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September 30th, 2020

California SB 1159 Codifies COVID-19 Workers Compensation Presumption

On September 17th, California Governor Newsom signed SB 1159 into law. SB 1159 amends existing workers' compensation laws to address the impact of employees who contract COVID-19 and the extent to which such illness is considered industrial, and therefore entitles the employee to workers' compensation benefits. In particular, SB 1159 extends a disputable presumption of compensability to police, firefighters, and certain health professionals who contract COVID-19 in the course of their employment through January 1, 2023.

A. Standards for Application of Workers' Compensation Rebuttable Presumption for an Employee's COVID-19 Illness

Generally, employees injured in the course and scope of employment are entitled to receive workers' compensation benefits for their injuries. With certain public safety employees, existing law establishes a class of specific injuries and illnesses that are presumed to be industrial in nature and creates a rebuttable presumption that will qualify these employees for workers' compensation benefits immediately, unless an employer can show that the injury or illness is non-industrial.

SB 1159 creates a similar presumption for illness or death resulting from COVID-19 in the following circumstances:

1. The bill codifies Executive Order N-62-20, issued by Governor Newsom on May 6, 2020, which expanded the workers' compensation rebuttable presumption to ANY employee who reported to their place of employment between March 19 and July 5, 2020, and who tested positive for or was diagnosed with COVID-19 within the following 14 days during that time period.

2. This rebuttable presumption is then extended beyond July 6, 2020, for firefighters, peace officers, fire and rescue coordinators, and certain kinds of health care and health facility workers, including in-home supportive services providers that provide services outside their own home. For health facility employees other than (i) those who provide direct patient care, and (ii) custodial employees in contact with COVID-19 patients, the presumption does not apply if the employer can show the employee did not have contact with a COVID-19 positive patient within the 14-day period.
3. For all other employees, the rebuttable presumption is only applied if the employee works for an employer with five or more employees and the employee tests positive for COVID-19 within 14 days after reporting to their place of employment during a COVID-19 "outbreak" at the employee's specific work place. For purposes of this presumption, a COVID-19 "outbreak" exists if within 14 calendar days one of the following occurs at a "specific place of employment" (which excludes the employee's home):
 - If the employer has 100 employees or fewer at a specific place of employment, 4 employees test positive for COVID-19;
 - If the employer has more than 100 employees at a specific place of employment, 4% of the number of employees who reported to the specific place of employment test positive for COVID; or
 - A specific place of employment is ordered to close by a local public health department, the State Department of Public Health, the Division of Occupational Safety and Health, or a school superintendent due to a risk of infection with COVID-19.

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SB 1159 requires employers to report to their workers' compensation claims administrator in writing within three business days when they know or reasonably should know that an employee has tested positive for COVID-19, along with other relevant information.

The Workers' Compensation Appeals Board is bound by these presumptions unless presented with controverted evidence to dispute the presumption. Workers' compensation awarded for covered COVID-19 related illness or death includes full hospital, surgical, medical treatment, disability indemnity, and death benefits.

B. Application of Other COVID-19 Paid Benefits and Duration of New Law

SB 1159 also requires an employee to exhaust any COVID-19 related supplemental paid sick leave benefits (e.g., FFCRA's Emergency Paid Sick Leave or California's supplemental paid sick leave under AB 1867) and meet certain certification requirements before receiving temporary disability benefits or an industrial injury leave of absence.

Finally, the workers' compensation presumption under SB 1159 applies only through January 1, 2023, unless extended further by the Legislature.

Please visit www.moreton.com/news-events/ for more information and to view other client alerts. This Client Alert was written by Carolyn Cox, Moreton & Company's in-house corporate counsel who provides our clients with compliance services. For additional questions, please contact Carolyn at 801-715-7110 or ccox@moreton.com.

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