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COVID-19 LEGISLATION TO DATE

By Scott A. O'Mara

On May 14, 2020, the California Senate Labor, Public Employment and Retirement Committee approved a specific bill – Senate Bill 1159, authored by Sen. Jerry Hill (and co-authored by Assemblymember Tom Daly) – which deals with COVID-19 exposures and the potential harm they create for many California workers. SB 1159 sets forth a presumption which applies to particular workers in the labor force who are critical in protecting the public from the spread of COVID-19 and its resulting damage.

As discussed in our previous newsletter – 2020 Issue #5 – SB 1159 sets forth criteria for critical workers who have direct contact with the public, thereby creating a higher risk of potential harm to these workers. Most significantly, this bill creates a rebuttable presumption that any COVID-19 diagnosis would be presumed to be job-related.

Other bills designed to provide extended coverage to a narrow segment of the population have been considered. One such bill, Senate Bill 893 – which would have benefited only hospital workers – was voted down. SB 1159 provides broader coverage for more exposed employees.

Of significance, the employer groups who contend that California has a no-fault system to deal with job-related injuries are taking a narrow, misguided perspective, as the no-fault system does not deal with the realization that work is a contributory factor to workers being impacted by COVID-19.

The elements to demonstrate that COVID-19 is job-related still exist in Senate Bill 1159. The threshold for showing such disease is work-related is changed to a presumption. The change to the presumption is because of the ongoing horrendous exposures which numerous work groups have to this disease.

Some employer groups claim that California's no-fault system minimizes the need for the rebuttable presumption created by SB 1159, which is incorrect. A no-fault system in Workers' Compensation still requires proof that a condition is job-related. The rebuttable presumption is a recognition that particular workers have a very strong work exposure to the development or manifestation of COVID-19.

The broad view is that COVID-19, as time progresses and if the methodologies developed are successful — whether in the form of vaccinations or other treatment — the damage caused by this virus will be minimized. With that in mind, the legislation which sets forth that workers in the public or private sector who are employed to combat the spread of COVID-19 are covered, also will set forth that the coverage is not for an unlimited period, as the legislators are discussing what the length of the period for application of the presumption should be.

As discussed in a previous newsletter — 2019 Issue #6 — the Governor's executive order N-62-20 set forth a policy forcing workers to utilize their own sick leave benefits before they can access temporary disability benefits or benefits pursuant to Labor Code §4850. This is contrary to the establishment of Workers' Compensation, which does not force workers to use their own time.

The limitation on the Governor's executive order states: "This presumption shall only apply to dates of injury occurring through 60 days following the date of this Order." The date of the order was March 19, 2020. The presumption proposed in SB 1159 is not limited to a 60-day window.

Again, it is significant that some employer groups and insurance companies recognize that without the presumption, there will be delays in treatment, as well as delays in benefits, potentially compounding and exacerbating the extent of workers' residual impairment. Even more importantly, the lack of a presumption will impact not only the workers affected by these exposures, but their families as well, and friends who provide supplemental economic assistance to allow affected workers to get through the treatment stage, support their households, and fulfill their family needs.

Finally, 2020 Issue #5 discusses the fact that State Compensation Insurance Fund, the largest Workers' Compensation carrier, has announced their support for the concept that essential workers impacted by their exposures to COVID-19 are entitled to full Workers' Compensation benefits.

Newsletter 2020 Issue #2 discusses COVID-19 exposures and the need to protect not just workers, but their families as well, by having reasonable medical care.

Assembly Bill 664 also introduced and provides protection for many workers, firefighters, peace officers and health care workers with the presumption that COVID-19 is job related.

Senate Bill 1159 is not a give-away, but a protective bill. Governor Newsom's executive order N-62-20 is also protective, but unfortunately has a time limitation which potentially could harm California workers and their families.

The concept of the presumption is for at-risk workers to receive medical care without delay. Allowing at-risk workers protection against COVID-19 creates a return back to work, reducing time off (sick leave), thereby enabling the at-risk workers to return to work sooner, lessening the cost placed on the workers, their families and our society as a whole.



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THE LAW OFFICES OF
SCOTT A. O'MARA

2370 Fifth Ave.
San Diego, CA 92101

4200 Latham St. – Ste. B
Riverside, CA 92501-1766

1-800-LAW-1199
(1-800-529-1199)
619-583-1199
951-276-1199
www.law1199.com

**BOBBITT, PINCKARD
& FIELDS, A.P.C.**

8388 Vickers St.
San Diego, CA 92111

4200 Latham St. – Ste. B
Riverside, CA 92501-1766

858-467-1199
www.coplav.org

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