

Workers' Compensation

New Law Creates COVID-19 Claim Framework



- Statements made by the employee, or
- Any other evidence normally used to dispute a work-related injury.

REPORTING REQUIREMENTS

When an employer learns of an employee testing positive, they must report to the insurer the following information within three business days:

- The date the employee tested positive.
- The address or addresses of the employee's specific place(s) of employment during the 14-day period preceding the date of their positive test.
- The highest number of workers who reported to work in the 45-day period preceding the last day the employee worked at each specific site.

GOVERNOR GAVIN Newsom has signed legislation that creates a new framework for COVID-19-related workers' compensation claims.

SB 1159 replaces an executive order that Newsom made on March 18 that required all employees working outside the home who contracted COVID-19 be eligible for workers' compensation benefits if they file a claim.

The new law expands that "rebuttable presumption" that a coronavirus case is work-related to front-line workers, as well as employees in workplaces that have had an outbreak of cases.

The new law is retroactive to July 6, the day after Newsom's executive order expired, and is set to expire Jan. 1, 2023.

Employers with fewer than five employees are exempt under the statute.

SB 1159's three parts

Part 1. The law codifies Newsom's prior executive order that provided a "rebuttable presumption" that COVID-19 was contracted in the scope and course of work by employees working outside of the home who get infected.

Part 2. The law provides a rebuttable presumption that firefighters, law enforcement officers, health care workers and home care workers who contract COVID-19, contracted it in the workplace.

Part 3. The law creates a rebuttable presumption that a worker's COVID-19 diagnosis is work-related within 14 days of a company outbreak. Under SB 1159, an outbreak is defined as when four employees test positive at a specific place of employment with 100 or fewer employees and, for larger places of employment, when 4% of the employees test positive.

It's also deemed a workplace outbreak if the employer had to shut down due to the coronavirus.

Rebutting a claim

Employers can rebut the presumption that COVID-19 was contracted at work if they have:

- Proof of measures they put in place to reduce potential transmission of COVID-19,
- Evidence of the employee's non-occupational risks of contracting COVID-19,

The Rossi Law Group has the following recommendations for employers in California:

- Keep track of all locations each employee works at, the number of employees on each day at each location, as well as a log of those that test positive (including the date the specimen was collected).

See 'Filing' on page 2

Law Adds Independent Contractor Exemptions

A NEW LAW has come to the rescue of a number of freelance professions by exempting them from the onerous requirements of AB 5, which required most independent contractors to be classified as employees in California.

Governor Gavin Newsom on Sept. 1 signed AB 2257 as an urgency measure, so that it took effect immediately.

If you remember, AB 5 set a new standard for hiring independent contractors, requiring many to be reclassified as employees covered by minimum wage, overtime, workers' compensation, unemployment and disability insurance. It created a three-pronged test that needs to be satisfied to determine if someone is an independent contractor or an employee.

To be independent contractors under AB 5's "ABC test," workers must (A) work independently, (B) do work that is different from what the business does, and (C) offer their work to other businesses or the public. All three conditions must be met.

It is prong B that's problematic. For example, a freelance writer working for a magazine would not be doing something different than the business does. The law sets limits on the amount of income someone can receive while doing this kind of work before being considered an employee.

AB 2257 also expands the "business-to-business" definition in AB 5 to cover a relationship between two or more sole proprietors.

PROFESSIONS NOW EXEMPT FROM AB 5

- Youth sports coaches
- Specialized performers
- Home inspectors
- Appraisers
- Underwriting inspectors
- Premium auditors
- Risk management, or loss control specialists
- Sports competition judges, umpires and referees
- Graphic designers
- Web designers
- Tutors
- Consultants
- Caddies
- Wedding planners and event vendors
- Yard cleanup
- Interpreters and translators

FREELANCE EXEMPTIONS

- Fine artists
- Freelance writers
- Translators
- Editors and content contributors
- Advisors, narrators, cartographers, producers and copy editors
- Illustrators, and newspaper cartoonists working under written contracts.



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Reconfigure Furniture in Offices, Public Seating Areas

- If you are aware of any staff who have tested positive between July 6 and Sept. 17, you have 30 days after Sept. 17 to report the positive test to the claims administrator.
- You must also report to the claims administrator positive COVID-19 results for employees that are not filing claims. In that case, you must omit personal identifying information of the employee.
- Provide any factual information to the claims administrator that could help rebut any claim of work-relatedness.

The law also has some teeth: Anyone who submits false or misleading information shall be subjected to a civil fine up to \$10,000.

One last thing...

- The governor also signed into law AB 685, which requires employers to report an outbreak to local public health officials. Employers must also report known cases to employees who may have been exposed to COVID-19 within one business day. ❖

Permanent Wildfire Safety Rules on Tap

AS WILDFIRES continue raging throughout California, Cal/OSHA has issued a reminder to employers that they are required to protect their outdoor workers from smoke if the air quality index exceeds 150.

Cal/OSHA has extended an emergency regulation it put in place in August 2019 through January 2021 as it works on a permanent regulation on wildfire smoke protection for outdoor workers in the state.

For the safety of your workers and to comply with the regulation, it's important that you follow the regs and know when you will need to take action to protect them from outdoor smoke.

The regulation applies when the Air Quality Index (AQI) for airborne particulate matter 2.5 microns (PM2.5) or smaller is 151 or greater in an area where employees are working outdoors. Here are the details:

Identification

Employers must monitor the AQI for PM2.5. You can monitor the index using the following websites:

- U.S. EPA AirNow
- U.S. Forest Service Wildland Air Quality Response Program
- California Air Resources Board
- Local air pollution control district websites or local air quality management district websites.

Training and instruction

Employers with outdoor workers need train their workers in:

- The health effects of wildfire smoke.
- Their right to obtain medical treatment without fear of reprisal.
- How they can obtain the current AQI for PM2.5.
- Actions they must take if the AQI exceeds 150 PM 2.5

Communication

Employers must implement a system for communicating wildfire smoke hazards to all affected employees, as well as a system for employees to inform the employer of smoke hazards.

OPTIONS FOR PROTECTING WORKERS

The regs provide three ways employers can protect their workers:

1. Modifications – If possible, employers should implement modifications to the workplace in order to reduce exposure. Examples include providing enclosed structures or vehicles for employees to work in, where the air is filtered.

2. Changes to procedures and schedules – Another option is to change work procedures or schedules. Examples include changing the location where employees work or reducing the amount of time they work outdoors or are exposed to unfiltered outdoor air.

3. Respiratory protection – Employers also have the option to provide proper respiratory protection equipment, such as disposable respirator masks for voluntary use without fit-testing.

Respirators must be labeled N-95, N-99, N-100, R-95, P-95, P-99 or P-100, and must be approved by the US National Institute for Occupational Safety and Health.

If the AQI is above 300, fit-testing and a medical examination prior to use would be mandatory.

The takeaway

If you have outside employees who may have to work in smoky conditions, you should stockpile a two-week supply of N95 masks for all of them if you are unable to implement other controls to reduce their exposure.

Cal/OSHA is in the process of making the emergency rules permanent and has sent them out for public comment. We will continue monitoring the agency's progress on the rules and update you when they have been completed. ❖



New Tech Can Reduce Truck Rear-End Crashes

A NEW STUDY from the Insurance Institute for Highway Safety (IIHS) reports that driver assistance technologies, such as automatic emergency braking and forward collision warning systems, have been shown to reduce accident rates among large trucks.

Increased use of these systems in these vehicles should prevent countless deaths and injuries and save millions of dollars.

The U.S. relies on large trucks for shipping goods, but they have always presented a serious threat to other vehicles. Often, the consequences have been fatal for drivers of passenger vehicles and costly for the trucks' owners.

For example, the singer Harry Chapin died in 1981 when his Volkswagen was hit from behind by a tractor-trailer on the Long Island Expressway. In 1986, a jury awarded his widow \$10 million (worth \$23.5 million today), which she donated to charity.

Forward collision warning (FCW) and automatic emergency braking (AEB) systems rely on either or both radar and video sensors to monitor the road in front of the vehicle. The FCW system sounds an audible alert when it detects that a collision is imminent.

The AEB system applies the vehicle's foundation brakes to avoid or reduce the impact of a collision if the driver does not act. AEB systems typically include the FCW system.

Manufacturers have generally designed these systems to avoid collisions with moving vehicles. Some systems can also detect pedestrians, motorcycles, bicycles and vehicles that have stopped moving.

These systems are widely installed in passenger vehicles; by the fall of 2022, almost all new passenger cars will include them.

Strong evidence

Studies have provided strong evidence that they help avoid rear-end crashes in passenger vehicles. Until now, their effects on large commercial trucks were less well known. The new IIHS research shows that they have a positive effect on these trucks.

The study looked at crash, miles-driven and hours-driven data between 2017 and 2019 for tractor-semi-trailers weighing 33,000 pounds or more. The vehicles were driven on limited-access highways and included those with and without the avoidance systems.

The results showed a clear improvement for trucks equipped with these systems:

- Trucks equipped with FCW struck other vehicles from behind at a rate that was 44% less than that of unequipped trucks. The rate for trucks with AEB was 41% less. These results were the same on both a miles-driven and hours-driven basis.
- FCW sounded warnings in 31% of rear-end crashes, and AEB activated in 43%.
- The average speed reduction between the moment of the systems' interventions and impact was more than half.

The takeaway

These results indicate that safety should improve as more of these systems are installed in large trucks. It is easier and less expensive to retrofit trucks with FCW systems, so these systems may be implemented sooner.

Technologies such as these will save lives, prevent serious injuries, and save truck owners and their insurers from having to pay out \$23-million damage awards. ❖



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