

Governor Signs Law Impacting COVID-19 Workplace Exposures

09.21.2020

ATTORNEYS

Governor Newsom has signed **SB 1159** and **AB 685**, establishing a rebuttable presumption that COVID-19 was contracted in the workplace and mandating that employers notify employees of potential workplace exposure.

SB 1159

The Governor issued an Executive Order on May 6, 2020, creating a rebuttable presumption that any employee who reported to the workplace between March 19 and July 5, 2020, and was diagnosed with COVID-19 within 14 days after being onsite, suffered an industrial injury and was eligible for workers' compensation benefits. If an employer wished to dispute the claim that COVID-19 was contracted in the workplace, it would have the burden of proving that the transmission occurred elsewhere.

This bill codifies the Executive Order and extends the rebuttable presumption through January 1, 2023 for front line emergency response workers, including firefighters and peace officers, and certain health care providers, including emergency medical technicians and paramedics. For all other employees, SB 1159 extends the rebuttable presumption only for employers of 5 or more employees, and only when an employee tests positive for COVID-19 during a workplace "outbreak." An outbreak is defined as a period of 14 calendar days during which (a) for employers of 100 employees or fewer at one worksite, 4 employees at that location test positive for COVID-19; or (b) for employers of more than 100 employees at one worksite, 4 percent of the number of employees who reported to the worksite test positive for COVID-19.

SB 1159 requires an employee to exhaust all COVID-19 related leave (e.g., Emergency Paid Sick Leave under the FFCRA, Supplemental Paid Sick Leave under AB 1867, or any employer-provided leave specific to COVID-19) before receiving any temporary disability benefits or workers' compensation leave.

AB 685

AB 685 mandates that an employer take all of the following actions within one business day of receiving notice of an employee's potential exposure to COVID-19:

Rebecca Green

1. Provide written notice of the potential exposure to all employees who were present at the worksite during the "infectious period" (as defined by the State Department of Public Health);
2. Provide written notice to the exclusive representatives of any represented employees notified under paragraph (1);
3. Provide all employees who may have been exposed, and their exclusive representatives, with information on COVID-19 related benefits, as well as anti-discrimination and anti-retaliation protection for employees; and
4. Notify all employees and their exclusive representatives of the disinfection and safety plan the employer will implement and complete per the guidelines of the Centers for Disease Control and Prevention.

Medical privacy laws must still be adhered to, and the required notifications should not disclose employees' names or any confidential medical information.

If you have any questions about the new laws or any other workplace issues, please contact **Rebecca Green** or any member of our **Labor & Employment Department**.