



BULLETIN

No. 19-09

October 21, 2019

The deadline for Governor Newsom to act upon 2019 bills passed by the State Legislature has come and gone. Among the 870 bills enacted this year, the following may be of interest to the workers' compensation community:

Employee & Independent Contractor Status (AB 5, Gonzalez) amends LC §3351, adds LC §2750.3, and amends Unemployment Insurance Code §§606.5 and 621 to codify the California Supreme Court's *Dynamex* decision, requiring employers to use a 3-part test to determine if a worker is an employee or independent contractor and to clarify its application. A number of employment categories were exempted, including attorneys, doctors, realtors, cosmetologists, and travel agents. For workers' comp, the application of the ABC test to the definition of employee takes effect 7/1/20.

California Consumer Privacy Act (CCPA) of 2018 Exemption (AB 25, Chau) amends Civil Code §§1798.130 and 1798.145 to exempt companies, until 1/1/21, from CCPA provisions requiring them to collect personal data on job applicants, employees, business owners, directors, officers, medical staff, or contractors, and delaying employee and job applicant rights to access and delete certain personal data compiled on them within the normal scope of employment or hiring. Excludes personal data collected solely to administer benefits from CCPA (though it's unclear if this applies to workers' comp), and exempts medical data or businesses covered by the Confidentiality of Medical Information Act or HIPAA. The CCPA provision requiring a notice of information use and the provision related to private civil actions still take effect 1/1/20.

Blood Lead Levels; Reporting (AB 35, Kalra) amends Health & Safety Code §105185, and adds LC §147.3 to require the Dept. of Public Health to notify Cal/OSHA within 5 days of receiving a lab report showing that a worker has a lead concentration in their blood of at least 20 micrograms/deciliter. The bill defines this blood-lead level as injurious to the worker's health, and the DPH notification will be deemed a complaint of a serious violation of workplace safety standards requiring Cal/OSHA to begin investigating within 3 days and allowing sanctions and fines. Training must be provided by 5/1/20 and annually thereafter.

Newspaper Distributor Exemption from *Dynamex* (AB 170, Gonzalez) amends LC §2750.3 to exempt until 1/1/21 newspaper distributors working under contract with a newspaper publisher, and newspaper carriers working under contract either with a newspaper publisher or newspaper distributor, from the *Dynamex* provisions added by AB 5.

Valley Fever Awareness Training (AB 203, Salas) adds LC §6709 to require construction employers conducting specified work or vehicle operation in counties where Valley Fever is highly endemic to provide awareness training before employees begin work expected to cause substantial dust disturbance. Effective 1/1/20.

CURES Changes (AB 528, Low) amends Business & Professions Code §209 and amends, repeals, and adds §§11164.1, 11165, 11165.1, and 11165.4 of the Health & Safety Code to require pharmacies to report the dispensing of controlled substances to the CURES database within 1 working day of the fill date (vs. the current 7-day report period); authorize California-licensed physicians who are not registered with the DEA to register for CURES access; expand the authority of a prescriber's licensed delegate to retrieve CURES data on behalf of the prescriber; and to require pharmacies to start reporting when they dispense Schedule V drugs.

Civil Arrests at Courthouses (AB 668, Gonzalez) adds Civil Code §43.54 and amends Code of Civil Procedure §177 to protect individuals from civil arrest while in California courthouses or attending judicial proceedings. The bill does not apply to arrests made pursuant to valid judicial warrants. CAAA sponsored the bill in part as a response to growing fears among immigrant injured workers following civil arrests by ICE agents at California courthouses.

"Pay for Delay" Drug Agreements (AB 824, Wood) adds Div. 114.01 (commencing with §134000) to the Health & Safety Code to prohibit "pay-for-delay" agreements in which brand drug manufacturers contract with generic drug manufacturers to delay marketing cheaper, generic versions of their drugs.

CCPA Definitions (AB 874, Irwin) amends Civil Code §1798.140 to clarify that "publicly available" information exempted from CCPA includes data lawfully available from government records; and "personal information" is information "reasonably associated" with an individual or household, but excludes de-identified or aggregated information.

Drug Compounding Standards (AB 973, Irwin) adds Business & Professions Code §4126.8 to require drug compounders in the state meet US Pharmacopeia-National Formulary compounding standards, including testing and quality assurance standards, and to allow the state Pharmacy Board to impose additional standards.

Firefighter Peer Support and Crisis Referral Services (AB 1116, Grayson) adds Article 21 (commencing with §8669.05) to Ch. 7 of Div. 1 of Title 2 of the Government Code to allow state and local or regional public fire agencies to establish programs to aid firefighters on a wide range of emotional or professional issues including critical incident-related stress, serious injury or illness, substance abuse, and suicide.

Personal Information/Data Breaches (AB 1130, Levine) amends Civil Code §§1798.29, 1798.81.5, and 1798.82 to redefine personal information in various consumer protection statutes to include biometric data, tax ID, and passport numbers. The bill also authorizes entities notifying consumers of a breach to provide instructions on how to notify other entities that breached data is no longer reliable for authentication. Effective 1/1/20.

CCPA Personal Data (AB 1355, Chau) amends Civil Code §§1798.100, 1798.110, 1798.115, 1798.120, 1798.125, 1798.130, 1798.140, 1798.145, 1798.150, and 1798.185 to broaden CCPA's Fair Credit Report Act exemption, specifying that businesses do not need to collect or retain personal data for longer than they would during ordinary business; exclude de-identified or aggregated consumer data from the definition of personal information; delay application of CCPA mandates for certain business & consumer communications until 1/01/2021; and specify that a private right of action arises after a data breach where nonencrypted and nonredacted personal data are disclosed.

Study on Fire Equipment Maintenance Cancer Risks (AB 1400, Kamlager-Dove) amends Civil Code §§1798.29, 1798.81.5, and 1798.82 to require CHSWC to work with Los Angeles County and labor organizations to produce a study by 1/1/21 on the risks of carcinogenic exposures and the incidence of cancer among mechanics who repair and maintain fire equipment.

CCPA Disclosure Requests (AB 1564, Berman) amends Civil Code §1798.130 to require businesses to provide two methods for consumers to submit CCPA requests for information, including, at a minimum, a toll-free phone number. However, companies that operate exclusively online and have direct relationships with the consumers from whom they collect personal data are only required to provide an email address for submitting CCPA requests.

Serious Injury or Illness Reporting (AB 1804, Labor & Employment Comm.) amends LC §6409.1 to require employers to report serious injuries, illnesses, or deaths immediately by phone or via a Cal/OSHA online portal; until the agency creates the online portal, the bill allows employers to continue reporting injuries by phone or email. Effective 1/1/20.

“Serious Injury or Illness” & “Serious Exposure” Definitions (AB 1805, Labor & Employment Comm.) amends LC §§6302 and 6309 to revise the definition of “serious injury or illness” that must be reported to Cal/OSHA by removing the 24-hour minimum requirement for qualifying hospitalizations (for reasons other than medical observation or tests), and adding loss of an eye as qualifying injury. Also defines “serious exposure” as an exposure to a hazardous substance that could realistically cause death or serious physical harm. The revised language brings the Cal/OSHA definitions in line with Fed-OSHA standards.

State Hospital Patients Injured in VR Programs (SB 78, Budget & Fiscal Review Comm.) adds LC §3370.1 as part of an omnibus health trailer bill to specify that state hospital patients shall be entitled to workers' comp for injuries arising out of and in the course of a vocational rehabilitation program work assignment.

UR, IMR, Treatment, MPNs (SB 537, Hill) amends LC §§138.7, 4600.4, 4603.2, 4610, 4616, and 4616.5 and adds LC §§127.1, 138.8, and 5307.12 to require the AD to publish an online list of providers who treat 10 or more injured workers a year, including their NPI, number of workers' comp patients, number of UR modifications and denials, and number of services modified, denied, and overturned by IMR; require MPNs to list all participating physicians and ancillary providers on their website; restrict MPNs in altering MTUS-compliant treatment plans or medical billing codes; delete references to “working day” in terms of UR deadlines and replace them with “business day,” which excludes Saturdays, Sundays, and holidays. Effective 1/1/24. Effective 7/1/21, the bill requires contracting agencies to notify payers if provider payments are more than 20 percent below the fee schedule amount. The bill also clarifies that medical providers must provide claims administrators with the NPI of the provider who rendered service and that claims administrators may withhold payment until the NPI is provided, making this provision declarative of existing law.

First Responder PTSD Presumption (SB 542, Stern) adds and repeals LC §3212.15 to create a rebuttable presumption that a diagnosis of PTSD is an occupational injury for law enforcement officers and firefighters. Effective 1/1/20; sunsets 1/1/25.

All of these bills are posted at www.leginfo.ca.gov. To access a bill, click “Bill Information,” and type in the bill number.

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