



**AUTOMOTIVE
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ALERT

COVID-19 and Workers' Compensation

New Tracking Rules Challenge Employers

SB 1159, signed into law in September, requires that when a California employer learns that an employee has tested positive for coronavirus, it must report that positive case to its workers' compensation carrier within three business days.

There is a lot of ground to cover in these reports and the legislation was passed without much fanfare, so many employers may not even know about their obligations. And that could cost them: the fine for non-compliance is \$10,000 per incident.

The report must include a number of details that legal experts say will create a significant reporting burden for employers.

WHAT MUST BE REPORTED

- The date the worker tested positive,
- The address of the worker's place(s) of employment during the 14 days preceding the positive test, and
- The highest number of employees who reported to work in the 45 days preceding the last day the employee worked in the workplace.

The task will be made even more difficult if an employee works at multiple worksites, and an employer could have to spend a significant amount of time doing all that detective work.

Employers will have to go through the same process for each COVID-19 case among their staff.

The law creates a presumption that workers who come down with COVID-19 between July 6 this year and Jan. 1, 2023, contracted the virus at work, which makes them eligible for workers' compensation benefits.

The presumption applies to all workers: (1) who test positive during an outbreak at work; and (2) whose employer has five or more employees.

WHEN IT APPLIES

All of the following conditions must exist for the COVID-19 presumption to apply:

- The employee tests positive within 14 days of working at a worksite;
- The date of injury shall be the last date the employee performed labor or services at the employee's place of employment at the employer's direction prior to the positive test; and
- The positive test occurred during an outbreak at the workplace.

What is an 'outbreak'?

An "outbreak" exists if, during a 14-day period, one of the following occurs at a worksite:

- If the employer has 100 employees or fewer at a specific place of employment, four 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-19; 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.

The takeaway

The most important thing is that you are prepared for the paperwork and detective work you'll have to engage in in case one of your workers contracts the coronavirus. You may want to put systems in place now so that gathering the information will be easier in case of a COVID-19 infection at your workplace. ❖



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Family Health

New Fitness Guidelines for Children and Adults

THE U.S. Department of Health and Human Services has issued new fitness guidelines that recommend adults get two and a half hours of moderate exercise every week, at a minimum.

The slogan of the new guidelines is “Move More, Sit Less,” in an attempt to address the two main reasons many of us don’t get enough exercise. This new guidance is the first update to the guidelines since 2008, when they were first released.

Here are the report’s main suggestions:

ADULTS

- At least two and a half hours of moderate-intensity aerobic exercise a week.
- Exercise should be done in intervals that are at least 10 minutes. It doesn’t matter when or how long you exercise every week, just as long as the total reaches the recommended minimum. Exercising less than 10 minutes does not render the same benefits.
- On top of this 150 minutes of aerobic exercise, adults need to do strengthening activities, like push-ups, sit-ups and weightlifting, twice a week.

CHILDREN

- At least 60 minutes of moderate and vigorous aerobic physical activity per day.
- At least three times a week, kids should engage in vigorous-intensity physical activity, like running, jumping rope, swimming or playing soccer.
- Muscle-strengthening activities (such as weightlifting) and bone-strengthening activities (like running) three times a week.

Getting started on a routine

If you aren’t getting enough exercise currently, you can use the holidays or the beginning of the year to get started.

Here are some tips from the Mayo Clinic:

Proceed with caution – If you’re just beginning to exercise, start cautiously and slowly, particularly if you are overweight and out of shape. If you have a medical condition, talk to your doctor first.

Start slowly – Many people make the mistake of going all out when they start exercising. They unrealistically expect immediate results, but instead they are left in pain from pushing too hard too early. That can set them back or they may just give up at that point.

Make it a routine – Schedule time to exercise as you would any other appointment. You can even multitask while exercising, like watching your favorite show while on the exercise bike, or reading while on the stair-stepper.

If you want to start with moderate exercise, take walks during your lunch break and log the miles and steps with a fitness tracker.

Mix it up – Try different activities and consider taking up a new exercise, like cycling or tennis. If you have access to nature, consider going on long nature hikes on the weekends in the fresh air.

Mixing it up can keep things interesting – and keep you from getting bored.

Alternating activities can also help you develop different muscles and emphasize different parts of your body.

Allow time for recovery – If you are working out one part of your body one day, you should not focus on it again the next day. And if you have put in serious time exercising one day for many hours, consider taking a day off the next day to let your body recover.

Get it in writing – Write down your plans and make a schedule. It will help you stay on track with your fitness routine. ❖

COVID-19 Claims Grow as Overall Claims Plummet

WHILE THE number of COVID-19 workers' compensation cases filed in California continues to grow, total workplace injury and illness claims in the state have fallen nearly 20% in 2020 compared to last year.

Through September, the state had recorded 47,412 COVID-19 workers' compensation claims, accounting for 11.1% of all claims reported since the start of the year. During that same period, California workers filed 425,280 workers' compensation claims, down 19% from the first nine months of 2019.

The first COVID-19 cases among California workers were filed in March. They peaked in July and started to decline in August, just when parts of the state started opening up on a partial basis.

While it's too early to tell if it's a harbinger of things to come, the numbers are high enough that employers cannot let their guard down when it comes to preventing the spread of the coronavirus in their workplaces.

Who is filing claims?

The top five sectors reporting COVID-19 workers' compensation claims during the first seven months of the pandemic were:

- **Health care:** 16,889 claims (37%)
- **Public safety/government:** 6,902 claims (15%)
- **Manufacturing:** 3,759 claims (8.3%)
- **Retail:** 3,593 claims (7.9%)
- **Transportation:** 2,255 claims (5%)

Overall claims falling

Due to the severe economic slowdown brought on by the coronavirus pandemic that forced thousands of businesses to shut their doors or have their employees work from home, the number of overall workplace injuries has tumbled.

There were a total of 425,280 workers' compensation claims filed

in California in the first nine months of the year, compared to 526,469 claims in the same period of 2019. The case load in September dropped 30% compared to September 2019.

"That decline reflects both the sharp drop in employment, the high number of workers now working from home, and the pandemic-driven slowdown in economic activity in the state," the California Workers' Compensation Institute wrote in a report about the numbers.

Handling workers' comp claims

A new law that took effect in September extends workers' compensation benefits to California employees who contract COVID-19 while working outside of their homes.

To qualify for the presumption, all of the following conditions must be met:

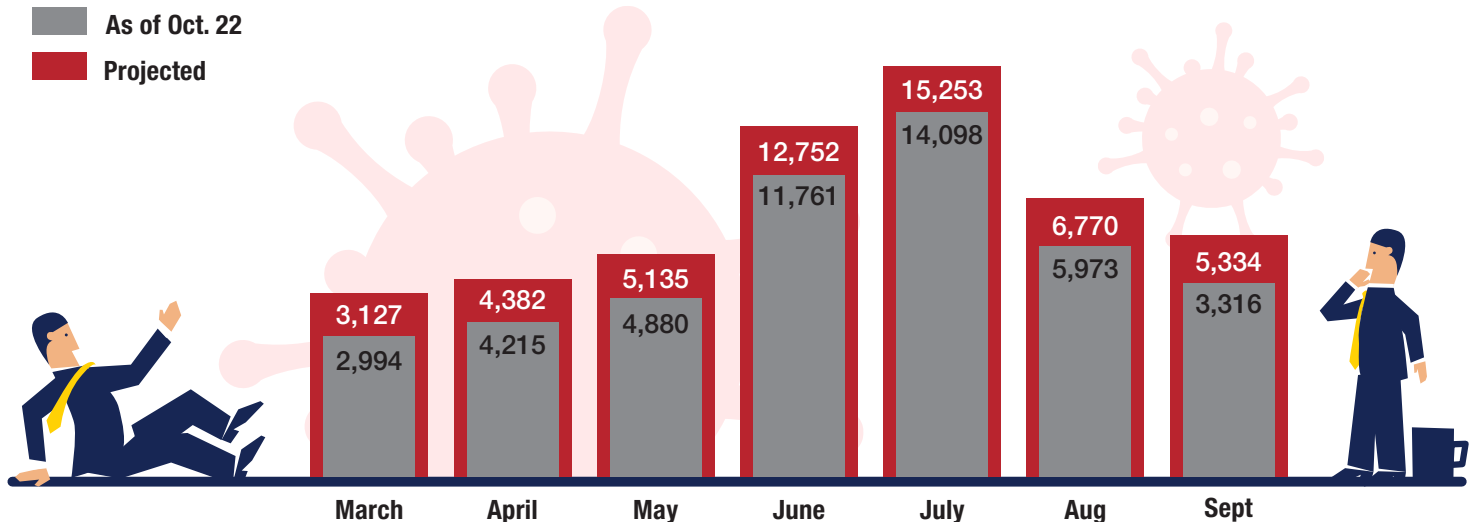
- The worker must test positive for or be diagnosed with COVID-19 within 14 days after a day they worked at your jobsite at your direction.
- The day they worked at your jobsite was on or after July 6.
- The jobsite is not their home or residence.
- If your worker is diagnosed with COVID-19, the diagnosis was done by a medical doctor and confirmed by a positive test for COVID-19 within 30 days of the date of the diagnosis.

The takeaway

If you have an employee who is working on-site and who tests positive for COVID-19, you should let them know about their rights to file for workers' compensation if they miss work and/or need treatment.

The state's insurance commissioner has approved new rules that bar insurers from using any COVID-19 claims against your experience modifier (X-Mod), so it won't hurt your workers' compensation experience if an employee files a claim. ❖

CALIFORNIA CORONAVIRUS WORKERS' COMPENSATION CLAIMS



Source: California Workers' Compensation Institute

Cal/OSHA Conducts Sweeps, Proposes Huge Fines



CAL/OSHA has been conducting sweeps of employers in California to root out those who are not protecting their workers from COVID-19 exposure.

The agency targeted companies in industries that have a heightened risk of exposure to the coronavirus, which resulted in 54 citations being issued.

The recent sweeps are part of a new targeted and ongoing enforcement effort that California employers should be aware of.

Fines have varied, but for egregious cases, they can be steep. To date, the largest citations were issued on a temp agency, Jobsource North America Inc., and frozen-food maker Overhill Farms Inc., which face more than \$200,000 each in proposed penalties for allegedly failing to protect hundreds of workers at two poultry plants.

Cal/OSHA inspected the facilities after receiving an anonymous complaint from a worker at one of the plants. It found hundreds of workers were exposed to the coronavirus due to the lack of physical distancing procedures among employees.

TYPICAL COVID-19-RELATED CITATIONS

- Failure to reduce exposure to employees through the use of engineering controls such as face coverings or the use of Plexiglas or other physical distancing barriers.
- Failure to identify, evaluate and correct workplace hazards relating to COVID-19.
- Not investigating employees' COVID-19 infections.
- Failure to provide effective training to employees on procedures to mitigate risk of COVID-19 in the workplace.
- Failing to report a COVID-19 fatality or serious illness to Cal/OSHA.

The most recent sweeps

In the recent sweeps, the agency cited 54 employers for not protecting employees from COVID-19 exposure. Proposed penalties for those firms range from \$2,025 to \$105,000, according to Cal/OSHA.

Most of the citations were for failing to protect workers from exposure to COVID-19 because the businesses did not take steps to update their workplace safety plans to properly address hazards related to the coronavirus.

The citations were issued on firms in the following sectors:

- Food processing
- Health care
- Agriculture
- Supermarkets
- Employment agencies and labor services.

WHAT'S PROMPTING INSPECTIONS

- Employees became seriously ill,
- Cal/OSHA received complaints about workplace conditions, or
- Joint enforcement efforts on high-risk, targeted industries.

The takeaway

Word from Cal/OSHA is that it is continuing to conduct targeted inspections, as well as respond to complaints from insiders about employers who may not be taking steps to protect their workers.

The best way for your firm to avoid penalties is to follow Cal/OSHA and state guidelines for protecting your workers against COVID-19. [You can find those here.](#) ❖