



# LAW1199.COM NEWSLETTER™

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## UPDATES:

- 1. COVERAGE FOR CORONAVIRUS ATTACK ON SAFETY PERSONNEL/AND MANY HEALTHCARE WORKERS**
- 2. DWC VIEW ON QUICKER ACCESS FOR MEDICAL EXAMS/TREATMENT**

**By Scott O'Mara**

### *UPDATE #1*

Assemblymembers Jim Cooper, Lorena Gonzalez, Rob Bonta and Senator Tom Umberg introduced Assembly Bill 664 which was previously amended in the Assembly on March 13, 2019 and with the most recent amendment in the Senate on April 17, 2020. This Amended Bill provides protection to safety personnel and many certain health care workers who are protecting and serving the populous of the State of California. This coverage is for fire, city, county, districts, state colleges, universities, state firefighters and other fire groups. The coverage for Peace Officers as defined by Section 830 of the Penal Code. Also, there is coverage for certain health care workers who provide direct patient care.

The drafting of the amendments declare the urgency of the bill and state “declaring the urgency therefore to take effect immediately.” This bill establishes a presumption that the communicable disease such as CORONAVIRUS, is job caused. Also, stating if this disease caused any permanent disability, the level of disability cannot be subject to a reduction by outside factors or the makeup of the worker.

The legislation states, “It is the intent of the Legislation in enacting this section to fully compensate the peace officers, firefighters, and certain health care employees whose lives are placed at risk when they are exposed to or contact COVID-19 or other communicable diseases in the course of performing their duties.” This STRONG verbiage reflects the devastating aspect of this type of exposure and the need for society to protect those who protect the populous.

The cost of the injury or possible injury costs also recognizes that the safety worker/certain health care workers could be placed in quarantine while there is a medical determination if there is a communicable disease and if there is a need for medical treatment. The coverage for compensation during quarantine or lost time will be paid for by the employer. This does not require a finding of the disease. This coverage will insure that the exposed

member will not be reluctant either consciously or sub-consciously try and avoid the potential quarantine for fear of losing their income and medical benefits. Currently, without this section of the law a narrow and limited view by certain Employers or Supervisors at times would try and deny the safety worker/certain health care workers Workers' Compensation benefits while the case is vetted out. If there is a communicable disease and the safety worker/certain health care workers are forced to work this will cause additional exposures to the public and co-workers. The Legislation also recognizes the potential expense for separate and temporary quarantine needed to protect the family and others who live in the primary residence of the exposed worker will be compensated for. This Legislation is necessary to protect those who PROTECT AND SERVE the people of California.

## *UPDATE #2*

The Workers' Compensation system recognizes exposures may occur in many work situations and the need for follow-up medical care from said exposures. The Department of Industrial Relations set forth a protocol on March 28, 2020, that encourages the use of telehealth evaluations; this can expedite access to medical care. The telehealth evaluations allow a remote evaluation by a doctor using a video conferencing mechanism allowing the worker and the doctor to see and interact with each other. This video connection obviously lessens the exposures to the worker, to the people in the lobby, the doctor, the physician's assistant, the doctor's staff, etc.

Most assuredly the benefit of telehealth is quicker evaluations, by avoiding the delay that would occur with an in-person medical examination.

I have spoken to several doctors who were working to embrace this concept prior to the DWC's Newsletter of March 28, 2020.

For the worker, this can avoid the delay of providing medical care and avoid long travel that may be necessary depending upon where the worker lives and where the doctor's office is located. Also, this will limit additional exposures to other patients in the lobby that may have COVID-19 or other medical problems that could complicate recovery of the injured worker.

Specifically, the Department of Industrial Relations Newsletter of March 28, 2020, states,

“...it may be beneficial for parties to allow telehealth for QME evaluations when an in-person physical examination is not necessary.”

But, it also encourages the primary treating physician to utilize this mechanism. They end their discussion with the initial summary that,

“DWC strongly recommends that all of the following conditions apply to a telehealth evaluation to promote the health and safety of all parties...”

1. The injured worker is able to participate in the telehealth evaluation without violating the stay-at-home order.
2. The medical issue in dispute is determined to be essential to an injured worker's benefits and must be addressed no later than May 1, 2020.

One of the major issues that can be determined is whether the medical condition is an injury AOE/COE (Arising Out of Employment/Course of Employment) i.e., is job-related. Another issue is the ability or lack thereof of the employer's right to cease or continue payments of Temporary Disability, §4800 time, §4850 time, §4800.5 time, as well as the employer's obligation to provide medical treatment.

The evaluating doctor such as the Qualified Medical Evaluator must acknowledge that the evaluation of the patient by telehealth is an effective and safe way that does not require an in-person physical examination. This addition is an expansion of access to benefits, again, not requiring the worker to travel to see the doctor, whether it is the treating doctor or if there is a dispute as to whether the condition is job-related or access to benefits requiring an evaluation by a Qualified Medical Evaluator. In any event, it does require preparation of the worker prior to the evaluation as to those elements the doctor will be reviewing and examining to issue an opinion regarding the need for medical care, the extent of medical care, the time off from work and determining whether the worker is temporarily or partially disabled.



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