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CALIFORNIA LEGISLATURE—2021–2022 REGULAR SESSION

ASSEMBLY BILL**NO. 654****Introduced by Assembly Member Reyes****February 12, 2021**

An act to amend Section 6325 of, and to amend and repeal Section 6409.6 of, the Labor Code, relating to occupational safety, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 654, Reyes. COVID-19: exposure: notification.

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 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 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.

This bill would add the delivery of renewable natural gas to the list of utilities that the division's prohibitions are not allowed to materially interrupt.

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 requires, if an employer or the employer's representative is

notified of enough COVID-19 cases to meet the definition of an outbreak, the employer, with the exception of a health facility, to notify the local public health agency within 48 hours, as provided. 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.

This bill, among other things, would require the employer, when giving notice to the local public health agency of a COVID-19 outbreak, to give that notice within 48 hours or one business day, whichever is later. The bill would expand the employers exempt from the COVID-19 outbreak reporting requirement to various licensed entities, including, but not limited to, community clinics, adult day health centers, community care facilities, and child day care facilities. The bill would repeal these provisions on January 1, 2023.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. Section 6325 of the Labor Code, as amended by Section 2 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 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, 2023, and as of that date is repealed.

SEC. 2. Section 6409.6 of the Labor Code is amended to read:

6409.6. (a) If an employer or representative of the employer receives a notice of potential exposure to COVID-19, the employer shall take all of the following actions within one business day of the notice of potential exposure:

(1) Provide a written notice to all employees, and the employers of subcontracted employees, who were on the premises at the same worksite as the qualifying individual 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.

(2) Provide a written notice to the exclusive representative, if any, of qualifying individuals and employees who had close contact with the qualifying individuals under paragraph (1).

(3) Provide all employees who were on the premises at the same worksite as the qualifying individual within the infectious period and the exclusive representative, if any, with 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) Notify all employees who were on the premises at the same worksite as the qualifying individual within the infectious period, and the employers of subcontracted employees who were on the premises at the same worksite as the qualifying individual within the infectious period and the exclusive representative, if any, of 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) If an employer or representative of the employer is notified of the number of cases that meet the definition of a COVID-19 outbreak, as defined by the State Department of Public Health, within 48 hours or one business day, whichever is later, the employer shall notify the local public health agency in the jurisdiction of the worksite of the names, number, occupation, and worksite of employees who meet the definition in subdivision (d) of a qualifying individual. An employer shall also report the business address and NAICS code of the worksite where the qualifying individuals work. An employer that has an outbreak subject to this section shall continue to give notice to the local health department of any subsequent laboratory-confirmed cases of COVID-19 at the worksite.

(c) The notice required pursuant to paragraph (2) of subdivision (a) 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.

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

(1) "Close contact" means being within six feet of a COVID-19 case for a cumulative total of 15 minutes or greater in any 24-hour period within or overlapping with the high-risk exposure period as defined by this section. This definition applies regardless of the use of face coverings.

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

(3) "High-risk exposure period" means either of the following time periods:

(A) For persons who develop COVID-19 symptoms, from 2 days before they first develop symptoms until 10 days after the symptoms first appeared, and until 24 hours have passed with no fever, without the use of fever-reducing medications and symptoms have improved.

(B) For persons who test positive who never develop COVID-19 symptoms, from 2 days before until 10 days after the specimen for their first positive test for COVID-19 was collected.

(4) "Infectious period" means the time a qualifying individual 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 representative from a public health official or licensed medical provider that an employee was exposed to a qualifying individual at the worksite.

(B) Notification to the employer or representative from an employee, or their emergency contact, that the employee is a qualifying individual.

(C) Notification through the testing protocol of the employer that the employee is a qualifying individual.

(D) Notification to an employer or representative from a subcontracted employer that a qualifying individual was on the worksite of the employer receiving notification.

(6) "Qualifying individual" means any person who has any of the following:

(A) A laboratory-confirmed case of COVID-19, as defined by the State Department of Public Health.

(B) A positive COVID-19 diagnosis from a licensed health care provider.

(C) A COVID-19-related order to isolate provided by a public health official.

(D) Died due to COVID-19, in the determination of a county public health department or per inclusion in the COVID-19 statistics of a county.

(7) "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 a qualified individual 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. In a multiworksite environment, the employer need only notify employees who were at the same worksite as the qualified individual.

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

(f) 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.

(g) The State Department of Public Health shall make workplace industry information received from local public health departments pursuant to this section 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 in accordance with subdivision (b). Local public health departments and the division shall provide a link to this page on their internet websites. No personally identifiable employee information shall be made public or posted.

(h) This section shall apply to both private and public employers, except that subdivision (b) shall not apply to any of the following:

(1) A "health facility," as defined in Section 1250 of the Health and Safety Code.

(2) A "community clinic," as defined in subdivision (a) of Section 1204 of the Health and Safety Code.

(3) An intermittent clinic exempt from licensure under subdivision (h) of Section 1206 of the Health and Safety Code.

(4) A tribal clinic exempt from licensure under subdivision (c) of Section 1206 of the Health and Safety Code.

(5) An outpatient setting conducted, maintained, or operated by a federally recognized "Indian tribe," "tribal organization," or "urban Indian organization," as defined in Section 1603 of Title 25 of the United States Code.

(6) A "rural health clinic," as defined in Section 1395x(aa)(2) of Title 42 of the United States Code.

(7) A "federally qualified health center," as defined in Section 1395x(aa)(4) of Title 42 of the United States Code.

(8) A "chronic dialysis clinic," as defined in paragraph (2) of subdivision (b) of Section 1204 of the Health and Safety Code.

(9) An employer that provides health care services and that has employees licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code.

(10) An "adult day health center" as defined in subdivision (a) of Section 1570.7 of the Health and Safety Code.

(11) A "home health agency" as defined in subdivision (a) of Section 1727 of the Health and Safety Code.

(12) A "pediatric day health and respite care facility" as defined in paragraph (1) of subdivision (a) of Section 1760.2 of the Health and Safety Code.

(13) A "hospice" as defined in subdivision (d) of Section 1746 of the Health and Safety Code.

(14) A community care facility, as described in the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code), and including an adult residential facility for persons with special health care needs, as described in Section 1567.50 of the Health and Safety Code.

(15) A residential care facility for persons with chronic life-threatening illness, as described in Chapter 3.01 (commencing with Section 1568.01) of Division 2 of the Health and Safety Code.

(16) A residential care facility for the elderly, as described in the California Residential Care Facilities for the Elderly Act (Chapter 3.2 (commencing with Section 1569) of Division 2 of the Health and Safety Code).

(17) A child day care facility, as described in the California Child Day Care Facilities Act (Chapter 3.4 (commencing with Section 1596.70), Chapter 3.5 (commencing with Section 1596.90), and Chapter 3.6 (commencing with 1597.30) of Division 2 of the Health and Safety Code).

(i) 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 qualifying individual is an employee at the same worksite.

(j) 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.

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

(l) The division shall enforce paragraphs (1), (2), and (4) of subdivision (a) by the issuance of a citation alleging a violation of these paragraphs 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.

(m) This section shall remain in effect only until January 1, 2023,, and as of that date is repealed.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that proper direction and certainty is provided to government agencies, businesses, and other stakeholders, which make significant contributions to economic stability and public safety during these unprecedented times caused by COVID-19, it is necessary for this act to take effect immediately.