Potential OSHA COVID Regulations



Poll

Yes, I have (select all that apply):

- Prepared a risk assessment that involves employee participation.
- Ensure that face covering requirements are met.
- Appoint a “distancing officer” to ensure the six-foot distancing rule.
- Conduct specified COVID training and posted the information.
- Clean common areas and equipment frequently.
- Comply with ventilation requirements.
- Reassign EEs when a public health agency or medical provider recommends employee quarantine or isolation.
- Advise other employees when an employee tests positive for COVID-19.
- Comply with industry/ activity guidance.
- Have training documentation (signatures) for the above.

Employee Acknowledgement Form (Eng & Spa)

www.esminsite.com/s/COVID-19_Exposure-Control-Plan-Acknowledgement_Eng_Spa_10012020.pdf

Editable form available in INSITE



COVID-19 Exposure Control Plan Employee Acknowledgement Form

[Company] is committed to preventing workplace hazards that could result in employee injury and/or illness, and to complying with all applicable state and local occupational safety and health guidelines and regulations. This acknowledgement confirms that you have received, read and understand [Company]'s COVID-19 Exposure Control Plan and are willing to follow the expectations established by our Plan. Please initial and initial and sign in the spaces below.

ACKNOWLEDGEMENT

By initialing below I, _____, acknowledge that I have received training provided by [Company] to ensure I understand the dangers of COVID-19, including (initial):

- _____ COVID-19 and how it spreads
- _____ Symptoms of COVID-19 infection and when to seek medical attention
- _____ Importance of not coming to work when ill
- _____ Steps to prevent the spread of COVID-19 infection
- _____ Coughing and sneezing etiquette
- _____ Importance of frequent hand washing/sanitizing
- _____ Importance of maintain safe physical distance
- _____ Safely using cleaners and disinfectants on surfaces and objects
- _____ COVID-19 Exposure Control Plan information and expectations
- _____ Method to report issues or suggest improvements to the COVID-19 Exposure Control Plan

RESPONSIBILITIES

I, _____, also understand [Company] has established a list of expectations. By initialing below, I acknowledge my responsibility to prevent the spread of COVID-19 in the workplace, including, but not limited to:

- _____ Self-assessing my health on a daily basis
- _____ Stay at home when sick and avoid close contact with others when possible
- _____ Keep a minimum distance of 6 feet from others when possible
- _____ Refrain from shaking hands, hugging, or touching others
- _____ Avoid unnecessary interaction with others outside my immediate work area or work team
- _____ Clean surfaces in common areas and shared equipment before and after use
- _____ Wash hands with soap and water or use sanitizer
- _____ Wash/sanitize multiple times daily, including before/after work, breaks, eating, going to the restroom, and after coughing, sneezing, or blowing nose
- _____ Avoid touching mouth, nose and eyes
- _____ Wear face covering and other PPE as required by [Company]
- _____ Cover mouth and nose when coughing or sneezing and immediately wash hands
- _____ Avoid sharing personal items with coworkers (food, dishes, gloves, etc.)
- _____ At lunch and on breaks, continue to utilize mitigations practices
- _____ Report any unsafe behaviors or safety violations regarding our COVID-19 Exposure Control Plan to your supervisor

If I have tested positive for COVID-19, identified symptoms, or have interacted with someone infected with COVID-19, I will:

- _____ Immediately notify the presence of symptoms to my supervisor
- _____ Immediately notify my supervisor when I interacted with someone with COVID-19 inside/outside of the workplace
- _____ Go home immediately after discovering symptoms or as instructed
- _____ Immediately contact a medical professional by phone or going to a medical facility
- _____ Provide my supervisor with names of people in the workplace I have interacted with
- _____ Notify [Company]'s human resource contact when the doctor allows my safe return to work

RECEIPT

I have received a copy of the [Company]'s COVID-19 Exposure Control Plan. I understand I am expected to abide by the program at all times and to report any issues or suggestions I may have.

Employee Name Signature Date

Supervisor Name Signature Date



RECORDING COVID claims on your OSHA 300

- To be recordable, an illness must be work-related and result in one of the following:
 - The case is a confirmed case of COVID-19, as defined by the CDC,
 - The case is work-related, as defined by 29 CFR § 1904.5,
 - Death,
 - Days away from work,
 - Restricted work or transfer to another job,
 - Medical treatment beyond first aid,
 - Loss of consciousness, or
 - A significant injury or illness diagnosed by a physician or other licensed health care professional.
- If a work-related COVID-19 case meets one of these criteria, then covered employers in California must record the case on their 300, 300A and 301 or equivalent forms.



REPORTING COVID claims to Cal/OSHA

Per OSHA:

An “**incident**” is thus when an employee is **exposed** to the virus at work, as opposed to when the employee develops symptoms, or tests positive.

In-patient hospitalizations:


... in order to be reportable, an in-patient hospitalization due to COVID-19 must occur within **24 hours** of an exposure to SARS-CoV-2 at work.

The employer must report such hospitalization within 24 hours of knowing both that the employee has been **in-patient hospitalized** **and** that the reason for the hospitalization **was a work-related case** of COVID-19.

Fatalities related to COVID-19:

In order to be reportable, a fatality due to COVID-19 must occur **within 30 days of an exposure** to SARS-CoV-2 at work.

The employer must report the fatality **within 8 hours** of knowing both that the employee has died, and that the cause of death was a work-related case of COVID-19.



SB 1159 & AB 685



Poll

Are you familiar with the new reporting and notice requirements as required per SB 1159 & AB 685:

- Yes
- No

August 31, 2020

California

41,861

Claims Filed

(11.2%)

224

Deaths

(0.5%)



New Legislation

Senate Bill 1159

Workers' compensation: COVID-19: critical workers.

- Rebuttable presumption is back
- New and confusing reporting obligations
- “Outbreak” definition has changed, and different from Cal-OSHA and CDC definitions
- Potential penalties up to \$10,000

Assembly Bill 685

COVID-19: imminent hazard to employees: exposure: notification: serious violations.

- What is a “potential exposure”
Reporting requirements to employees and contractors
- Defining a “realistic possibility”
- What is a serious violation
- Serious violations can start at \$18,000
- Effective January 1, 2021

1159: Two Sections

*Not covered today:
Section 3212.87 applies to
healthcare workers, police
officers, and firefighters.*

Section 3212.88

Applies to all other workers not working from home

Presumption

- Presumption applies when it is determined that the positive test occurred during an outbreak at the specific place of employment.
- Initial burden on the employer to report the claim to the carrier, then the claims administrator to interpret that information.
- Only after an “outbreak” has been identified does the “disputable presumption” apply.

Evidence

- Evidence relevant to disputing or rebutting the presumption may include:
- Evidence of measures in place to reduce potential transmission of COVID-19
- Evidence of an employee’s nonoccupational risks of COVID-19 infection.

Review of Reporting

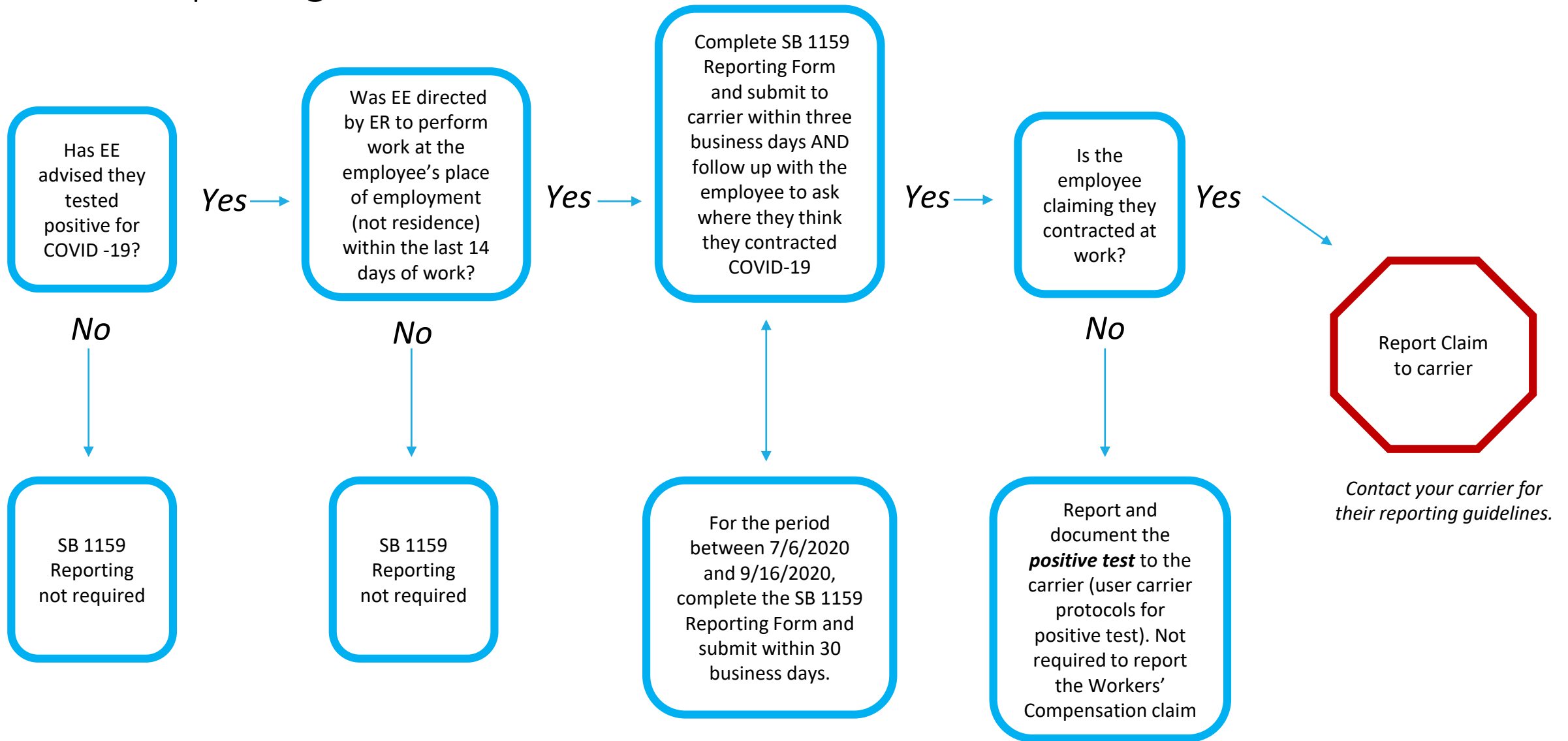
Positive Test: What to report

- Alert the Carrier that an employee has a positive test. If the employee intends to claim the injury as work related, then report that employee's name and other identifying information.
- If employee is unsure about the case being work related, *you may **not*** provide any identifying information about that applicant to the Carrier, only that there has been a positive test and the date of the positive test.

45-day window

- You must take the date of the positive test and go back over the preceding 45 days and provide to the Carrier *the highest number of employees working at the specific place of employment over that period.*
- Example: if over the preceding 45 days from the date of positive test, there were 30 employees working, but on *one* of those days, there were 31 employees working, then you report to Carrier that 31 is the maximum number of employees over that time period.

SB 1159 Reporting Workflow



WORKERS' COMPENSATION CLAIMS REPORTING

If employee:

- has **tested positive** for COVID-19 or was diagnosed with COVID-19 within 14 days after performing services at Employer's worksite (not Employee's home or residence) at Employer's direction, and they believe or allege they contracted it at work:



1. Provide the employee with an [Employee Claim Form](#) (DWC-1)
2. Submit the [Employer's Report of Occupational Injury or Illness](#) to your carrier or TPA (or just report the claim on their respective portal, if they fill it out for you).
3. If the claim is accepted, log it on your [OSHA 300](#)

SB 1159 — The skinny

- Applies to employers with 5 or more employees.
- Only applies if there is an “outbreak”
 - Outbreak is 4 or more covid-19 exposures within 2 weeks, if you have under 100 employees; OR
 - For over 100 employees, 4% of employees exposed at a specific location
- Employee must have tested positive within 14 days of working at an employer’s direction
- Once an employer knows or *reasonably should have known that an employee has tested positive* for COVID-19, **within three days**, the employer must alert the claims administrator
- For all claims *after July 6* and before September 17, 2020, you have 30 days to get all the information to the claims administrator.
- Employer may not provide specifically identifying information about the employee in question, *unless* that employee asserts the infection is work related.

AB 685

Overview

- Requires employers that receives a notice of potential exposure to COVID-19 to notify its employees within one business day.
- Employers must provide written notice of potential COVID-19 exposure within one day of knowledge of exposure by a **“qualifying individual”**
- “Notice” may include any written notice, such as email, text message, or personal service, so long as it can be “reasonably anticipated” that the employee will receive the notice within one business day.
- Notify their local public health agency of an “outbreak” at the place of employment within 48 hours of knowledge of the outbreak*
- Expanded Power of Cal/OSHA authority
- **The law will be in effect from January 1, 2021 to January 1, 2023**

Who Are “Qualifying Individuals” Under AB 685?

Those who have a laboratory confirmed case of COVID-19.

A COVID-19 diagnosis from a licensed health care official.

A COVID-19 related isolation order from a public health official.

A death due to COVID-19 confirmed by a county public health official.

4 things AB 685 changed for Cal/OSHA

1

Orders Prohibiting Use (OPU):

- Cal/OSHA can issue an OPU to shut down an entire worksite or a specific worksite area that exposes employees to an imminent hazard related to COVID-19.

2

Citations for serious violations

- Cal/OSHA can issue citations for serious violations related to COVID-19 without giving employers 15-day notice.
- Citations are classified as serious when Cal/OSHA demonstrates there is a realistic possibility that death or serious physical harm could result from the actual hazard.
- Serious Violations can start at \$18,000
www.dir.ca.gov/title8/336.html

3

Notification To Employees

- Employers are required to notify all employees at a worksite of potential exposures, COVID-19-related benefits and protections, and disinfection and safety measures that will be taken in response to the potential exposure.

4

Notification to LHD within 48 hours

- Employers are required to notify local public health agencies of all workplace outbreaks, which are defined as three or more laboratory-confirmed cases of COVID-19 among employees who live in different households within a two-week period.

Sample AB 685 Notice to Employees

*(subject to change, consult your labor attorney)
(Editable format in INSITE)*

www.esminsite.com/s/COVID-19_AB685_Sample-notice-to-employee.pdf

[insert logo]



[Company] COVID-19 Notice to employees

[INSERT DATE]

Dear employee:

This letter is to inform you that you may have been exposed to a coworker who tested positive for Coronavirus (COVID-19) sometime between [INSERT DATE] and [INSERT DATE]. This person is home and will return to work in accordance with CDC guidelines.

If you are sick or have flu-like symptoms, please stay at home and immediately let them know. Next, we recommend you make an appointment with your doctor for COVID-19.

During your illness period, you are eligible to use your Sick Leave and Family Medical Leave in accordance with [Company] policies. You may also be eligible for extended family and medical leave under the Families First Coronavirus Response Act (FFCRA). Information on the FFCRA can be found here: https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH

If the test is **positive**, please contact [NAME] to seek time off. We also recommend you disclose the results immediately so that we can take all reasonable steps such as cleaning and notifying others whom you may have been in contact with. Please take reasonable steps to ensure your confidentiality and privacy.

Discrimination or retaliation against any employee who is suspected of having COVID-19, or testing positive is strictly prohibited. [INSERT HR RETALIATION]

In the meantime, we are taking the following actions to ensure that you and your coworkers are safe:

- Cleaning and disinfecting the worksite, including common areas and high-touch areas.
- Minimizing shared equipment between workers; for equipment that is shared, frequent cleaning between worker use.
- Training workers on safe use of cleaners and disinfectants and proper use of equipment.
- Instituting expanded sick leave policies for employees who need to stay home with COVID-19.
- [INSERT OTHER ACTIONS]

If you live with other people or have been in close contact with others, please follow the steps on how to *Prevent the spread of COVID-19 if you are sick*, which can be found here: <https://www.cdc.gov/coronavirus/2019-ncov/downloads/sick-with-2019-ncov.pdf>

Additional steps you can take to keep yourself and others around you safe from COVID-19 include:

- Review and follow [Company] Exposure Control Plan policies and procedures related to illness, cleaning and disinfecting, face coverings, work meetings and travel. An overview is provided below.
- Stay home if sick, except to get medical care.
- Practice physical distancing by keeping at least 6 feet away from others when in or around work areas.
- Wear face coverings, especially when social distancing.

For additional information, please contact [NAME].

Thank you,

Name
Title
Phone
Email

Encl.

[Company] COVID-19 Mitigation Practices

[Company] is taking a proactive approach to protect the workplace against potential COVID-19 exposures. The following is a brief summary of the mitigation practices we are implementing:

- 1. Health & Hygiene:**
 - a. All employees are required to wash their hands frequently throughout the day. Examples include:
 - i. before and after work.
 - ii. Before and after lunch
 - iii. Before and after breaks
 - b. Please also utilize frequent handwashing practice when at home to prevent the potential spread of COVID-19.
 - c. Please remember not to touch your face.
- 2. Sanitation Procedures:**
 - a. The facility will be sanitized frequently throughout the day.
 - b. The sanitation team will be monitoring the facility and will increase the frequency if warranted.
- 3. Ventilation:**
 - a. [Company] will continue to monitor air circulation within the facility.
 - b. Doors and windows may be opened to increase outside air flow
 - c. Air filters will be monitored and replaced as needed
- 4. Personal Protective Equipment (PPE):**
 - a. Face coverings are required by all employees during working hours.
 - b. We ask that you continue to use your face covering when on breaks and lunch.
 - c. Gloves may be required, depending on your department.
- 5. Physical Distancing:**
 - a. We will continue to implement 6-foot physical distancing practices wherever practical.
 - b. Employees are not to congregate in work rooms, break rooms, bathrooms, copier rooms or other areas where employees may socialize.
 - c. During lunch and breaks we ask that you maintain physical distancing to prevent the potential spread of COVID-19.
- 6. Health Screening:**
 - a. An employee who has a fever at or above 100.4 degrees Fahrenheit or who is experiencing coughing or shortness of breath will be sent home.
- 7. Limiting Travel:**
 - a. All nonessential travel should be avoided until further notice.

It is the goal of [Company] to operate effectively and to ensure that all essential services are continuously provided and that employees are protected and remain safe within the workplace.

How Does AB 685 Intersect with SB 1159?

Presumptions

- Both SB 1159 and AB 685 assume that an employee contracted COVID-19 at work, when certain criteria are established, shifting the burden of proof to the employer.

Timeframes

- The employer has a limited/reduced timeframe in which to conduct investigations, provide information, and assert defenses.

Notification/Reporting

- Employers are charged with frequent notification to multiple parties within a short period of time when an employee tests positive for COVID-19.
- Failure to comply could have serious, negative implications for the employer.

“Outbreak”

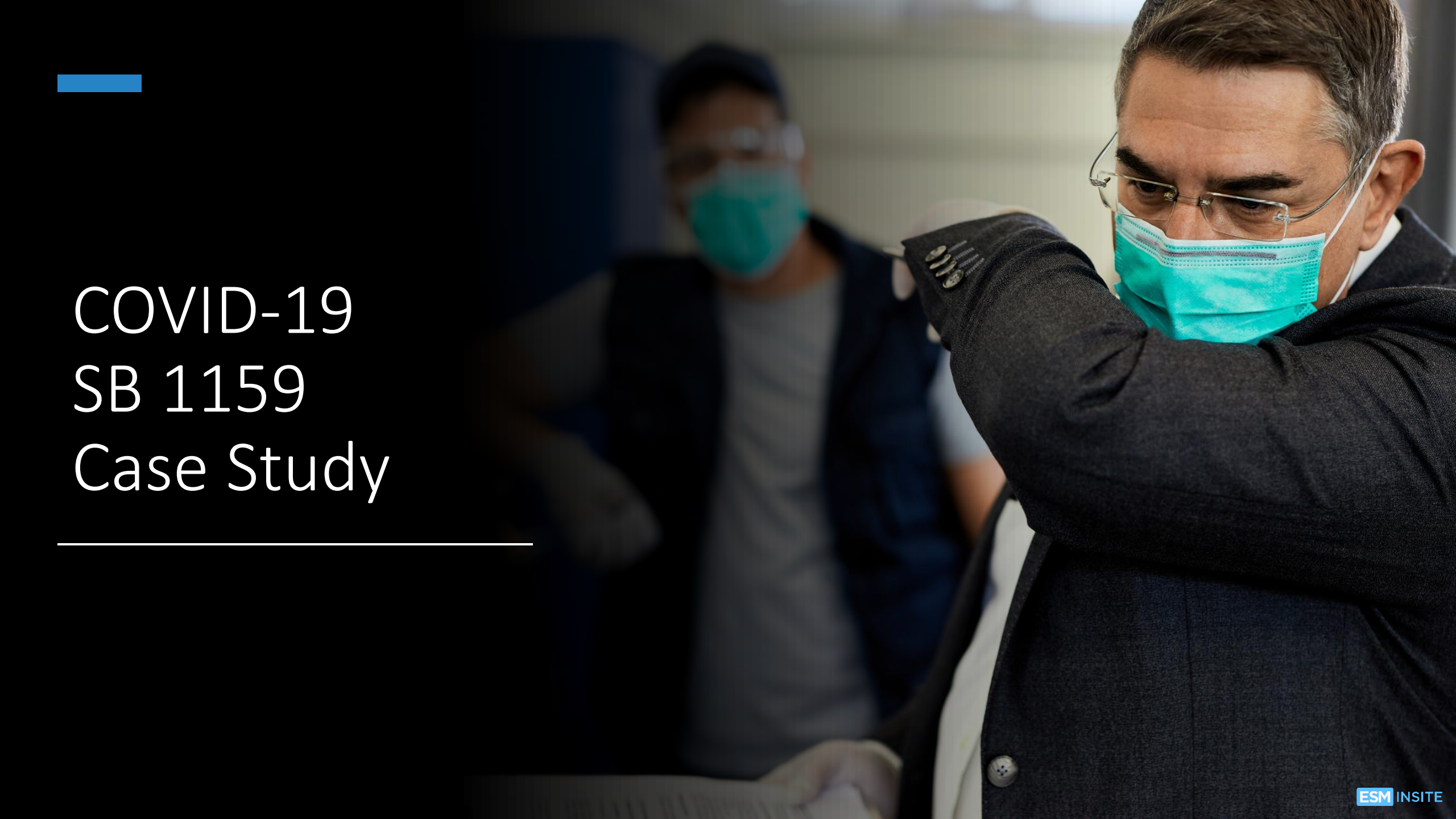
- “Outbreak” as used in AB 685 is different than in SB 1159 for purposes of determining if the presumption applies.
- An “outbreak” requiring notification under AB 685, does not necessarily qualify as an “outbreak” under SB 1159.

Serious & Willful

- Employers may see an increase in S&W claims based on Cal/OSHA’s safety orders related to COVID-19, or evidence of actual citations related to COVID-19 violations, pursuant to Labor Code § 4553.1.

Labor Code §132a Claims

- The new laws have the potential to make it easier for an employee to claim a COVID-19 injury, and also to provide additional grounds for increased benefits under Labor Code §132a
- Assuming the employee can demonstrate that the employer violated one of the provisions of the new Cal/OSHA regulations preventing discrimination.

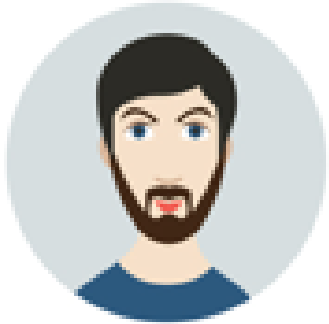


COVID-19
SB 1159
Case Study

Case Study

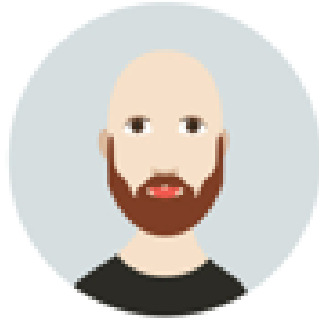
4 employees all working at a factory which has 85 workers onsite.

A



Believes they contracted COVID at a family gathering – able to get tested – positive test within 14 days of working onsite.

B



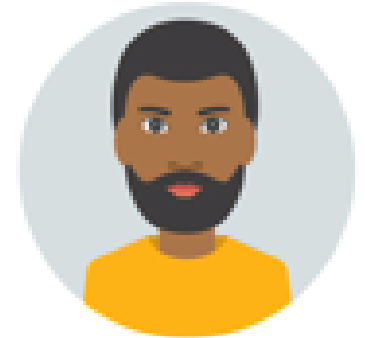
Rides with A to work, works at the same facility as A, B, C & D – positive test. Alleges they contracted COVID at work and has been in close contact with other employees onsite. Ends up in the hospital.

C



Typically works from home but came in on-site one day to collect a work packet and later tests positive 5 days later after developing symptoms.

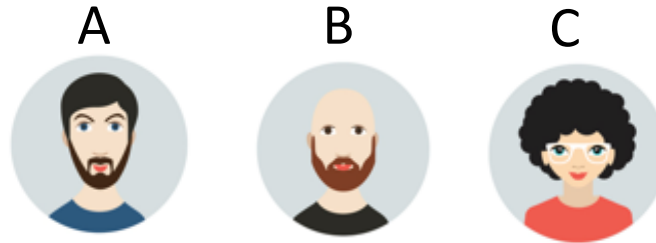
D



Works onsite, has COVID symptoms and asks to quarantine – is unable to get tested right away.

What is reported to the insurance carrier?

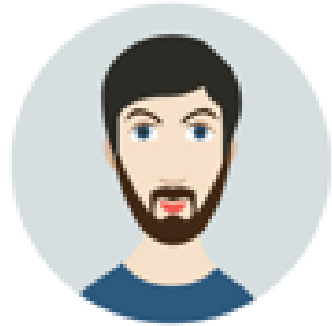
All positive tests need to be reported – 3 positives



TWO OPTIONS FOR A POSITIVE TEST	
OPTION 1	OPTION 2
Employee tests positive but <u>DOES NOT</u> allege it to be work-related	Employee tests positive and states they believe <u>they contracted it from work</u>
ACTION: Report the positive test to the carrier, but the main difference is that you keep the employees name confidential	ACTION: Employee is alleging a work-related illness; you give them a DWC-1 and file the claim as normal. Report their name and identifying information, just as you would for any other claim.

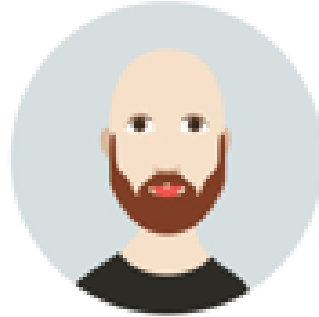
What is reported to the insurance carrier?

A



Report to carrier without identifying information (use an employee ID or similar to protect their identity).

B



Give them a DWC-1 and file this claim with the carrier to investigate.

C



Since this employee did come onsite, this claim should be reported just like A (confidentially).

D



No positive test yet, but if confirmed, should also be documented and reported, just like A & C.

If you meet or exceed the threshold for an outbreak, all of the employees testing positive will be presumed to have contracted Covid-19 at work. The carrier will investigate and use any rebuttable evidence to make a compensability determination.

E.g.  stated they likely contracted Covid at a family gathering, which could be used to deny the claim.

Is there an “Outbreak” with these 4 employees?



An outbreak is when there are **4 or more employees test positive within two weeks**, assuming there are 100 or fewer employees working at a specific site or, if over 100, 4% of the workforce test positive within 2 week at a particular site.



The definition of outbreak is different for the health department and other agencies – **typically 3 positive tests within 2 weeks.**

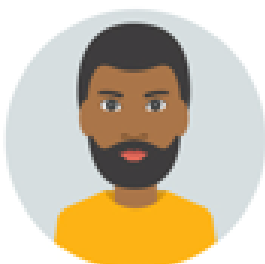
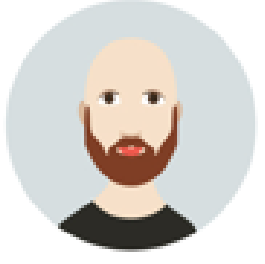
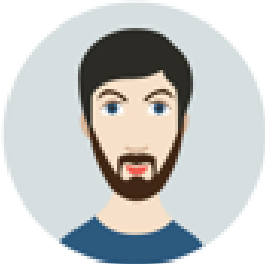


However, if the 4th employee does test positive within the same two-week period of the other 3, we have an **outbreak for Workers’ Compensation purposes.**



As for reporting to the LHD, you likely have reporting obligations **if you have 3 or more** lab confirmed tests. Also, due to the “in-patient hospitalization”, there will be a serious illness Cal-OSHA reporting requirement.

Quarantine & FFCRA



All qualify for Families First Coronavirus Response Act Leave.

The employer has less than 500 employees.

EMPLOYEE RIGHTS

PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

► **PAID LEAVE ENTITLEMENTS**
Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- ⅔ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 10 weeks more of paid sick leave and expanded family and medical leave paid at ⅓ for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

► **ELIGIBLE EMPLOYEES**
In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

► **QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19**
An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

<ol style="list-style-type: none">1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;2. has been advised by a health care provider to self-quarantine related to COVID-19;3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);	<ol style="list-style-type: none">5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.
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► **ENFORCEMENT**
The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.

WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

For additional information or to file a complaint:
1-866-487-9243
TTY: 1-877-889-5627
dol.gov/agencies/whd

WH1622 REV 03/20

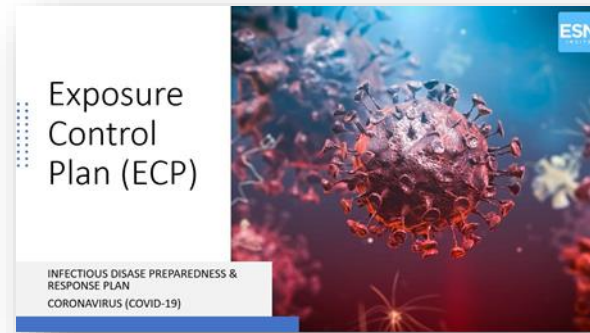
www.esminsite.com/s/Families-First-Coronavirus-Response-Act-Medical-Leave-Poster.pdf

A smiling man with a beard, wearing a grey blazer over a light blue shirt, stands in a modern office. He is holding a tablet computer. In the background, other people are blurred, and large windows let in bright light. A blue horizontal bar is visible in the top left corner.

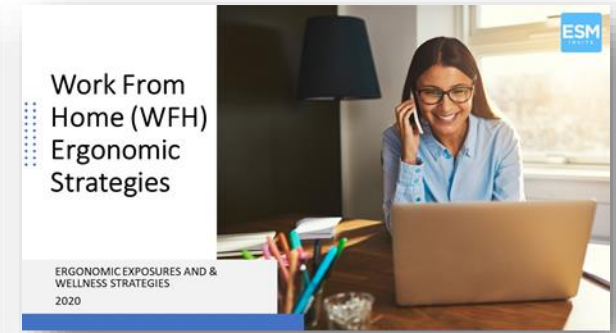
We're here to help!

ESM has your complete COVID-19 Compliance Portal & beyond

ESM's compliance portal provides employers with editable and actionable tools to accelerate the development of programs focused on reducing the risk and cost associated with COVID-19 and Workers' Compensation exposures.



Infectious Disease & Preparedness Plan
Respiratory Protection Plan
Bloodborne Pathogens Policy
Fed, State & Local Forms
COVID-19 Safety Training (Eng & Spa)
Videos



Ergonomics Policy
Remote Work Program Module
Ergonomic QuickCheck for home office
Workstation ergonomic set-up
Safety Trainings
Videos



Exposure Control Plan (General Industry & Construction)
Re-entry checklist
Implementation forms
Safety trainings
CDC posters for your facility



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Forms
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