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AMENDMENT ON SOME PRESUMPTIONS SIGNED BY THE GOVERNOR — 9/29/22

By Scott A. O'Mara

Governor Newsom signed two bills on 9/29/22 — Senate Bill 1127 and Assembly Bill 1751. Senate Bill 1127 shortens the time-frame for employer decisions as to whether certain cases should be accepted or denied. Employers will now have a shorter time period to accept certain presumptive cases as being job-related or face penalties of up to \$50,000 if they unreasonably deny these cases.

Employers previously had 90 days to accept or deny all cases. If a denial occurred after 90 days, an injury was presumed to be job-related. SB 1127 changes the time parameters for acceptance or denial of cases involving certain law enforcement officers and firefighters from 90 days to 75 days for certain presumptive medical injuries and conditions, including hernias, heart-related conditions, pneumonia, cancer, PTSD, blood-borne infectious disease, MRSA, biochemical disease, tuberculosis, lyme disease, meningitis and aureus skin infections, as well as the low back for certain law enforcement officers.

Another significant element of SB 1127 is that the maximum period during which certain safety workers can receive temporary disability benefits for presumptive cancer cases has been increased from 104 weeks to 240 weeks. This change provides recognition of the very complex nature of the treatment which is often required for cancer cases. This change also creates economic incentives for employers to provide the medical care needed to cure or relieve injured workers from the effects of their industrial injuries in such cases, thereby allowing workers to recover faster and return to work.

Unfortunately, some employers tend to delay their decision as to whether an injury is or is not work-related with no economic impact upon them. The implementation of penalties up to \$50,000 will create a new approach by adjusters in their evaluation of cases, and provide substantial economic motivation for employers to provide more workers with the care they need to cure or relieve them of the effects of their industrial injuries.

Assembly Senate Bill 1751 extends the presumption of COVID-19 being job-related for safety workers through January 1, 2024. (See *Law1199.com 2021 Issue #8.*)

The continuation of COVID has resulted in a greater understanding of the medical phraseology which defines developments which result from the impact of COVID-19 on prior existing medical

problems, as well as problems which develop subsequent to the finding of COVID. Comorbidity, defined as “the simultaneous presence of two chronic diseases or conditions in a patient”, comes into play when COVID impacts either an underlying medical condition, or another medical condition which develops after the COVID finding. When comorbidity exists in COVID-19 cases, affected workers are placed at greater risk as to the eventual outcome of their health because of the impact of COVID on their other medical condition. In either scenario, the second medical condition — whether it develops before or after the onset of COVID-19 — makes the situation more severe and problematic.

Many COVID-19 sufferers develop comorbidity if they have high blood pressure/hypertension, chronic pulmonary disease, diabetes, liver problems, kidney problems, cancer or even obesity. These factors, along with other medical conditions which are combined with COVID-19 to create comorbidity, place the affected workers at a higher risk of suffering a more severe disability because of the combined impact of the two medical conditions, substantially delaying their ability to return to work and/or increasing their level of residual impairment.

Research regarding comorbidity has shown that it increases the likelihood of death when two medical conditions — one being COVID-19 — interact. As time progresses, and our understanding of comorbidity and COVID increases, there will be information which should cause adjusting agencies to see the combined effect.

The combined effect of COVID-19 and other previously-existing or later-developing medical conditions is a paramount issue to be addressed by Workers’ Compensation adjusters, adjusting agencies and self-insured employers so they will recognize the impact of comorbidity. If these parties fail to make this recognition and delay treatment needed by injured workers to cure or relieve their work-related injuries which involve comorbidity, the workers most likely will be off work for a longer period of time and have increased residual impairment.

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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
