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GOVERNOR NEWSOM SIGNED SENATE BILL 1159 – ASSEMBLY BILL 685

BY: SCOTT A. O'MARA

September 17, 2020 Governor Newsom signed two bills that deal with the significant challenges and problems that currently exist regarding the COVID-19 exposures and illnesses that emanate from work exposures. During this signing of SB 1159 and AB 685 the Governor stated “Protecting workers is critical to slowing the spread of this virus,” he also stated, “These two laws will help California workers stay safe at work and get the support they need if they are exposed to COVID-19.”

SB 1159 deals with an umbrella protection for a certain segment of the population that develops the COVID-19, and creates the rebuttal of presumption that COVID-19 is work related. AB 685 sets forth standards that the employer must meet advising co-workers and subcontractors as to exposures and/or potential exposures to COVID-19, from work.

SB 1159 establishes a presumption for fire fighters, certain peace officers, certain health workers and workers' that provide direct patient care or custodial employees with contact with COVID-19 patients at a health facility for home health agencies and providers of in-home health supportive services.

Of significance is the threshold that the employer has to deny the case has been changed from ninety days to thirty days. If in fact the employer does not make a denial within thirty days of awareness of the COVID-19 that the worker claims to have, this establishes an additional presumption that the COVID-19 is work related (for safety and particular health care providers).

There is a second area of employment covering workers' who test positive during an OUTBREAK at employees' place of employment. There must be five or more employees at the place of work. These employees fall within the forty-five day rule of denial.

Further, that the tested positive or diagnosis of COVID-19 after May 6, 2020 shall be certified for temporary disability within the first fifteen days after the initial diagnosis and shall be re-certified for temporary disability every fifteen days thereafter the first forty-five days following initial diagnosis. If the employee did test positive for the diagnosis of the COVID-19 before May 6, 2020 the employee shall obtain certification no later than May 21, 2020 documenting the period

for which they were temporary disabled and unable to work. Again, they implement the additional standard of re-certification every fifteen days thereafter the first forty-five days of diagnosis.

The Labor Code states that the employee has tested positive of COVID-19 within 14 days after the employee performed labor or services of employment, this is the first threshold. The diagnoses are by a licensed physician, surgeon holding a MD or DO degree, state licensed physician assistant, a nurse practitioner acting under the review and supervision of the physician or surgeon, and that the diagnosis is confirmed by a COVID-19 serological test within thirty days of the date of diagnosis.

SB 1159 also creates additional change in the implementation of the Labor Code. In the past, once the condition is found to be work related, the worker could immediately receive temporary disability paid by the employer, or benefits pursuant to Labor Code §4800, §4800.5 or §4850. SB 1159 forces the COVID-19 infected worker to use their own sick leave before they can access the workers' compensation benefits pursuant to temporary total disability §4800, §4800.5 and/or §4850 payments. This barrier of benefits will create a constitution issue that will be resolved at a later date. Additionally SB 1159 states that when the worker tests positive for COVID-19 on or after May 6, 2020, the worker will be mandated to be certified for temporary disability within fifteen days of the initial diagnosis and shall be re-certified regarding temporary disability every fifteen days for the first forty-five days after the diagnosis.

The Labor Code speaks that the diagnosis is to be made by a physician or surgeon who is licensed by the state of California has to be either a doctor predesignated by the worker in the event of a job related injury, or, if there is a medical network that the employer has, a physician within that network. But, it does add that otherwise the certifying position may be a physician or surgeon of the employee's choice allowing the worker to step outside the employers' medical network or the predesignation.

AB 685 goes to the specifics of the work environment and what has to be done by the employer to minimize future exposures and/or illness related events that occur due to said exposures.

AB 685 indicates that where public and private employers receive notice of any potential and/or actual exposure to COVID-19, and a notification will be provided to the employees within one business day of the potential exposure or actual exposure to COVID-19. The legislation requires that the notice is not just limited to the employees, but any subcontractors that who are on the premise on or about time of the exposure.

The particular emphasis of AB 685 bill is the demand that the employer notify all employees and subcontractors. AB 685 requires that the employer have a record keeping policy and any notification that they provide as to the exposure must be kept at a minimum of three years from said exposure.

If the employer does not take appropriate proactive roles relative to the exposure, this may create an imminent hazard to employees, or other people coming on the property. The employer could then be prohibited from use of that immediate area in which the imminent hazard exists, or there may complete prohibition from the entry of the work site depending on many factors. These

factors would be what the employer must do to clean up the work site and create a situation that avoids the opportunity for imminent hazard to reoccur.

The purpose of AB 685 is not to interrupt the performance of critical governmental functions, but to ensure public health and safety.

The notice to the employees, notice to the subcontractors will be in a written form, and the information must be disseminated within one business day of receipt of exposure information. Additionally, when the employer or the agent receives notice of a COVID-19 exposure or outbreak they are mandated within 48-hours to notify the local Public Health Agency of the work site and the names, phone numbers and occupation of the work site employees who have had the finding of the COVID-19 disease.

The definition of a “qualifying individual” who does have COVID-19 is set forth by a laboratory confirmed case of COVID-19 as defined by the State Department of Public Health, a positive COVID-19 diagnosis from a licensed health care provider, a COVID-19 related order to isolate provided by a public health official, and finally a death due to COVID-19. Again, this individual’s exposure and death is to be provided to the State Department of Public Health.

This legislation has a timeline and will cease to be in place on and after January 1, 2023.

The purpose of this demanding legislation is to hopefully curtail and minimize further exposures to co-workers and the public. This will take a policy and procedure manual created by the employer to identify, deal and communicate to the various individuals and government entities as to the exposure and/or the findings of the COVID-19.

It would be the hope that by this demand, and following the same, there can be minimization of further exposure to COVID-19, and development of COVID-19.



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