



California expands Cal/OSHA reporting requirements for California employers, setting the stage for more investigations of serious incidents

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Governor Gavin Newsom recently signed two bills, effective January 1, 2020, that expand Cal/OSHA reporting requirements and change the methods of that reporting. Practically speaking, this could expand the number of investigations and inspections initiated by Cal/OSHA for serious incidents.

Assembly Bill No. 1805

AB 1805 amends Cal. Labor Code Section 6302 and the definition of “serious injury or illness” and “serious exposure.” Below is a redlined excerpt of the new Section 6302 language.

(h) “Serious injury or illness” means any injury or illness occurring in a place of employment or in connection with any employment ~~which~~ **that** requires inpatient ~~hospitalization for a period in excess of 24 hours for~~ **hospitalization, for** other than medical observation or **diagnostic testing, or** in which an employee suffers a ~~loss of any member of the body or suffers~~ **an amputation, the loss of an eye, or** any serious degree of permanent disfigurement, but does not include any injury or illness or death caused ~~by the commission of a Penal Code violation, except the violation of Section 385 of the Penal Code, or by an accident on a public street or highway~~ **highway, unless the accident occurred in a construction zone.**

(i) “Serious exposure” means any exposure of an employee to a hazardous substance when the exposure occurs as a result of an incident, accident, emergency, or exposure over time and is in a degree or amount sufficient to create a ~~substantial probability~~ **realistic possibility** that death or serious physical harm in the future could result from the **actual hazard created by the** exposure.

Cal. Labor Code Section 6409.1(b) requires immediate reporting by the employer to Cal/OSHA of every case involving a serious injury, illness, or death.

Thus, beginning in 2020, California employers will need to comply with several changes in the reporting requirements, including:

- Reporting obligations will be triggered for all inpatient hospitalizations (regardless of the length of that hospitalization) for reasons other than medical observation or diagnostic testing.
- Employers will need to report accidents involving any “amputation” or “the loss of an eye.”
- Employers will need to report serious injuries, illnesses, or deaths in the workplace or in connection with any employment arising from crimes by their coworkers or even third parties. This sets the stage for the impending general industry workplace violence regulations.
- Serious injuries or fatalities caused by accidents on a public street or highway if “the accident occurred in a construction zone” will also trigger Cal/OSHA reporting requirements. Cal. Labor Code Section 6302(h).

Finally, the new law revises the definition of “serious exposure” to be consistent with a “serious” classification under Cal. Labor Code Section 6432. Specifically, a serious exposure exists when Cal/OSHA determines that there is a *realistic possibility*, instead of a *substantial probability*, that death or serious harm could result from the “actual hazard created by” the exposure.

Because Cal. Labor Code Section 6313 requires Cal/OSHA to investigate all fatal accidents or those that result in a serious injury or illness or a serious exposure, this revised definition of serious exposure could mean more mandated inspections by Cal/OSHA. Although Cal/OSHA can still determine that an investigation of such an accident is unnecessary, it must take steps to justify the non-inspection.

Assembly Bill No. 1804

AB 1804 changes the actual methods for reporting. The bill amends Cal. Labor Code Section 6409.1 by removing the ability of employers to report serious occupational injuries, illnesses, or deaths by email. Under the new law, employers must only do so via telephone or through an online reporting portal that is going to be established by Cal/OSHA for that purpose.

Cal/OSHA has said it believes email reporting has sometimes resulted in inadequate information that prevented Cal/OSHA from assessing the hazard and related injury. Of course, Cal/OSHA has always had the ability to follow up and ask for more information.

Because the online reporting portal is not yet up and running, Cal/OSHA has specified that for now employers may continue making reports via email until the online portal is put into place. Cal/OSHA has not yet indicated when the portal will go live.

Next steps and impact on employers

Employers should revisit their reporting procedures and train those responsible for reporting with regard to these new obligations. Employers should consult with their OSHA counsel if they are unclear whether a specific employee injury or illness qualifies as “serious” and/or whether it needs to be reported.

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