



Webinar

Understanding New California Law Pertaining to the Presumption and Reporting of COVID-19

October 14, 2020





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Questions to Explore

- Review of bills, what is in effect today and what is to come?
- What is rebuttable presumption?
- What you need to know about reporting protocols and obligations?
- How has the claims process changed?
- What is the potential impact on Workers' Compensation system?

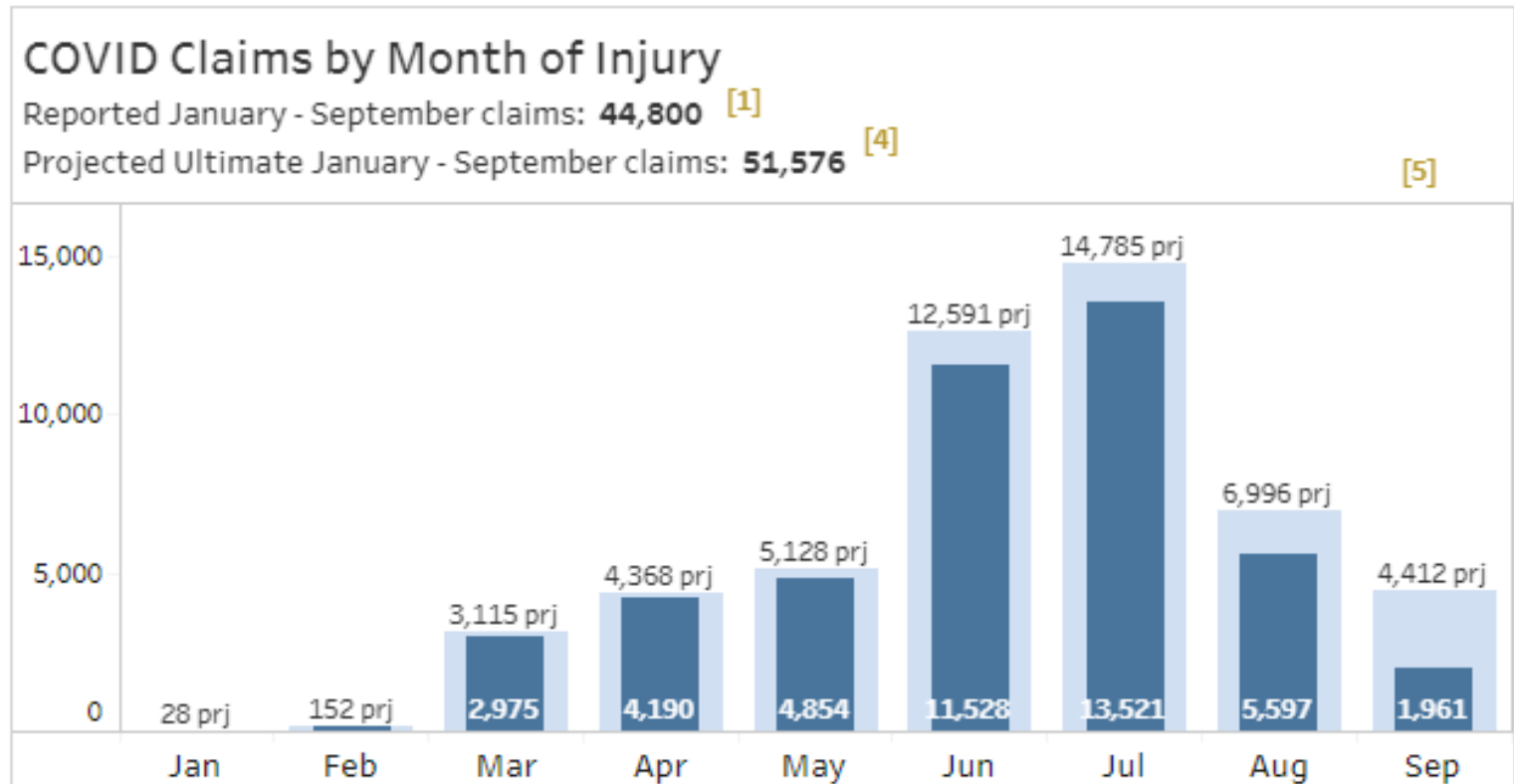
CWCI California 2020 COVID-19 Worker's Compensation Claims

Statewide Summary:

- Claims reported thru 10/5/2020: 44,800
- Deaths reported thru 10/5/2020: 241

COVID Claims by Industry

- Health Care 16,177 (37.8%)
- Public (Safety/Govt) 6,664 (15.6%)
- Retail 3,398 (7.9%)
- Manufacturing 3,274 (7.7%)
- Transportation 2,182 (5.1%)
- Food Services 1,850 (4.3%)
- Admin & Waste 1,531 (3.6%)
- Agriculture 1,216 (2.8%)
- Construction 1,120 (2.6%)
- Wholesale 996 (2.3%)
- Finance 852 (2.0%)
- Other Services 706 (1.7%)
- Educational 651 (1.5%)



Approved by Governor on 9/17/2020 and made effective immediately, creates rebuttable presumptions of COVID-19 workplace injury as codified in three new Labor Code Sections:

Labor Code §3212.86	Any worker diagnosed with COVID-19 within 14 days of work between 03/19/20-07/05/20 (30 days investigation period)
Labor Code §3212.87	Peace Officers, Firefighters, and certain Healthcare workers diagnosed with COVID-19 within 14 days of work on or after 07/06/20 (30 days investigation period)
Labor Code §3212.88	Any other worker diagnosed with COVID-19 within 14 days of work on or after 07/06/20 during an “outbreak” at their employer’s place of employment (45 days investigation period)
If employee doesn’t meet any of the above	Revert to 3202.5/5402. (90 days investigation period)

- **Shortened Investigation Period** – Denial must issue 30 days from the date a claim form is filed or injury is presumed compensable
- **Healthcare Workers include:** a) any person who provides direct patient care or custodial employees in contact with COVID-19 patients at a health facility, b) nurses and EMTs, and c) providers of in-home supportive services (if the services are performed outside their own home/residence)
- Healthcare Workers can also include any other employees of a health facility
- For these “other” health facility employees, the presumption can be rebutted if the employer shows they did not have contact with a health facility patient in the last 14 days who tested positive for COVID-19

- **Health Facility** - a facility, place, or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness... to which the persons are admitted for a 24-hour stay or longer (Health & Safety Code 1250)
 - Includes employees working in buildings part of a general acute care hospital
- **Excludes clinics/outpatient facilities** (Health & Safety Code 1200)
 - Exception? – Single consolidated license issued to a general acute care hospital (H&S 1250.8)

- **EXCLUDES** employees described in LC 3212.87
- Employer must have **5 or more employees**
- **Diagnosis must be made within 14 days** of the last date of work at the employer's place of employment at the employer's direction AND during an "outbreak"
- Diagnosis must be made by **PCR test** (or similar USFDA approved test to detect viral RNA)
- Date of injury is the last date worked prior to the positive test
- Presumption extends for up to 14 days following termination from the last day worked
- Shortened Investigation Period – Denial must issue 45 days from the date a claim form is filed or injury is presumed compensable

- Non-denied claims – can be rebutted by evidence discovered after the initial investigation period
- Same “reasonable diligence” standard for initial investigation? State Comp Ins. Fund v. WCAB (Welcher)

Peace Officer/Firefighter/Healthcare Workers

- Evidence of no opportunity for occupational exposure (difficult)

“Other” Workers at Outbreak Locations

- Evidence of measures in place to reduce transmission (use of PPE/masks, hygiene requirements, enforcement of social distancing)
- Evidence of potential non-industrial exposure (investigation, interviews, social media searches)

Employer obligations under SB 1159:

Starting **September 17, 2020**, When an employer knows or reasonably should know that an employee has tested positive for COVID-19 they must report to their carrier/administrator within three (3) business days

Retro Active Reporting - Employers must report all employees who have tested positive for COVID-19 from July 6, 2020 through September 16, 2020 to their carrier/administrator no later than October 29, 2020.

The specific address or addresses of the employee's specific place of employment during the 14-day period preceding the date of employee's positive test.

The highest number of employees who reported to work at the employee's specific place of employment in the 45-day period preceding the last day the employee worked at each specific place of employment

Each carrier/administrator has their own reporting forms and instructions. If not received, please reach out to your carrier/administrator immediately.

Failure to report or intentionally submitting false/misleading information is subject to civil penalty up to \$10,000 to be assessed by the Labor Commissioner.

5 to 100 Employees at Location

- **Four** or more employees at a specific place of employment test positive for COVID-19 within 14 calendar days

More Than 100 Employees at Location

- **4%** or more of the employees at a specific place of employment who reported to work test positive for COVID-19 within 14 calendar days

OR

A specific place of employment that is ordered to close by a public health department or school superintendent due to risk of COVID-19 infection

Determined by the claims administrator based on information provided by the employer

The employer MUST report to their claims administrator (by e-mail or fax) within three business days of when they know or reasonably should have known an employee tested positive for COVID-19

IMPORTANT DISTINCTION – This employer reporting is required when they learn/should have learned of a positive employee test, NOT when there is a claim form filed

Unintended consequences – claims administrators may be subject to deposition if AA disagrees with denial of injury/presumption for no outbreak; subpoenas for employee information used to determine existence of outbreak (privacy issues?)

- Date of Injury is defined as the last day worked at a specific location prior to the positive test
- Possible to have multiple dates of injury for one case (reimbursement vs. contribution claims)

DWC-1 Form

- Whether “presumed” or “possible” or “potential” or actual – you need to provide the DWC-1 and the opportunity for the employee to seek benefits
- Standard: Within **one working day** of receiving notice or knowledge of potential injury or illness
- *Honeywell v. WCAB (Wagner)* – deliberate/intentional refusal to provide claim form, false statements to employee to prevent or delay a claim form

State of California
Department of Industrial Relations
DIVISION OF WORKERS' COMPENSATION

WORKERS' COMPENSATION CLAIM FORM (DWC 1)

Employee: Complete the “Employee” section and give the form to your employer. Keep a copy and mark it “Employee’s Temporary Receipt” until you receive the signed and dated copy from your employer. You may call the Division of Workers’ Compensation and hear recorded information at **(800) 736-7401**. An explanation of workers’ compensation benefits is included in the Notice of Potential Eligibility, which is the cover sheet of this form. Detach and save this notice for future reference.

You should also have received a pamphlet from your employer describing workers’ compensation benefits and the procedures to obtain them. You may receive written notices from your employer or its claims administrator about your claim. If your claims administrator offers to send you notices electronically, and you agree to receive these notices only by email, please provide your email address below and check the appropriate box. If you later decide you want to receive the notices by mail, you must inform your employer in writing.

Any person who makes or causes to be made any knowingly false or fraudulent material statement or material representation for the purpose of obtaining or denying workers’ compensation benefits or payments is guilty of a felony.

Employee—complete this section and see note above

1. Name. *Nombre.* _____ Today’s Date. *Fecha de Hoy.* _____

2. Home Address. *Dirección Residencial.* _____

3. City. *Ciudad.* _____ State. *Estado.* _____ Zip. *Código Postal.* _____

4. Date of Injury. *Fecha de la lesión (accidente).* _____ Time of Injury. *Hora en que ocurrió.* _____ a.m. _____ p.m.

5. Address and description of where injury happened. *Dirección/lugar dónde ocurrió el accidente.* _____

6. Describe injury and part of body affected. *Describe la lesión y parte del cuerpo afectada.* _____

7. Social Security Number. *Número de Seguro Social del Empleado.* _____

8. Check if you agree to receive notices about your claim by email only. *Marque si usted acepta recibir notificaciones sobre su reclamo solo por correo electrónico. Employee’s e-mail.* _____ *Correo electrónico del empleado.* _____

You will receive benefit notices by regular mail if you do not choose, or your claims administrator does not offer, an electronic service option. *Usted recibirá notificaciones de beneficios por correo ordinario si usted no escoge, o su administrador de reclamos no le ofrece, una opción de servicio electrónico.*

9. Signature of employee. *Firma del empleado.* _____

Employer—complete this section and see note below. Empleador—complete esta sección y note la notación abajo.

10. Name of employer. *Nombre del empleador.* _____

11. Address. *Dirección.* _____

12. Date employer first knew of injury. *Fecha en que el empleador supo por primera vez de la lesión o accidente.* _____

13. Date claim form was provided to employee. *Fecha en que se le entregó al empleado la petición.* _____

14. Date employer received claim form. *Fecha en que el empleado devolvió la petición al empleador.* _____

15. Name and address of insurance carrier or adjusting agency. *Nombre y dirección de la compañía de seguros o agencia administradora de seguros.* _____

16. Insurance Policy Number. *El número de la póliza de Seguro.* _____

17. Signature of employer representative. *Firma del representante del empleador.* _____

18. Title. *Título.* _____ 19. Telephone. *Teléfono.* _____

Employer: You are required to date this form and provide copies to your insurer or claims administrator and to the employee, dependent or representative who filed the claim within **one working day** of receipt of the form from the employee.

SIGNING THIS FORM IS NOT AN ADMISSION OF LIABILITY

Employer copy/Copia del Empleador Employee copy/Copia del Empleado Claims Administrator/Administrador de Reclamos Temporary Receipt/Recibo del Empleado

Estado de California
Departamento de Relaciones Industriales
DIVISION DE COMPENSACIÓN AL TRABAJADOR

PETITION DEL EMPLEADO PARA DE COMPENSACIÓN DEL TRABAJADOR (DWC 1)

Empleado: Complete la sección “Empleado” y entregue la forma a su empleador. Quédese con la copia designada “Recibo Temporal del Empleado” hasta que Ud. reciba la copia firmada y fechada de su empleador. Ud. puede llamar a la División de Compensación al Trabajador al **(800) 736-7401** para oír información gravada. Una explicación de los beneficios de compensación de trabajadores está incluido en la Notificación de Posible Elegibilidad, que es la hoja de portada de esta forma. Separe y guarde esta notificación como referencia para el futuro.

Ud. también debería haber recibido de su empleador un folleto describiendo los beneficios de compensación al trabajador lesionado y los procedimientos para obtenerlos. Es posible que reciba notificaciones escritas de su empleador o de su administrador de reclamos sobre su reclamo. Si su administrador de reclamos ofrece enviarle notificaciones electrónicamente, y usted acepta recibir estas notificaciones solo por correo electrónico, por favor proporcione su dirección de correo electrónico abajo y marque la caja apropiada. Si usted decide después que quiere recibir las notificaciones por correo, usted debe de informar a su empleador por escrito.

Toda aquella persona que a propósito haga o cause que se produzca cualquier declaración o representación material falsa o fraudulenta con el fin de obtener o negar beneficios o pagos de compensación a trabajadores lesionados es culpable de un crimen mayor “felonia”.

Empleado—complete esta sección y note la notación arriba.

1. Nombre. *Nombre.* _____ Today’s Date. *Fecha de Hoy.* _____

2. Home Address. *Dirección Residencial.* _____

3. City. *Ciudad.* _____ State. *Estado.* _____ Zip. *Código Postal.* _____

4. Date of Injury. *Fecha de la lesión (accidente).* _____ Time of Injury. *Hora en que ocurrió.* _____ a.m. _____ p.m.

5. Address and description of where injury happened. *Dirección/lugar dónde ocurrió el accidente.* _____

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Employer: Se requiere que Ud. feche esta forma y que proporcione copias a su compañía de seguros, administrador de reclamos, o dependiente/representante de reclamos y al empleado que hayan presentado esta petición dentro del plazo de **un día hábil** desde el momento de haber sido recibida la forma del empleado.

EL FIRMAR ESTA FORMA NO SIGNIFICA ADMISION DE RESPONSABILIDAD

Employer copy/Copia del Empleador Employee copy/Copia del Empleado Claims Administrator/Administrador de Reclamos Temporary Receipt/Recibo del Empleado



Now Get Ready for
1/1/2021

AB 685

1

Breakdown of the law

2

Reporting and notification
requirements for employers

3

Expansion of Cal/OSHA
authority

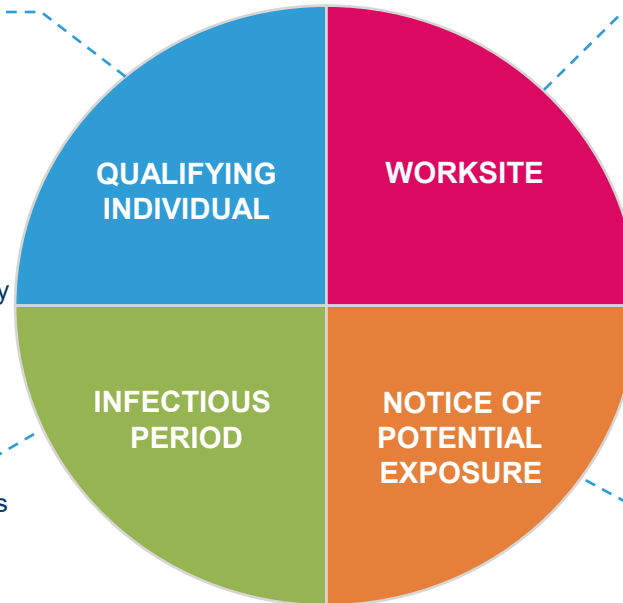
- **Signed into law on 9/17/20** by Governor (Labor Code section 6409.6)
- In effect from **1/1/21 – 1/1/23**
- Requires employer who receives “notice of potential exposure” to Covid-19 to take the following actions within **ONE BUSINESS DAY**:
 - Provide written notice to all employees and employers of subcontracted employees, who were on the premises at the same “worksites” as the “qualifying individual” (person who tested positive, received isolation order or died of Covid-19) within the “infectious period”
 - Provide written notice to the Union, if any, of the employees
 - Provide all employees who may have been exposed and their Union, if any, with information regarding Covid-19 related benefits that employees may be entitled to receive, including workers compensation benefits, Covid-19 related leave, company sick leave, paid sick leave, supplemental sick leave, as well as the company’s anti-retaliation/anti discrimination policies
 - Notify all employees, the employers of subcontracted employees, and the Union, if any, on the company’s Covid-19 disinfection protocols/safety plan that the company plans to implement to prevent further exposures per CDC guidelines
- The notice should be in a manner that does not reveal the identity of the “qualifying individual”

Qualifying Individual

- Defined as a person who:
 - Has a laboratory-confirmed positive case or diagnosis from a licensed healthcare provider
 - Received an isolation order from a public health official, OR
 - Died due to Covid-19
- *** An individual may receive a local isolation order based on potential exposure and not a confirmed case. Hence, inclusion of such individuals increases frequency of notice requirements for employers

Worksite

- Defined as the building, store, facility, agriculture field, or other location where a worker worked during the infectious period. Does not apply to buildings, floors, or other locations of the employer that a qualified individual did not enter.



Infection Period

- The time period a Covid-19 positive person is infectious as defined by the State Department of Health. The CA Department of Public Health (CDPH) states that for symptomatic cases, the infectious period is up to 10 days after onset.

Notice of Potential Exposure

- Includes any of the following: Notice to the employer or representative from
 - (a) A public health official/ licensed medical provider that an employee was exposed to the qualifying individual at the worksite
 - (b) Employee/ employee's emergency contact that the employee is a qualifying individual
 - (c) Employer's testing protocol that an employee is a qualifying individual, or
 - (d) Notice from subcontracted employer that a qualifying individual was on the worksite

- **Employers must also notify local public health department within 48 hours of the notice of a Covid-19 “outbreak”** (as defined by the CA Dept. of Public Health)
 - The CDPH currently defines an “outbreak” as three (3) or more laboratory-confirmed cases of Covid-19 among workers who live in different households within a two-week period
 - *** Note this is different than “outbreak” as defined in SB1159 – the “4 and 4” rule (4% of employees test positive)
- **Expansion of Cal/OSHA Authority**
 - Cal/OSHA normally has authority to prohibit entry to all or part of a workplace w/in imminent hazard, or to order that an employer stop an operation or process that creates such a hazard
 - AB 685 expands this power by allowing Cal/OSHA to prohibit entry to a workplace or part of a workplace, or prohibit an operation or process where there is a finding that the workplace, operation, or process exposes employees to a risk of Covid-19 infection
- **Serious Violations Citations**
 - Prior to AB 685, Cal/OSHA notified employers of an alleged violation 15 days prior to issuing a citation for a serious violation of occupational health and safety statutes or regulations. This enabled employers to provide additional info/evidence that they took mitigating factors to rebut the potential citation.
 - AB 685 eliminates the latter requirement and Cal/OSHA can now issue citations for serious violations related to Covid-19 immediately, though the employer may still appeal the citation.

Q&A



Thank
You!



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