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Heads Up!

Lawsuit Prevention for Employers

NEW LAWS FOR 2021: A PERFECT STORM FOR EMPLOYERS

Starting January 1, employers must promptly notify employees of a potential COVID-19 exposure in the workplace, and local health authorities in the event of an outbreak. Newly-enacted Labor Code, section 6409.6 (AB 685) will require employers who receive notice of a potential exposure to take action within one business day.

Exposures

Effective January 1, 2021, employers must provide written notice to all employees, and those of subcontractors, who were present at the worksite with the "qualifying individual" during the "infectious period," that they may have been exposed to COVID-19. The notice must be provided in a manner that does not identify the qualifying individual.

A "qualifying individual" is anyone who has a laboratory-confirmed positive diagnosis, received an isolation order from a public health official or died of COVID-19.

A "worksite" is a building, store, facility, agricultural field or other location where an employee worked during the "infectious period."

In addition to employees, the employer is required to provide written notice to collective bargaining representatives.

Once a triggering event occurs, employers must provide information regarding COVID-19 related benefits that employees may be entitled to receive. This would include workers' compensation benefits, COVID-related leave, company sick leave, paid sick leave, supplemental paid sick leave, as well as the employer's anti-retaliation and anti-discrimination policies. Further, the employer must notify all employees, and those of subcontractors, of the company's COVID-19 disinfection protocols and other protections that the employer will implement to prevent further exposures.

Outbreaks

Employers must notify the local public health department within 48 hours of a COVID-19 "outbreak," i.e., "three or more laboratory-confirmed cases among workers who live in different households within a two-week period." This notice must provide several elements of information.

After the initial written report, the employer must provide additional notice of any subsequent confirmed cases at the same worksite.

Presumption of Workers' Compensation Coverage

The newly-enacted SB 1159 establishes a rebuttable presumption that any illness or death related to COVID-19 is an occupational injury and therefore covered by workers' compensation insurance.

A Perfect Storm of Liability Exposure

In addition to the above gauntlet of new obligations, California's enhanced sick pay rules, "Kincare" laws and, not least, the new and vastly expanded California Family Rights Act (discussed in [November's Newsletter](#)), impose revolutionary and demanding new leave of absence requirements on an employer community already struggling with the COVID pandemic.

These new laws, combined with the spiking Coronavirus infections, make it likely that employers will be deluged with new leave requests. The confluence of these factors, combined with the substantial expansion of leave rights that will take effect on January 1, mean that employers must respond with extreme caution to any health-related request for time off.

Before denying any leave request or disciplining employees who take time off for any health-related reason or due to the health condition of a family member, it is imperative that employers understand their legal obligations and comply with them. Failure to do so may provoke a lawsuit.

Arbitration Policies Are Vital

Due to the sheer volume and complexity of the new requirements, it is inevitable that employers will make mistakes, and that legal challenges will ensue. Because employers lose the vast majority of cases decided by juries, it is imperative the employers develop and distribute legally-enforceable arbitration policies without delay.

See the author's website for several detailed newsletters explaining the potent protection such policies offer employers.

Jay G. Putnam is a Petaluma labor lawyer who has specialized in representing California employers for over 39 years. His practice is devoted to preventing lawsuits against his clients, without sacrificing workplace authority or management prerogatives. He has a remarkable record of success.

For those clients who have arrived with pending lawsuits, Putnam has established an excellent track record of success as well.

You are invited to visit Mr. Putnam's website, where you will find in-depth discussion of the most common mistakes made by California employers, and how to avoid them. <http://www.jaygputnam.com/newsletter/>

This newsletter is not intended as a substitute for legal advice and its content is provided for discussion purposes only. Any suggestions or recommendations must be assessed by competent legal counsel to be sure the unique requirements of each workplace are properly considered.