



POMS

RISK CONTROL
& INSURANCE

SMARTER INSURANCE
FOR SMARTER BUSINESS.

Risk Control Roundtable

November 20, 2020

Maria Brunel, CSP

mbrunel@pomsassoc.com

Larry Vigil, ASP, CSRM, CPSI, CIC

lvigil@pomsassoc.com

Rebecca Torrey, Partner

The Torrey Firm

rebecca@torreyfirm.com

Agenda

- SB 1830 Family Medical Leave
- AB685-Covid-19 Infection Prevention Requirements
- Cal-OSHA New COVID-19 Safety Regulations
- OSHA New Mexico

SB 1830 - Expanded Family Medical Leave

Effective January 1, 2021, Senate Bill 1830 expands California's Family Rights Act to provide up to 12 weeks of job-protected, unpaid family care and medical leave for the following reasons:

- For serious health condition of employee or her/his family member (parents, children, spouses and registered domestic partners, grandparents, grandchildren and siblings)
- For bonding with a child (born, adopted or foster placed)
- For reasons related to deployment activities of spouse, domestic partner, child or parent who is a member of the Armed Forces
- Does not provide the 26 weeks of military caregiver leave provided by FMLA

SB 1830 – Who Does it Cover?

Will apply to employers with 5 or more employees

- Unclear whether that means 5 or more employees working in CA or anywhere (further guidance expected)
- Employees eligible for leave must be employed for 1 year plus work 1250 hours during the preceding 12 months
- 75 mile radius limitation is inapplicable under the new law
- Includes public sector employers

SB 1830 Increases Employee Protection

In addition to applying to smaller businesses, CFRA will now cover:

- Leave to care for more family members, such as grandparents, grandchildren and siblings, in addition to parents, children, spouses and registered domestic partners.
- Key employees who were currently exempt under certain circumstances.
- 12 weeks of child-bonding leave for each parent, even if they work for the same employer. Currently, those parents have to share the leave time.
- Leave for certain qualifying reasons related to the active military duty of an employee's spouse, domestic partner, child or parent.

SB 1830 Protections

Legal protections under CFRA:

- Health insurance paid by employer as though the employee was working
- Reinstatement to same or a comparable position
- No retaliation of any kind permitted
- No changes required during the life of the existing collective bargaining agreement

SB 1830 Interaction With Other Laws:

- Replaces California's New Parental Leave Act (2018) for child bonding
- Is in addition to California's Pregnancy Disability Act providing up to 4 months leave for pregnancy disability during the period of actual disability and childbirth
- Overlaps some but not entirely with federal FMLA

SB 1830 Stacking Permissible Leaves

Examples of CFRA's stacking with other leave laws (over a 12 month period):

- Employee qualifies for up to 12 weeks to care for a child under FMLA and an additional up to 12 weeks leave to care for a grandparent under CFRA
- Employee giving birth qualifies for up to 4 months for pregnancy/childbirth disability under PDLA, up to 12 weeks of child bonding under FMLA and up to 12 weeks to care for a sibling under CFRA
- If the employee's spouse or domestic partner works for the same employer, each could take up to 12 weeks to care for their child due to birth, adoption or fostering under CFRA

SB 1830 – What Employers May Request

Documentation to support a CFRA leave is limited:

- For employee's own health condition, the date the condition commenced, probable duration, statement that employee is unable to perform the job
- For family member's health condition, date condition commenced and probable duration plus estimate of time employee needs to provide care and that health condition warrants a family member's participation
- Employer may not request the diagnosis (unlike FMLA)

SB 1830 – What Paid Leave is Available?

Types of paid benefits available to California employees

- Accrued vacation, PTO and paid sick leave (certain conditions)
- SDI for periods of employee disability
- PFL benefits (8 weeks) for care of family members and child bonding
- Even FFCRA's 10 days of emergency paid sick leave if serious health condition of employee or family member relates to COVID-19
- Employees may combine state benefits with partial use of accrued time off

Cal OSHA Covid-19 Safety Regulations

- Approved on Thursday November 19, 2020
- Will take effect within 10 days and last for six months
- **What was proposed:**
 - Employers will be required to have a written COVID Prevention Program, which can be incorporated into the IIPP or be stand-alone;
 - Employers must identify, evaluate and correct COVID hazards, the first two with the participation of employees and their authorized representatives;
 - Employers must investigate and “respond effectively” to COVID cases and notify employees who might have been exposed within one day. Employees who may have been exposed must be offered COVID testing at no cost;
 - Employers must report COVID cases in their workplaces to local health authorities;
 - Physical distancing and mask-wearing are required unless it is not possible in the former. But the burden is on the employer to demonstrate it isn't possible. There are also exceptions for masks;
 - Return-to-work provisions are included for employee COVID cases;
 - There are specific and more stringent requirements for multiple COVID infections and outbreaks in the workplace;
 - The proposal also includes COVID prevention procedures in employer-provided housing, such as labor camps, and employer-provided transportation to and from work.

AB 685-Covid-19 Infection Prevention Requirements

- Assembly Bill 685 enhances Cal/OSHA's enforcement of COVID-19 infection prevention requirements by allowing for Orders Prohibiting Use and citations for serious violations related to COVID-19 to be issued more quickly.
- The law also requires employers to notify all employees who were at a worksite of all potential exposures to COVID-19 and notify the local public health agency of outbreaks.
- What did AB 685 change?
- 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 at the worksite in response to the potential exposure.
- 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.
- From January 1, 2021 until January 1, 2023, Cal/OSHA can issue an Order Prohibiting Use (OPU) to shut down an entire worksite or a specific worksite area that exposes employees to an imminent hazard related to COVID-19.
- From January 1, 2021 until January 1, 2023, Cal/OSHA can issue citations for serious violations related to COVID-19 without giving employers 15-day notice before issuance.
- <https://www.dir.ca.gov/dosh/coronavirus/AB6852020FAQs.html>

AB 685-Covid-19 Infection Prevention Requirements

Whom must employers now notify of their potential exposure to COVID-19?

- The law now clearly states that employers must provide a written notice to all employees, and the employers of subcontracted employees, who were on the premises at the same worksite as the person who was infectious with COVID-19 or who was subject to a COVID-19-related quarantine order. After becoming aware of a potential exposure because someone at the worksite was infectious with COVID-19 or is ordered by a public health official to isolate due to COVID-19 concerns, employers must immediately (within one business day) provide the written notice to the employees and the employers of subcontracted employees.
- <https://www.dir.ca.gov/dosh/coronavirus/AB6852020FAQs.html>

AB 685-Covid-19 Infection Prevention Requirements

What must employers notify workers of when informing them of their potential exposure?

- The law requires an employer to notify employees, and employers of subcontracted employees, of their potential exposure and provide them with certain information regarding COVID-19-related benefits and options. Employers must also notify employees and employers of subcontracted employees of the disinfection and safety plan that the employer plans to implement and complete per the guidelines of the federal Centers for Disease Control and Prevention.
- <https://www.dir.ca.gov/dosh/coronavirus/AB6852020FAQs.html>

AB 685-Covid-19 Infection Prevention Requirements

What is a workplace outbreak of COVID-19?

- The California Department of Public Health defines an outbreak in non-healthcare or non-residential congregate setting workplaces as three or more laboratory-confirmed cases of COVID-19 among employees who live in different households within a two-week period.
- <https://www.dir.ca.gov/dosh/coronavirus/AB6852020FAQs.html>

AB 685-Covid-19 Infection Prevention Requirements

How do employers have to report outbreaks?

- Employers must notify local public health agencies of outbreaks within 48 hours of becoming aware of the number of cases that meets the definition of an outbreak. The employer must notify the local public health agency in the jurisdiction of the worksite of the names, phone number, occupation, and worksite of employees who may have COVID-19 or who are under a COVID-19 isolation order from a public health official. Employers must also report the business address and NAICS industry code of the worksite where the infected or quarantined individuals work. An employer that has an outbreak subject to these provisions must continue to give notice to the local health department of any subsequent laboratory-confirmed cases of COVID-19 at the worksite.
- <https://www.dir.ca.gov/dosh/coronavirus/AB6852020FAQs.html>

AB 685

- Develop or update your Return to Workplace plan.
 - Conduct or revisit the Workplace Risk Assessment
 - Develop or Revise Written Plan as needed
- Add Return to Workplace plans as an addendum to your Injury & Illness Prevention Program (IIPP).
 - In May 2020, Cal/OSHA released interim guidelines for CA employers to add an addendum to their IIPPs on protecting workers from COVID-19 (<https://www.dir.ca.gov/dosh/coronavirus/General-Industry.html>). Guidelines include:
 - Providing washing facilities
 - Establishing infection prevention measures
 - Providing employee training to include, but not limited to:
 - General COVID-19 Information (recognizing symptoms, when to seek medical attention, how to prevent spread, and procedures for preventing spread)
 - Proper use of cloth face coverings
 - Cough and sneeze etiquette
 - Proper method for washing hands
 - Avoiding touching eyes, nose, and mouth
 - Avoiding sharing items with coworkers
 - Safe use of cleaners and disinfectants
 - Personal Protective Equipment (PPE)

AB 685

- Develop a “COVID-19 Exposure Notice Letter” to be sent to employees, employee’s representative, and employers of subcontracted employees (**must be sent within one business day of being informed of potential exposure**).
 - Notice shall include:
 - Information regarding COVID-19-related benefits and leave options
 - Disinfection and safety plan
 - May be sent in a manner normally used to communicate employment-related information.
- Develop a Communication Plan to notify the public health department if you have a potential or confirmed COVID-19 exposure (**within 48 hours**).
 - Notice shall include:
 - Names, number, occupation, and worksite of employees who employees who meet the definition of a “potential exposure” and a “qualifying individual”

OSHA-New Mexico

- OSHA Inspections
 - 204 Citations, \$2,856,533 in Proposed Penalties
 - Violations Include Failures to:
 - Implement Written Respiratory Protection Program
 - Provide Medical Evaluation, Fit Test, Training
 - Report an Injury, Illness or Fatality
 - Record an Injury, Illness on OSHA Recordkeeping Forms
 - Comply with the General Duty Clause

New Mexico Coronavirus Update

- Two week “Reset” Effective 11/16/20
- NM Environment Dept (NM OSHA) Rapid Response
 - Must report positive cases within 4 hours
 - Isolate positive cases
 - Quarantine close contacts
 - Cease operations to the extent necessary to clean/disinfect
 - Implement safety procedures
- Rapid Response Watchlist
 - Two or more Rapid Responses in 14 days at a location
 - Possible two-week business closure if four or more Rapid Responses
 - Schools required to shut down will have to remain remote until entire county moves to “green”

Disclaimer

This briefing has been prepared by Poms & Associates Insurance Brokers, LLC to provide information on recent developments of interest to our clients. It is not intended to offer legal or regulatory advice for a particular situation. Events are rapidly developing during this national state of emergency, and best practices are constantly changing. We recommend that individuals and entities carefully monitor and follow health directives of the WHO and CDC, along with federal, state and local authorities.

Please visit our website at www.pomsassoc.com or call us at 818-449-9300