



BULLETIN

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The 2020 legislative session was marked by COVID-19-related fits and starts that stymied many of the best laid plans of California lawmakers, though there were still several measures enacted that may be of interest to the workers' compensation community:

AB 5 Exemption for Newspaper Delivery (AB 323, Rubio) amends LC §2750.3 and §2783, and adds and repeals Part 2, Division 2, Ch 2.8 §11800 of the Public Contract Code to extend the AB 5 exemption for newspaper delivery through 1/1/22.

Notification of Imminent Hazard from COVID-19 (AB 685, Reyes) amends, repeals, and adds LC §§6325 and 6432 and adds and repeals LC §6409.6 relating to work safety to increase employers' COVID-19 exposure notice and reporting requirements. As of 1/1/21, the bill requires: 1) that within 1 business day of receiving notice of "potential exposure" due to a positive COVID-19 test employers provide all employees and employers of subcontracted employees who were on the premises at the same worksite as the infected employees, and any union rep, written notice of potential exposure and information on COVID-19 benefits that the employee may be entitled to under federal, state, or local laws (including workers' comp, supplemental paid leave, and anti-discrimination and anti-retaliation protections); 2) that an employer with an "outbreak" (defined [here](#)) report it to the local health department within 48 hours and update the health department of subsequent lab-confirmed cases; and 3) that an employer with a positive case on its premises notify all employees and subcontractors' employees of the CDC-compliant disinfection and safety plan it plans to implement. Records of the notifications must be kept for 3 years. The law also requires Cal/OSHA to post reported findings on its website, gives it authority to shut down a workplace if it determines the risk of COVID-19 infection presents an "imminent hazard" to employees, and gives it authority to issue citations and impose civil penalties for COVID-19-related violations without issuing typical notice of alleged violation descriptions. The law expires 1/1/2023.

Extension of the California Consumer Privacy Act (CCPA) Exemption for Employee Data (AB 1281, Chau) amends Civil Code §1798.145 to continue to exempt specified personal data that companies collect on job applicants, employees, business owners, directors, officers, medical staff, or contractors from CCPA provisions until 1/1/22. AB 1281 will not take effect if voters enact changes to the CCPA by passing Proposition 24 in November.

COVID-19 Supplemental Paid Sick Leave (AB 1867, Budget Committee) adds and repeals Govt Code §12945.21, adds Health & Safety Code §113963, amends LC §248.5, and adds LC §§248 and 248.1 to codify the governor's executive order [EO-N-51-20](#), which provided up to 80 hours of COVID-19 supplemental paid sick leave for food sector workers and required that food sector workers in any food facility be allowed to wash their hands every 30 minutes or more as needed. The bill also closes gaps in paid sick days provided by EO-N-51-20 and those provided to other workers by the federal [Families First Coronavirus Response Act](#) ("FFCRA") by extending the COVID-19 supplemental paid sick leave requirement to employers with more than 500 employees and public and private employers of first responders and health care workers who opted not to cover their employees under the FFCRA. Workers are entitled to up to 80 hours of COVID-19 paid sick leave if they are: 1) subject to a federal, state, or local quarantine or isolation order related to COVID-19; or 2) advised by a health care provider to self-quarantine or self-isolate due to COVID-19; or 3) prohibited from working by their hiring entity due to concerns over potential COVID-19 transmission. Amounts paid must be the higher of the local or state minimum wage, or the worker's regular rate of pay for the last pay period but may not exceed \$511 per day or a total of \$5,110/employee. Employers who provided leave for one of the three specified reasons prior to the effective date, but at a rate lower than specified, may retroactively pay employees the difference. The bill also allows the Labor Commissioner to cite workplaces for a lack of paid sick days and requires the Commissioner to provide a model notice to post in the workplace or distribute electronically to employees. It also requires employers to make changes to their employee wage statements to reflect the new supplemental paid sick leave. AB 1867 was a budget trailer bill so it is already in effect. Access to the paid sick days will be available through the end of 2020 or upon the expiration of any federal extension of the FFCRA, whichever is later.

Agricultural Workplace Health & Safety (AB 2043, Rivas) adds and repeals LC §6725 to require Cal/OSHA to develop a campaign – including bilingual outreach – to inform farmworkers on best practices to prevent COVID-19 infection and to provide information on paid sick leave, workers' comp, and other coronavirus-related services. The bill also requires Cal/OSHA to enforce COVID-19 guidance, and track and report investigations into conditions, practices, injuries, or illnesses in the agricultural industry.

Electronic Access to State Trial Courts (AB 2165, Rivas) amends Civil Procedure Code §1010.6 to expand the availability of electronic filing to all state trial courts and provide more courthouse access to farmworkers and others living in rural areas.

Independent Contractors/AB 5 Clean-Up (AB 2257, Gonzalez) repeals LC §2750.3, adds Art. 1.5 (commencing with §2775) to Ch. 2, Div.3, and amends Revenue and Tax Code §§17020.12 and 23045.6 and adds §§18406, 21003.5, and 61001 to modify the existing tests for independent contractor status under AB 5, which created a presumption that workers are employees (and not independent contractors) unless they meet the so-called "ABC test." AB 5 exempted many professions from the ABC test, but AB 2257 permanently exempts dozens of additional professions. It also clarifies AB 5's "business-to-business" exemption, which may make it easier to satisfy the exemption, modifies the "referral agency/service provider" exemption but specifies that the exemption does not apply to high-hazard industries, and grants local district attorneys authority to pursue injunctive relief against employers for employee misclassification. AB 2257 was signed on 9/4/20 as an urgency measure so it is now in effect.

Acute Care Hospital PPE Stockpiles (AB 2537, Rodriguez) adds LC §6403.3 to require public and private general acute care hospitals to stockpile a 3-month supply of PPE for employees by 4/1/21 and to authorize a \$25,000 fine for failure to comply.

Skilled Nursing Facility Death Reports (AB 2644, Wood) adds Health & Safety Code §§1255.9 and 1275.41 to require that skilled nursing facilities report disease-related deaths to health authorities within 24 hours during declared emergencies and to codify Dept of Public Health (DPH) guidance that facilities have a full-time staff member trained in infection prevention/control. It also requires a weekly report of the deaths on the DPH website and that residents and their families be notified of COVID-19 cases.

Domestic Worker Safety (AB 2658, Burke) amends LC §§6310, 6311, and 6399.7 and adds LC §6311.5 to include domestic workers in the definition of employee in terms of existing laws that: 1) prohibit employees from being laid off or fired for refusing to perform work in violation of prescribed safety standards, where the violation would create a real and apparent hazard to the employee or fellow employees; and 2) create a cause of action for lost wages for an employee who is laid off or discharged for such a refusal. The bill also makes it a crime for a person, after receiving notice to evacuate or leave, to willfully and knowingly direct an employee to remain in or enter an area closed under prescribed provisions of law due to a menace to the public health or safety.

CIGA Coverage Expansion (AB 3012, Wood) amends IC §§678, 1063.1, 1063.5, 1063.14, 2051.5, 2060, 10095, and 10103.7 to expand CIGA coverage to include out-of-state claims filed by California residents if the workers' comp insurer is insolvent and the claim is not covered by another guarantee association. The bill also requires insurers to report to CIGA within 90 days after filing an annual statement indicating the amount of premiums not subject to CIGA's premium charge and the amount of special excess workers' comp premiums for the preceding year, and allows insurers to file amended reports indicating the amount of surcharges collected for the prior 5 years if they discover an error in their original reports.

Healthcare/Essential Worker PPE Stockpile (SB 275, Pan) adds Health & Safety Code §131021 and LC §6403.1 to require that health care providers, including hospitals and nursing homes, create a 45-day stockpile of PPE, and that the DPH create a 90-day PPE stockpile by 6/1/23 or 1 year after regs are adopted, whichever is later. DPH must also establish a PPE Advisory Committee to make recommendations on the development of guidelines for procuring, managing, and distributing PPE, taking into account the amount of PPE needed by all health care and essential workers in the state during a 90-day pandemic or other health emergency.

Superior Court Procedural Changes (SB 1146, Umberg) amends Civil Procedure Code §§1010.6 and 2025.310 and adds to and repeals Civil Procedure Code §599 to enact changes to Superior Court rules of practice and procedure. The Superior Court system and the Workers' Comp Appeals Board each have their own rules of practice and procedure, but both are subject to the same discovery statute (LC §5710) effectively requiring workers' comp depositions to be taken in the manner prescribed by law for depositions in civil actions in the Superior Courts. Thus, the changes to CPC §2025.310 that allow remote depositions also apply to WCAB cases. Earlier this year, in response to the pandemic the WCAB adopted a temporary rule change to allow remote depositions, but SB 1146 makes the change permanent. SB 1146 was an urgency bill, so it is now in effect.

COVID-19 Presumptions (SB 1159, Hill) adds LC §77.8 and adds LC §§3212.86, 3212.87, and 3212.88 to:

- 1) codify the Governor's May 6 Executive Order EO N-62-20, which granted a rebuttable presumption of compensability to employees with injury dates between 3/19/20 and 7/5/20 who were diagnosed or tested positive for COVID-19 within 14 days of the last day they worked at their place of employment at the employer's direction, and met other criteria specified in the order.
- 2) make minor changes to the original order, allowing the COVID-19 diagnosis to be made by a licensed physician assistant or nurse practitioner, as well as a licensed physician, and defining the date of injury for COVID-19 claims as the last day the employee worked at their place of employment at the employer's direction. As in the original order, if the claim is not denied within 30 days of the filing of the claim form, the illness is presumed compensable unless rebutted by evidence discovered after the 30-day period;
- 3) create a second rebuttable presumption for first responders and specified health care workers who have direct contact with COVID-19 patients with injury dates on or after 7/6/20, which retains the 30-day time frame for denying the claim.
- 4) create a third rebuttable presumption for workers employed at companies with 5 or more employees who have injury dates on or after 7/6/20 and who were employed at a worksite where there was a COVID-19 "outbreak" within 14 days of their injury date. For employers with 100 or fewer employees at a specific worksite, an outbreak is deemed to have occurred if 4 employees test positive for COVID-19 within 14 calendar days; for employers with more than 100 employees, an outbreak is deemed to have occurred if 4 percent of the employees test positive within a 14-day period; or, regardless of the number of employees, an outbreak is deemed to have occurred if a state or local public health department or school superintendent orders the worksite closed due to a risk of COVID-19 infection. In these "outbreak" cases, the time frame for denying the claim is 45 days rather than 30 days.
- 5) require employers to report all instances of positive COVID-19 tests among employees to their workers' comp claims administrator and authorize fines of up to \$10,000 for employers who fail to do so.

SB 1159 was an urgency bill that took effect 9/17/20 and sunsets on 1/1/23.

CWCI's webinar on SB 1159 offers more details on SB 1159 and on AB 685, and it is now available on-demand (free to CWCI members, \$99 for nonmembers). Continuing education units are available. For details or to register for the webinar, click [here](#).

All of these bills are posted at <http://leginfo.legislature.ca.gov/>. To access a bill, simply type in the bill number in the box provided.

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