COVID-19 Presumed Work-Related Under California Workers' Compensation Rules

First responders, healthcare workers and certain other employees who contract COVID-19 are presumed covered under new California law. By Catherine Kimble

RIVERSIDE, CALIFORNIA, UNITED STATES, August 20, 2021 /EINPresswire.com/ -- To date, California has experienced 3.72 million COVID-19 infections, leading to 61,083 deaths. Only a fraction of those who got sick – around 90,000 in 2020 – filed claims for workers' compensation based on contracting the illness through employment. More than a quarter of those claims were denied, however, leading to a legislative reaction. SB 1159, signed by Governor Newsom in September 2020, creates a presumption in California law that certain employees who get COVID-19 are presumed to have contracted the disease at work and are therefore entitled to workers' compensation benefits.

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> *Omar Ochoa, California Workers' Compensation Attorney*

Executive Order N-62-20 Establishes Presumption

In May 2020, Gov. Newsom signed an executive order declaring that "Any COVID-19-related illness of an employee shall be presumed to arise out of and in the course of the employment for purposes of awarding workers' compensation benefits." Under the current workers' compensation system in California, you have to provide proof that your injury or illness was related to work in order to receive the benefits. In the case of COVID-19, however, the EO presumed the infection was work-related, so long as "The employee tested positive for or was diagnosed with COVID19 within 14 days after a day that the employee performed labor or services at the employee's place of employment at the employer's direction." Any employee who tested positive for COVID-19 within 14 days of working at a jobsite outside the home was presumed to have contracted the illness at work for purposes of workers' compensation, That executive order, however, expired on July 5.

SB 1159 Codifies the Expired EO

The California Legislature met in Sacramento over the summer and tried to get a permanent

COVID-19 presumption in place. The Legislature introduced several bills to do this, but SB 1159 was the only one to make it to the governor, who signed it on September 17 when it immediately went into effect. This bill codified into California's workers' compensation statutes the presumption that coronavirus was contracted at work and is therefore compensable by workers' comp.


Omar Ochoa, Riverside Workers' Compensation Attorney

SB 1159 also picks up where the EO left off and covers workers starting July 6, 2020. However, starting July 6, the presumption is limited to first responders and health care workers or employees who test positive for COVID-19 during an "outbreak" at their specific workplace. An outbreak means that four employees tested positive for COVID-19 for worksites with up to 100 employees, or four percent of employees tested positive at a larger worksite.

It's important for all California employees to know that even if they don't qualify for the rebuttable presumption based on their occupation, they can still file for workers' compensation based on COVID-19 illness if they believe the infection was acquired at work. Riverside workers' compensation attorney Omar Ochoa of the Southern California law firm Ochoa & Calderón, explains the process like this: "The process to follow would be to file a claim with WCAB [the California Workers' Compensation Appeals Board], then be seen either a treating physician and/or a Qualified Medical Evaluator (QME) who would then determine if it was medically likely that the COVID-19 transmission took place at work."

If the physician concludes that there is a likelihood that it was so, then the employer/insurance carrier has to decide if it will accept or deny the claim, in which case the injured worker would have the same rights as if the rebuttable presumption had been met. Ochoa comments that since it's unlikely the employer will accept the claim, the employee's next step would be to file a Declaration of Readiness to proceed with the WCAB to have a judge determine if the COVID-19 infection was work-related. "It is usually at this juncture where the case either gets set for trial or the parties decided to settle for a lump sum, known as a Compromise and Release, in order to avoid the risks of continued litigation," says Ochoa.

Timeframe for Disputing Claims Shortened

Typically in California workers' compensation cases, an employer has 90 days to decide whether to accept or deny a claim. For COVID-19 claims, however, the rules have now changed to 30 days for first responders and certain front-line health care workers and 45 days for employees who

contracted COVID-19 during an outbreak at their workplace. Employees can be required to exhaust all paid sick leave or employment benefits, including Families First Coronavirus Response Act (FFCRA) benefits, before receiving temporary disability benefits.

All the employer needs to show to benefit from the presumption is that the worker tested positive or received a COVID-19 diagnosis within 14 days of working at a jobsite outside the home. Employers who want to dispute (rebut) the presumption would likely have to do contract tracing to show that the employee was not exposed to COVID-19 at work and that the employee contracted COVID-19 in his or her personal life. If the employer cannot prove this, then the employer should be responsible for paying the claim.

Rebutting this presumption is not a walk in the park for employers. In one case, a person who was hospitalized for COVID-19 filed a claim for workers' comp benefits. The claimant reported hugging a coworker in the parking lot at work and spending time with this coworker. Outside of work, the claimant went to church and a political rally where no one was wearing a mask and everyone was in close contact with each other. It could not be proven that anyone at this church service or political rally had COVID-19, but it could be proven that the claimant was at work within 14 days of contracting COVID-19. Therefore, this was considered an industrial injury.

Regardless, attorney Ochoa remarks that based on his experience, employers will almost always try to rebut the presumption through the discovery process by looking into the employee's daily activities outside of work to determine if any of those activities might have caused the infection. "In an actual COVID case that our firm is presently handling," says Ochoa, "the defendants have attempted to rebut the presumption at the upcoming trial by submitting pertinent sections of co-workers' personnel files that may indicate an absence of COVID-19 diagnoses."

"Ultimately," says Ochoa, "I think it is a very high bar that defendants need to meet to rebut the presumption, and I feel confident in the viability of most COVID-19 cases where the person believes the infection took place at work."

These changes to the law cover cases starting July 6, 2020, but are set to expire on January 1, 2023.

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