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## **AB1751 COVID PRESUMPTION POSSIBLE EXTENSION TO 01/2025, MORE WORKERS' COVERAGE SB213, SB1400 HIGH COST? TAX TRAP**

**BY: SCOTT A. O'MARA**

SB1159 was originally passed and signed by the Governor on 9/17/2020 provided certain factors that create a presumption that if the worker developed COVID-19 within fourteen days that the worker performed services at the employment place or at the direction of the employer, and if the diagnoses of the COVID-19 was made by a medical doctor, doctor of occupational medicine, state licensed physician assistant, or a nurse practitioner, that the diagnoses of COVID-19 was confirmed by the COVID-19 test within thirty days of diagnoses, that there is a presumption that this disease was job-related if the worker fell within certain classifications of a firefighter, peace officer or providing care for the person that does have COVID-19 as set forth in §3212.87. This presumption expires on 1/1/2023.

A new bill, AB1751 was set forth on February 3, 2022, could extend the presumption expiration date to January 1, 2025, therefore extending it two years, the bill is still under review and not approved yet.

This presumption unfortunately is reflective as the ongoing COVID concerns that we have. It is necessary to protect those individuals that are protecting us.

Again, the COVID-19 presumption is a necessity as to the disease and the infectious nature of it as well as protecting those that are protecting us.

There is a Senate Bill (Senate Bill 213) offered that could create presumptions for various medical conditions for hospital workers. This bill will expand the coverage to people within presumptions that were set forth for certain cancers, musculoskeletal injuries, post-traumatic stress disorder and some infectious diseases, pulmonary disease and very importantly the COVID-19. This expansion that is suggested again creates an umbrella of protection for other people that protect our society. SB 213 will be hashed out further in the Assembly.

It should be noted that there was previous legislation also offered that has impact for care, and this is Assembly Bill 1400 (AB 1400). This Assembly Bill created a single-payer system and the cost of the bill was not reflected in the Assembly Bill, and it is anticipated that the annual cost revenue needed would be four hundred billion dollars to achieve this passage of bill to extend medical coverage to a great number of people. This bill has run into many hiccups relative to the actual cost and implementation of same. At this point in time, the bill itself is in a delayed status. Many of the reviewers feel that the estimated cost between \$314 billion — \$391 billion does not really reach the point of the cost. This included a 2.3% excise tax on businesses with more than \$2 million in annual gross receipts; a 1.25% payroll tax on employers with 50 or more workers; a 1% payroll tax on workers earning more than \$49,900; and a progressive surtax to start at 0.5% on income over \$149,509 and rising to 2.5% at \$2,484,121.

The single-payer system in the current verbiage of AB1400 exempts workers' compensation and provides extended care. The program would be called California Guaranteed Health Care Act and the program, or Cal Care, is to provide a comprehensive universal single-payer coverage and place coverage on all residence of the state of California.

*(All residence)* does not mandate if the individual be a citizen of the United States, just a resident and it is a very liquid term *(the term residence)*.

The reality is the extension of the care, how far it will go and the anticipation even though it's not included, the change that can occur in the bill at a later date to incorporate workers' compensation Cal Care. There are many challenges and problems that currently exist within the Utilization Review and Independent Medical Review in California. The idea that the Cal Care single-payer bill could resolve it, there has been discussions of same. Again, this does not address the issue as to the artificial limitations that currently are there in accessing medical care, Utilization Review and Independent Medical Review.

### **TAX TRAP**

Another significant consideration that the worker needs to be aware of is misinformation that can emanate from the bookkeeper or accountant on the determination as to whether the money derived is taxable under the retirement system.

Under the retirement system, whether it is a local city, County Retirement Act 1937 or CalPERS, it has established a threshold that once the condition is established as job-related and the medical condition that is established as work-related within certain parameters precludes the worker from doing their substantial duties, the first fifty percent of the income that is received on a retirement is not subject to taxation (IRS rule). Therefore, this concept of the first fifty percent not being subject to taxation if certain thresholds are met by the retirement boards is to protect and provide

economic security for those people that have injuries that impact their employability at a later stage.

Unfortunately there is a segment of people that are doing taxes for safety members that try to draw a parallel that the level of percentage of disability the workers' receive in workers' compensation is a level of disability that is not taxable when it comes to retirement, income.

The permanent impairment percentage that is determined by the workers' compensation system is separate and distinct from the fifty percent that is found in the retirement system that is non-taxable.

Those workers' that follow this legally incorrect recommendation by this tax person, that the level of percentage in disability that they have in workers' compensation is equal to the same level is not taxable are subjecting themselves to an investigative process by the IRS, penalties and sanctions.

Therefore, if you have a condition that is job-related, and if the job-related condition precludes you from doing your substantial duties and the governing agency of your retirement system agrees with that, the first fifty percent of your retirement is not subject to taxation (per IRS) and has no bearing or impact relative to the percentage of disability you will receive from workers' compensation. This awareness is important as I have seen this occur where the tax person (*so far the ones that I have seen are not CPAs, accountants*) but they are book keepers or people that market themselves as tax experts. Fortunately in most cases the knowledgeable worker will not to fall for that Tax Trap that will come back and cause them harm at a later stage.

Anticipate that the medical care is going to be re-examined again. Anticipate that the presumptions on the COVID-19 should pass extending that. Anticipate that the employers will look at the Cal Care (single-payer system) as a way to create more control over the worker.

There are some writers that think that the Cal Care (single-payer system) may remove the determination from the employer as to the need of medical care. The overlapping problem that exists is the lack of judicial review that is not available in the Cal Care (single-payer system) that is suggested. As it is now, even though there are challenges, there can be rights to appear and go forward in some workers' compensation cases and get a judicial decision based upon substantial evidence.

The California workers' compensation system mandates that the employer, either through insurance or their self-insured program, provide coverage for the work-related injuries. The Cal Care (single-payer system) would shift the economic responsibility for medical care away from a particular employer and puts it on all of society.

With the economic responsibility that exists on employers for harm and injuries that occur at work, this motivates the employer to change or modify the work to lessen the likelihood of a work-related injury. The Cal Care (single-payer system) is one that would allow all employers to remove their economic responsibility for medical care and place it on all tax payers.

The perspective Cal Care coverage will not encourage a healthier work situation. It is unfortunate that the characterization of the system will have some sunlight and will be sold in a similar matter to when Utilization Review and Independent Medical Review was marketed. It was thought that Utilization Review and Independent Medical Review would benefit the worker, which it has not in all situations and has created a block to access medical care. The blind perspective that people are assuming that a Cal Care type system will solve the current problems in the workers' compensation system is not correct. Again, the employer that has a work environment that can place workers at risk or can cause injury should be economically responsible either through the insurance or self-insured. Economic responsibility is necessary on the employer to maintain a work environment of less threat of job-related injury to the worker.



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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.*

