

Date of Hearing: April 8, 2021

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

Ash Kalra, Chair

AB 654 (Reyes) – As Introduced February 12, 2021

SUBJECT: COVID-19: exposure: notification

SUMMARY: Clarifies the Department of Public Health's (DPH) internet posting requirement of COVID-19 workplace data to mean that the posting includes both workplace and industry information received from local public health departments.

EXISTING LAW:

- 1) Requires an employer that receives a notice of potential exposure to COVID-19 to take a number of actions within one business day of the potential exposure, including, but not limited to:
 - a) Provide a written notice to all employees, as specified, who were on the premises at the same worksite as the qualifying individual within the infectious period that they may have been exposed to COVID-19.
 - b) Provide a written notice to the exclusive representative, if any, of the employees in (a).
 - c) Provide all employees who may have been exposed and the exclusive representative, if any, with information regarding COVID-19-related benefits to which the employee may be entitled under applicable federal, state, or local laws.
- 2) Requires the DPH to make workplace industry information received from local public health departments pursuant to employer COVID-19 reporting requirements on its internet website in a manner that allows the public to track the number and frequency of COVID-19 outbreaks and the number of COVID-19 cases and outbreaks by industry reported by any workplace.

FISCAL EFFECT: Unknown

COMMENTS: Last year's COVID-19 workplace data reporting bill, AB 685 (Reyes), sought to improve our understanding of the disease's transmission and prevalence in the workplace. It was also a response to documented underreporting of COVID-19 cases across many industries. In fact, California employers reported only 1,600 serious worker illnesses or deaths to Cal/OSHA from the start of the pandemic through mid-December 2020. With Cal/OSHA relying on employers to self-report workplace infections, this led to incomplete data about COVID-19 outbreaks putting workers and ultimately their families at risk.¹ The shortcomings in our data collection highlighted the need for a more comprehensive system to track and make public occupational cases of COVID-19. AB 685 provided a mechanism for the DPH to collect and publish COVID-19 outbreaks by workplace and industry. Because DPH is currently only publishing the data by industry, AB 654 would clarify the department's obligation to also publish by workplace.

¹ “‘Major, major problem,’ California failing to track workplace COVID infections, deaths,” Sacramento Bee, February 2, 2021.

According to the author, “AB 654 is simply clean up to AB 685, Chapter 85 of 2020 and reflects negotiations from last year. Clean up to this measure is essential to the public health and safety of California so that we can mitigate the effects of the pandemic. We need to be transparent with our constituents on when and where outbreaks happen in their communities and also ensure there is no burden of dual reporting to DPH.”

Arguments in Support

The California Labor Federation argues in support of the bill, “AB 685 created reporting employer notification and reporting requirements to help stop the spread of COVID-19 in the workplace and the community. It requires employers to notify workers and their exclusive representative of potential exposure to COVID-19 in the workplace and to report workplace outbreaks to the local health agency. These reports are then to be compiled by the state Department of Public Health and posted publicly on their website. The law also expands the authority of Cal/OSHA to cite employers for COVID-19 health and safety violations and to suspend operations if COVID-19 creates an ‘imminent hazard.’”

Regarding the public posting of outbreak reports, the bill requires the California Department of Public Health (CDPH) to post this data by ‘workplace industry’ on their website. The database was intended, as shared in committee analysis, sponsorship, support, and opposition letters, to include outbreaks by workplace AND industry. However, the data is currently only being released by industry. This bill seeks to clarify how the data as required by AB 685, Chapter 85 of 2020 should be implemented on the CDPH website.”

Arguments in Opposition

A coalition of employer organizations, including the California Chamber of Commerce, are opposed to the reporting requirements of the bill and state, “First – employers cannot prevent outbreaks, even if an employer is compliant (or exceeding) all applicable laws and regulations, including the COVID-19 Emergency Temporary Standard. For example – if three employees attend a large social gathering on a Saturday night – completely outside of the employers’ control - then return to the workplace Monday and all test positive later that week, then that would qualify as an outbreak. It does not matter that the employer was in full compliance with all relevant county and state guidance, or if there is no evidence of any spread in the workplace. In fact, even if a group of employees all admitted they were visiting a COVID-19 positive friend and not social distancing while doing so, the employer would still be listed. This subjects good faith employers to a scarlet letter, which could be the death knell for struggling restaurants or retailers.

Second – there is no requirement here that the list be ‘up-to-date’ or include only ‘active’ outbreaks. Without such a guarantee, the list will become meaningless because it won’t help consumers. Knowing that three employees got sick at some point in the past doesn’t make the public safer – it could be two weeks ago or six months ago. Without the list being kept ‘up-to-date,’ it has no benefit and will only serve to punish employers for conduct they cannot control.”

Related and Prior Legislation

SB 606 (Lena Gonzalez) of 2021 would, among other things, establish a rebuttable presumption that an employer’s actions are retaliatory if an employer takes adverse action against an employee within 90 days of the employee doing certain things, including, but not limited to,

disclosing a positive test or diagnosis resulting from an exposure at the place of employment or worksite or of a communicable disease or reporting a possible violation of an occupational safety or health standard.

AB 1175 (Aguiar-Curry) of 2021 would revise advance warning provisions in the California Occupational Safety and Health Act to prohibit any representative of the division from giving advance notice of an inspection or investigation to an employer unless authorized under OSHA. The bill would authorize the chief, as specified, to permit advance notice of an inspection or investigation when advance notice is necessary to ensure availability of essential personnel or access to the site as prescribed by the director. The measure is pending before our committee.

AB 685 (Reyes) Chapter 84, Statutes of 2020 requires employers to report outbreaks to the local public health agency in the jurisdiction of the worksite within 48 hours and creates a rebuttable presumption that a “serious violation” exists in a place of employment if the division demonstrates that there is a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation.

AB 2334 (Thurmond) Chapter 538, Statutes of 2018 clarifies that the occurrence of a violation of an occupational safety and health order continues until the violation is corrected, the Division of Occupational Safety and Health discovers the violation, or the duty to comply with the requirement is no longer applicable.

REGISTERED SUPPORT / OPPOSITION:

Support

California Conference Board of The Amalgamated Transit Union
California Conference of Machinists
California Labor Federation
California Rural Legal Assistance Foundation
California School Employees Association
California Teachers Association
California Teamsters Public Affairs Council
Ceres Community Project
Engineers and Scientists of California Local 20, IFPTE
ILWU, Local 26
Pesticide Action Network North America
Professional & Technical Engineers, Local 21, IFPTE
Restaurant Opportunities Centers of California
Unite Here International Union
United Food and Commercial Workers, Western States Council
Utility Workers Union of America, Local 132
Utility Workers Union of America, Local 483
Utility Workers Union of America, Local 522
Warehouse Worker Resource Center
Worksafe

Oppose

Acclamation Insurance Management Services
Advanced Medical Technology Association
Agricultural Council of California
Allied Managed Care
American Council of Engineering Companies, California
Brea Chamber of Commerce
California Apartment Association
California Association of Health Facilities
California Association of Joint Powers Authorities
California Building Industry Association
California Business Roundtable
California Chamber of Commerce
California Farm Bureau
California Food Producers
California Fuels and Convenience Alliance
California Restaurant Association
California Retailers Association
California State Association of Counties
California Travel Association
Carlsbad Chamber of Commerce
Coalition of Small and Disabled Veteran Businesses
Family Business Association of California
Flasher Barricade Association
Housing Contractors of California
League of California Cities
National Federation of Independent Business
Oceanside Chamber of Commerce
Official Police Garages of Los Angeles
Oxnard Chamber of Commerce
Pleasanton Chamber of Commerce
Public Risk Innovation, Solutions, and Management
San Gabriel Valley Economic Partnership
Santa Barbara South Coast Chamber of Commerce
Southwest California Legislative Council
Specialty Equipment Market Association
Torrance Area Chamber of Commerce
Western Growers Association

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