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## **PROTECTORS NEED PROTECTION TOO**

**By Scott A. O'Mara**

All PROTECTORS — including firefighters, peace officers, doctors, nurses and others — work in positions where they provide protection for our society. In their careers, they have a higher level of exposure to COVID-19 than the general populace. Therefore, society must recognize that all these PROTECTORS need protection from the health risks they face when confronted with the possibility of being infected with COVID-19 by those they seek to help.

Major groups support Senate Bill 1159 and Assembly Bill 664, which create a rebuttable presumption that any COVID-19 infections developed by PROTECTORS are presumed to be job-related, thereby entitling them to medical care and other benefits. While this presumption is rebuttable, it at least is a presumption. The PROTECTOR must show a positive COVID-19 testing within 14 days after the PROTECTOR performed work at his/her place of employment at the employer's direction. The diagnosis of COVID-19 is made by a physician licensed by the California Medical Board. If the presumption is met, the Protector is entitled to medical care, temporary disability benefits, Labor Code §4850 or §4800.5 time, and other benefits.

The presumptive language in SB 1159 and AB 664 establishes faster access to treatment and paid time off. In all Workers' Compensation cases except for COVID-19 cases, the employer has 90 days upon learning of a job-related injury or condition to accept or deny liability for same. If the employer fails to deny liability within 90 days, the injury or condition is presumed to be job-related. SB 1159 and AB 664 place a shorter time limit on the employer's time allowed to determine whether to accept or deny liability for a claim — 30 days. If a denial of liability is not made within 30 days, the COVID-19 case is presumed to be job-related. Both bills will minimize delays for medical treatment and delays in payment for time off work.

We recognize that PROTECTORS have exposures throughout their careers which are not parallel to those of the general public. Exposures can occur from such activities as transferring a patient in a stretcher or chair, going up and down stairs with a patient, performing CPR, holding and containment, etc. That exposure can be in the form of vomit, blood, feces, urine and other forms. Contact with people who may be COVID-19-positive is much more prevalent for the PROTECTORS.

Employers will try to rebut the presumption that a COVID-19 diagnosis is work-related. Therefore, it is important that infected PROTECTORS articulate the various hazardous exposures which may have led to their infection.

If a COVID-19 PROTECTOR is removed from work because of their infection, he or she will first have to use their sick leave under Senate Bill 1159. After that, they can utilize temporary disability benefits and either Labor Code §4850 or §4800.5 time. AB 664 does not force usage of members' own time. A licensed California doctor must certify temporary disability within 15 days after a COVID-19 diagnosis.

COVID-19 presents unique medical issues regarding which the PROTECTORS must be aware. Typically, injured workers have five years from their date of injury to reopen a Workers' Compensation case for new and further disability if their medical condition becomes more symptomatic. New studies indicate that COVID-19 can cause lasting damage to the lungs, heart, brain and other body systems, but the level of impairment from the damage is not readily known within a five-year period. However, certain medical conditions have been labeled as INSIDIOUS AND PROGRESSIVE, in which case the injured worker has an unlimited right to reopen his or her case for new and further disability beyond the normal five-year window. The determination that COVID-19 is an insidious and progressive disease may be made as more knowledge is developed as to what this virus does to the body and the time period involved. Therefore, doctors studying COVID-19 will in time determine if it is insidious and progressive.

The challenge for many PROTECTORS is articulating their subjective complaints. Such articulation is important because some complaints which may seem minimal initially may become more significant later, and if those complaints are not made, their connection to that injury may be lost later, along with the right of the PROTECTOR to reopen his or her case for new and further disability, thus precluding any entitlement to benefits which might otherwise be applicable.

Again, COVID-19 is unique because it could re-manifest. Therefore, proper description of PROTECTORS' subjective complaints to their treater is essential.

Finally, on July 23, 2020, the Occupational Safety and Health Administration implemented seven standards which place more awareness and responsibility upon employers. These standards include the following, some of which are covered in AB 664:

1 – Alter the worksite to ensure that all employees are at least six feet apart, with the presence of barriers between workers in places where such spacing is not feasible.

2 – Allow employees ample time and enough supplies to disinfect used surfaces and areas. (This reinforces the absolute need to clean turn-outs, equipment, rigs, stretchers and any other items and places where COVID-19 exposures might occur.)

3 – Remind employees to wash their hands in accordance with Federal guidelines, and provide enough time and supplies so they can do so properly.

4 – Make cloth face coverings available to all employees, or allow them to use their own. If they use their own, employees should be reimbursed for the cost of purchasing said face coverings.

5 – Screen employees for COVID-19 symptoms before they start work, and advise them to stay home if they feel sick.

6 – Inform employees regarding sick leave benefits if they are unable to come to work.

7 – Employees and customers should wear face coverings at all times. *(This applies to a different area of the labor market, but in any case it emphasizes the importance of wearing face coverings.)*

As time goes on, more medical information will become known about COVID-19, and hopefully an effective vaccine can be developed. If a vaccine becomes available, employees should have the personal option of being vaccinated at their employer’s expense.

**SB 1159, on 8/31/2020, passed to protect the PROTECTORS now sent to Governor Newsom.**



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**NOTICE:** Making a false or fraudulent Workers’ Compensation claim is a felony subject to up to 5 years in prison or a fine of up to \$50,000 or double the value of the fraud, whichever is greater, or by both imprisonment and fine.

