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AB-2693 COVID-19: exposure. (2021-2022)

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Assembly Bill No. 2693

CHAPTER 799

An act to amend Sections 6325 and 6409.6 of the Labor Code, relating to occupational safety.

[Approved by Governor September 29, 2022. Filed with Secretary of State September 29, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2693, Reyes. COVID-19: exposure.

(1) Existing law, the California Occupational Safety and Health Act of 1973, authorizes the Division of Occupational Safety and Health to prohibit the performance of an operation or process, or entry into that place of employment when, in its opinion, a place of employment, operation, or process, or any part thereof, exposes workers to the risk of infection with COVID-19, so as to constitute an imminent hazard to employees.

Existing law requires a notice of the prohibition to be posted in a conspicuous location at the place of employment and makes violating the prohibition or removing the notice, except as specified, a crime. Existing law requires that the prohibition be issued in a manner so as not to materially interrupt the performance of critical governmental functions essential to ensuring public health and safety functions or the delivery of electrical power, renewable natural gas, or water. Existing law requires that these provisions not prevent the entry or use, with the division's knowledge and permission, for the sole purpose of eliminating the dangerous conditions.

Existing law repeals those provisions January 1, 2023.

This bill would extend those provisions until January 1, 2024. By expanding the scope of a crime, this bill imposes a state-mandated local program.

(2) Under existing law, if an employer or representative of the employer receives a notice of potential exposure to COVID-19, the employer is required to take specified actions within one business day of the notice of potential exposure, including providing written notice to all employees on the premises at the same worksite that they may have been exposed to COVID-19. Existing law repeals those provisions on January 1, 2023.

This bill would revise and recast those notification requirements to, among other things, authorize an employer to satisfy the notification requirements by prominently displaying a notice in all places where notices to employees concerning workplace rules or regulations are customarily posted that includes the dates on which an employee with a confirmed case of COVID-19 was on the worksite premises within the infectious period and the location of the exposure. The bill would require the notice to remain posted for 15 days. The bill would require an employer to keep a log of all the dates the notice was posted, and would require the employer to allow the Labor Commissioner to access those records. The bill would extend these provisions until January 1, 2024.

(3) Existing law requires an employer, if they are notified of the number of cases that meets the definition of a COVID-19 outbreak, to notify the local public health agency within 48 hours, except as specified. Existing law also requires the State

Department of Public Health to make workplace industry information received from local public health departments pursuant to these provisions available 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. Existing law requires local health departments and the division to provide a link to this page on their internet websites.

This bill would delete those provisions.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 6325 of the Labor Code, as amended by Section 1 of Chapter 522 of the Statutes of 2021, is amended to read:

6325. (a) When, in the opinion of the division, a place of employment, machine, device, apparatus, or equipment or any part thereof is in a dangerous condition, is not properly guarded or is dangerously placed so as to constitute an imminent hazard to employees, entry therein, or the use thereof, as the case may be, shall be prohibited by the division, and a conspicuous notice to that effect shall be attached thereto. Such prohibition of use shall be limited to the immediate area in which the imminent hazard exists, and the division shall not prohibit any entry in or use of a place of employment, machine, device, apparatus, or equipment, or any part thereof, which is outside such area of imminent hazard. Such notice shall not be removed except by an authorized representative of the division, nor until the place of employment, machine, device, apparatus, or equipment is made safe and the required safeguards or safety appliances or devices are provided. This subdivision shall not prevent the entry or use with the division's knowledge and permission for the sole purpose of eliminating the dangerous conditions.

(b) When, in the opinion of the division, a place of employment, operation, or process, or any part thereof, exposes workers to the risk of infection with severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) so as to constitute an imminent hazard to employees, the performance of such operation or process, or entry into such place of employment, as the case may be, may be prohibited by the division, and a notice thereof shall be provided to the employer and posted in a conspicuous place at the place of employment. Such prohibition of use shall be limited to the immediate area in which the imminent hazard exists, and the division shall not prohibit the performance of any operation or process, entry into or use of a place of employment, or any part thereof, which is not exposing employees to, or is outside such area of imminent hazard. In addition, this prohibition shall be issued in a manner so as not to materially interrupt the performance of critical governmental functions essential to ensuring public health and safety functions or the delivery of electrical power, renewable natural gas, or water. This notice shall not be removed except by an authorized representative of the division, nor until the place of employment, operation, or process is made safe and the required safeguards or safety appliances or devices are provided. This subdivision shall not prevent the entry or use with the division's knowledge and permission for the sole purpose of eliminating the dangerous conditions.

(c) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 2. Section 6325 of the Labor Code, as added by Section 3 of Chapter 84 of the Statutes of 2020, is amended to read:

6325. (a) When, in the opinion of the division, a place of employment, machine, device, apparatus, or equipment or any part thereof is in a dangerous condition, is not properly guarded or is dangerously placed so as to constitute an imminent hazard to employees, entry therein, or the use thereof, as the case may be, shall be prohibited by the division, and a conspicuous notice to that effect shall be attached thereto. Such prohibition of use shall be limited to the immediate area in which the imminent hazard exists, and the division shall not prohibit any entry in or use of a place of employment, machine, device, apparatus, or equipment, or any part thereof, which is outside such area of imminent hazard. Such notice shall not be removed except by an authorized representative of the division, nor until the place of employment, machine, device, apparatus, or equipment is made safe and the required safeguards or safety appliances or devices are provided. This section shall not prevent the entry or use with the division's knowledge and permission for the sole purpose of eliminating the dangerous conditions.

(b) This section shall become operative on January 1, 2024.

SEC. 3. Section 6409.6 of the Labor Code is amended to read:

6409.6. (a) In each worksite of the employer, the employer shall prominently display a notice in all places where notices to employees concerning workplace rules or regulations are customarily posted stating all of the following:

(1) The dates on which an employee, or employee of a subcontracted employer, with a confirmed case of COVID-19 was on the worksite premises within the infectious period.

(2) The location of the exposures, including the department, floor, building, or other area, but the location need not be so specific as to allow individual workers to be identified.

(3) Contact information for employees to receive information regarding COVID-19-related benefits to which the employee may be entitled under applicable federal, state, or local laws, including, but not limited to, workers' compensation, and options for exposed employees, including COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave, or negotiated leave provisions, as well as antiretaliation and antidiscrimination protections of the employee.

(4) Contact information for employees to receive the cleaning and disinfection plan that the employer is implementing per the guidelines of the federal Centers for Disease Control and Prevention and the COVID-19 prevention program per the Cal-OSHA COVID-19 Emergency Temporary Standards.

(b) The notice described in subdivision (a) shall be posted within one business day from when the employer receives a notice of potential exposure and remain posted for not less than 15 calendar days.

(c) If the employer posts other workplace notices on an existing employee portal, the notice described in subdivision (a) shall be posted on the employee portal.

(d) The notice shall be in English and the language understood by the majority of employees.

(e) As an alternative to the notice described in subdivision (a), the employer may provide written notice to all employees, and the employers of subcontracted employees, who were on the premises at the same worksite as the confirmed case of COVID-19 within the infectious period that they may have been exposed to COVID-19 in a manner the employer normally uses to communicate employment-related information. Written notice may include, but is not limited to, personal service, email, or text message if it can reasonably be anticipated to be received by the employee within one business day of sending and shall be in both English and the language understood by the majority of the employees.

(f) An employer shall keep a log of all the dates the notice required by this section was posted at each worksite of the employer, and shall allow the Labor Commissioner to access these records pursuant to the requirements set forth in Section 1174.

(g) The employer shall provide a written notice to the exclusive representative, if any, of confirmed cases of COVID-19 and of employees who had close contact with the confirmed cases of COVID-19 within one business day. This notice shall contain the same information as would be required in an incident report in a Cal/OSHA Form 300 injury and illness log unless the information is inapplicable or unknown to the employer. This requirement shall apply regardless of whether the employer is required to maintain a Cal/OSHA Form 300 injury and illness log. Notifications required by this section shall not impact any determination of whether or not the illness is work related.

(h) For purposes of this section, the following definitions apply:

(1) "Close contact" means an individual who has been in close contact with a confirmed case of COVID-19, as defined by the division.

(2) "Confirmed case of COVID-19" means an individual who has been infected with COVID-19, as defined by the State Department of Public Health.

(3) "COVID-19" means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

(4) "Infectious period" means the time a confirmed case of COVID-19 is infectious, as defined by the State Department of Public Health.

(5) "Notice of potential exposure" means any of the following:

(A) Notification to the employer or their representative from an employee, their emergency contact, a public health official, or a licensed medical provider that an employee has a confirmed case of COVID-19 and was on the worksite premises within the infectious period.

(B) Notification through the testing protocol of the employer that an employee has a confirmed case of COVID-19 and was on the worksite premises within the infectious period.

(C) Notification to an employer or their representative from a subcontracted employer that their employee has a confirmed case of COVID-19 and was on the worksite premises within the infectious period.

(6) "Worksite" means the building, store, facility, agricultural field, or other location where a worker worked during the infectious period. It does not apply to buildings, floors, or other locations of the employer that an individual with a confirmed case of COVID-19 did not enter, locations where the worker worked by themselves without exposure to other employees, or to a worker's personal residence or alternative work location chosen by the worker when working remotely.

(i) An employer shall not require employees to disclose medical information unless otherwise required by law.

(j) An employer shall not retaliate against a worker for disclosing a positive COVID-19 test or diagnosis or order to quarantine or isolate. Workers who believe they have been retaliated against in violation of this section may file a complaint with the Division of Labor Standards Enforcement pursuant to Section 98.6. The complaint shall be investigated as provided in Section 98.7.

(k) This section shall not apply to employees who, as part of their duties, conduct COVID-19 testing or screening or provide direct patient care or treatment to individuals who are known to have tested positive for COVID-19, are persons under investigation, or are in quarantine or isolation related to COVID-19, unless the confirmed case of COVID-19 is an employee at the same worksite.

(l) No personally identifiable employee information shall be subject to a California Public Records Act request or similar request, posted on a public internet website, or shared with any other state or federal agency.

(m) An employer shall maintain records of the written notifications required in subdivision (a) or (e) for a period of at least three years.

(n) The division shall enforce this section by the issuance of a citation alleging a violation of this section and a notice of civil penalty in a manner consistent with Section 6317. Any person who receives a citation and penalty may appeal the citation and penalty to the appeals board in a manner consistent with Section 6319.

(o) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.