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SB 1159: Worker's Compensation Changes Related to COVID-19

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On September 17, 2020, Governor Newsom signed SB 1159 (Hill), which expands workers' compensation coverage for employees who contract COVID-19 through December 31, 2022. The bill contained an urgency clause, so went into effect immediately upon signature.

SB 1159 has three key components:

First, it codifies the Governor's executive order, issued in May, establishing a rebuttable presumption of work-related injury for workers who contracted COVID-19 between March 19, 2020, and July 5, 2020. Under usual circumstances, employees are required to present evidence establishing the illness or injury is work related in order to qualify for worker's compensation benefits. The executive order instead shifted the presumption to the employer so that if certain criteria were met, it's automatically presumed the employee contracted COVID-19 at the workplace, during employment, and switched the burden of proof that the injury did not occur at the workplace to the employer.

Second, the bill establishes a rebuttable presumption for first responders and health care personnel. The law presumes covered workers contracted COVID-19 in the course of employment if the worker tests positive within 14 days of working at their place of employment, and the date worked was after July 6, 2020. The employer has 30 days to rebut the claim.

Third, the bill creates a presumption that applies to employers with five or more employees when there is a COVID-19 “outbreak” at the place of employment. SB 1159 establishes a presumption that an employee contracted COVID-19 during employment at the workplace if (1) they test positive within 14 days after working at their place of employment; (2) the date worked was after July 6, 2020; and (3) the positive test occurred during an “outbreak” at the employee’s place of employment. Employers have 45 days to rebut a claim.

SB 1159 defines “outbreak” as any the following:

- If the employer has 100 or fewer employees at a specific place of employment, 4 employees test positive for COVID-19 within 14 calendar days.
- If the employer has more than 100 employees at a specific place of employment, 4 percent of employees test positive within 14 calendar days.
- Public authorities order the place of employment closed due to a risk of COVID-19 infection.

“A specific place of employment” is defined as the building, store, facility, or agricultural field where an employee performs work at the employer’s direction. It does not include the employee’s home or residence, unless the employee provides home health care services to another individual at the employee’s home or residence.

SB 1159 also establishes new reporting requirements. When an employer with five or more employees “knows or reasonably should know” that an employee tests positive for COVID-19, the employer must inform their workers’ compensation carrier within three business days of the following:

- An employee tested positive;
- The date when the employee tested positive;
- The address of the employee’s worksite; and
- The highest number of employees who reported to the worksite within 45 days of when the employee last worked.

Finally, any employer who is aware of any employee testing positive on or after July 6, 2020, but before the law went into effect on September 17, 2020, must report the employee information described above to their claims administrator within 30 days.

For any questions about SB 1159, please reach out to Lauren Noland-Hajik at lhajik@ksacsacramento.com.

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