

# Many requirements, little clarity in COVID-19 law

AB-685's language is intended for public good, may present confusion

By **SUSAN WOOD**  
The North Bay Business Journal

With more than 200,000 American lives taken already, the six-month battle with COVID-19 may also morph into a war of words.

A new California law requires businesses report coronavirus cases to their employees. But North Bay law firm specialists say the new rules come with thoughtful intentions but convoluted details.

State Assembly Bill 685 authored by Eloise Gomez Reyes, D-San Bernardino, and signed by Gov. Gavin Newsom on Sept. 17 requires companies tell employees within 24 hours when a worker tests positive. Failure to provide adequate notifications may result in a \$10,000 fine.

The law goes into affect Jan. 1 and sunsets in two years.

"It is probably helpful from a peace of mind perspective. Employees can be sure that they have the information that they need (for) their own personal safety," said Petaluma attorney Patrick O'Brien, whose own brother Robert O'Brien, national security adviser, tested positive.

But the law itself may appear "likely redundant" to "most responsible businesses," the law practice's principal added. "My firm has notified every employee, when any of our employees have even shown any symptoms."

He said no one in the firm has tested positive thus far.

Faced with cases in their workplaces, some companies have issued "gag" orders not allowing their employees to talk about positive COVID-19 cases, citing federal health privacy regulations.

Across the nation, some employees have filed complaints as in the case of meat-packing plants in the Mid-West. Workers at Amazon.com, McDonald's and Target also allege they were told to keep quiet, Bloomberg News reported.

The argument over right and wrong workplace behavior has reached the highest level of government.

"The agency continues to field and respond to complaints and will take the steps needed to address unsafe workplaces," the U.S. Department of Labor said in a

"It's just complicated and incredibly challenging. There's not a lot of guidance for employers."

**LISA ANN HILARIO**, an employment law specialist with Spaulding, McCullough & Tansil in Santa Rosa



statement.

Consequently, California lawmakers took matters into their own hands.

If there's an outbreak in a California company, the reporting function must escalate to local public health departments. The California Department of Public Health defines a "workplace outbreak" in a non-health care or residential setting as "three or more laboratory-confirmed cases among employees in different households within a two-week period."

If outbreaks occur in the workplace, California Occupational Safety and Health Administration has the authority to close down a company's operations.

As it stands, safety hazards in the workplace fall under the California Occupational Safety and Health Act of 1973, which requires OSHA to determine when "a place of employment, machine, device, apparatus or equipment of 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," the bill's language reads.

With the incoming law, "Cal OSHA can exercise its authority at any place of employment where risk of exposure to COVID-19 constitutes an imminent hazard, and would remove employees from the risk of harm until the employer can effectively address the hazard," according to the state Department of Industrial Relations.

Companies are expected to draft a plan that covers disinfecting their workplaces in the event of an outbreak.

## BEYOND HEAVY MACHINERY

The bill has been supported and sponsored by the California Labor Federation, while the California Chamber of Commerce argued against it for exposing employers "to substantial fines and Cal OSHA enforcement," according to the Assembly analysis. State chamber representatives failed to respond to inquiries as of press time.

The devil in the new law may be in its details.

"I don't think there's anybody interested in hiding this (information). It's not a matter of an employer that doesn't want employees to know," said Lisa Ann Hilario, an employment law specialist with Spaulding, McCullough & Tansil in Santa Rosa. "It's just complicated and incredibly challenging. There's not a lot of guidance for employers."

Hilario's phone has lit up since the bill made its way through the Legislature.

The outline of the law covers eight pages of single-spaced notes at 8-point font.

"People will have to go to an attorney or consultant for assistance," she said.

## WHAT'S MY OBLIGATION?

This question may be the primary catch phrase going into 2021.

"Imagine being on the other end of this notice," Hilario said, referring to employees finding out they've been exposed to the virus.

What if a worker was in a setting in his or her leisure time and finds out someone who attended the outing claimed to test positive?

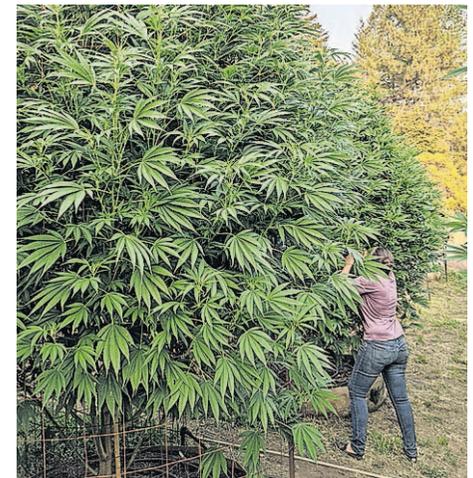
Up to this point, the law stipulates a case as either laboratory confirmed, positive test, death or order of isolation. It fails to recognize a verbal acknowledgment.

Hilario believes the law is too vague at this point to handle every possible scenario. Plus, so much guidance from agencies has changed, and conflicting information at numerous sites has made solutions to situations confusing.

"It's not a matter of being against the law. When people oppose a law, it's usually not about the intention. It's usually about the details," she said.



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CHRIS VAUGHN  
Casey Vaughn of Woodman Peak Farm leans into her cannabis plants on Woodman Peak Farm.

# Growers see smoke as possible crop threat

By **SUSAN WOOD**  
The North Bay Business Journal

With 3.5 million acres consumed by flame across California, cannabis growers are holding their collective breath over the state, size and health of the crops in the coming weeks.

A little later than its wine counterpart, harvests primarily fall into October — commonly referred to in cannabis circles as "croboter."

Because of a heavy smoke hanging over the area for days in late August into September this year, some growers say it has caused a premature bud finish, which means the plants are tricked into thinking it's later in the season and complete the budding process too soon, resulting in lower yield and smaller plants.

Smoke taint has even come up as a concern since the San Francisco Bay Area and beyond was inundated for days and days — weeks before the worst of the fire year is yet to come.

"We got concerned when the smoke started blanketing the area and blocking the sun. This is what terrified us," said Chris Vaughn, a grower who owns Woodman Peak Farm in Laytonville with his wife Casey. "We thought we would see early flowering like what we had in 2017, but we've actually seen the opposite. We're