

Coronavirus (COVID-19) Information

(WCIRB, NCCI & Temporary Modified Duty Information)

As of April 21, 2020

Update:

Labor Law and Workers' Compensation Statutes continue to be one of the most significantly affected areas as a result of the COVID-19 pandemic. Fortunately, our statistical rating bureaus have moved quickly to provide some relief for U.S. employers in the area of experience rating.

- 1) **Workers' Compensation Insurance Rating Bureau (WCIRB)** – On April 20, 2020, the WCIRB submitted a special regulatory filing to the California Insurance Commissioner. This filing contained items that would address COVID-19 and included special amendments to the California Workers' Compensation Uniform Statistical Reporting Plan – 1995 and the California Workers' Compensation Experience Rating Plan – 1995

(<https://www.wcirb.com/news/wcirb-submits-special-regulatory-filing-response-covid-19>). These updates are as follows:

- a) **COVID-19 Claims to be Excluded from Experience Rating** - Claims resulting directly from a positive COVID-19 diagnosis, with an accident date on or after December 1, 2019, will be excluded from the experience rating calculations of individual employers.
- b) **Payments to Employees Who Continue to be Paid While Not Working to be Excluded from Experience Rating** – Wages paid to employees while not engaged in any work activities will be excluded from reportable payroll. This applies while California's statewide stay-at-home order is in place and up to 30 days after if the employee continues not to work. (Code 12).
- c) **8810 Classification to be Assigned for Temporary Changes in Duties** - This would allow employers to temporarily assign the Classification of

8810-*Clerical Office Employees* to those employees whose job duties meet the definition of a Clerical Office Employee. This provision would apply while California’s statewide stay-at-home order is in place and for up to 60 days thereafter if the employee continues to meet the definition of a Clerical Office Employee, but does not apply to the payroll of employees whose payroll is otherwise assigned to this classification.

- 2) **National Council of Compensation Insurance (NCCI)** – As of April 17, 2020, NCCI reports that they recognize the extraordinary circumstances around COVID-19 and agree that they warrant an expedited rule change to address payroll questions for employees who are not working but are still receiving wages and how it relates to the basis of their insurance premiums. They are looking into approving a rule change which will be distinct from “idle time” under their current Basic Manual rules and a corresponding statistical code 0012 will be created for reporting this payroll – which will not be utilized in the calculation of premium.

They also note that they are working with individual states in a response to this so that as uniform an approach as possible is emphasized and achieved. Details of the proposed rule changes will be included in a filing to take place the week of April 20, 2020. (<https://www.ncci.com/Articles/Pages/Insights-Coronavirus-FAQs.aspx>).

- a) For state-specific legislative activity regarding COVID-19 go to https://www.ncci.com/Articles/Pages/II_LegislativeActivity.aspx

- 3) **Temporary Modified Duty** - It would be remiss if we didn’t also mention the issue HIB’s Risk Management Division is encountering regarding the payment, or non-payment, of Temporary Total Disability for employees who are released to modified duty which can be accommodated by their employer absent the pandemic and shelter-in-place orders. We have found that every claims administrator and/or carrier is taking one of two approaches to this. As follows:

- a) ***Payment of Temporary Total Disability is made*** based upon the premise that the employee was not responsible for the cause of the temporary modified duty no longer being available to them.
- b) ***Payment of Temporary Total Disability is being denied*** based upon the premise that, absent the pandemic, the employer would have been able to accommodate the temporary modified duty.

So which one is correct? This would depend upon the state jurisdiction (both the Statute and case law) where it is occurring. It also depends upon the carriers/claims administrators risk aversion as many chose option #1 to avoid future litigation. If this is something you are experiencing, HIB's Risk Management Division can definitely assist you through this.

Should you have any additional questions or need for assistance, please feel free to contact us at riskmanagement@heffins.com.

Coronavirus (COVID-19) Information

(Pandemic Labor Law, Occupational Clinics & Telemedicine Information)

As of March 31, 2020

Update:

Since our last update, our Nation's number of confirmed COVID-19 cases has surpassed China and Italy, we continue to practice social distancing as well as sheltering in place. For current COVID-19 statistics please check out <https://coronavirus.jhu.edu/map.html>, www.cdc.gov, or www.who.int.

For more information on COVID-19 insurance topics and newly enacted legislation, please visit Heffernan's COVID-19 Resource Center at <https://www.heffins.com/COVID19>. You can also sign up for Heffernan's weekly COVID-19 webinars where industry professionals will be discussing pertinent

information as things unfold. To register, go to <https://register.gotowebinar.com/register/3139770208099359245>.

The purpose of this update is to provide real-time information on what our Division is seeing on the labor law and occupational fronts since our last publication.

- 1) **What Employers Can & Can't Do During a Pandemic** - On March 11, 2020, the COVID-19 virus was officially declared a pandemic. This declaration brought forth a very important "Direct Threat" distinction under the Equal Employment Opportunity Commission's (EEOC) Americans with Disabilities Act (ADA) and Section 501 of the Rehabilitation Act and pandemic planning in the workplace. This was originally issued back in October of 2009 in response to the H1N1 virus and was updated on March 21, 2020 to encompass COVID-19. It allows employers to do the following to protect their employees and the general public from this "Direct Threat":
 - a. Employers can send employees home if they display COVID-19 like symptoms.
 - b. Employers may ask their employees if they are experiencing COVID-19 like symptoms but must maintain all information about employee illnesses as confidential.
 - c. An employer can take their employees temperatures but must keep the results confidential.
 - d. Employers cannot ask their employees, who do not have COVID-19 like symptoms, if they have a medical condition that might make them especially vulnerable to COVID-19 complications.
 - e. An employer can ask an employee, returning from business or personal travel, about possible exposure whether they have COVID-19 like symptoms or not.
 - f. Employers can encourage employees to telework from an alternate location.

- g. Employers can require employees to adopt infection control practices (like washing their hands, etc.) as well as wear protective gear (such as face masks, gloves, etc.).
- h. An employer can ask an employee why they were absent from work and should – especially if it is suspected that the employee was out for medical reasons.
- i. An employer should continue to provide employees with reasonable accommodations, for those employees with known disabilities (temporary or permanent), barring undue hardship as a result of the pandemic.
- j. Should an employee voluntarily disclose that they have a pre-existing condition that will put them at greater risk with COVID-19, reasonable accommodations (like telework) should immediately be offered.
- k. If an employee is confirmed to have COVID-19, an employer should inform fellow employees of their possible exposure to COVID-19 in the workplace, keeping the identity of the quarantined employee confidential.

For additional information on these, as well as on how to hire during a pandemic, what to do after a pandemic as well as additional EEOC Resources please go to https://www.eeoc.gov/facts/pandemic_flu.html.

- 2) **Occupational Clinics & COVID-19** – Because occupational clinics do not typically have the required Personal Protection Equipment (PPE) for something like the COVID-19 virus, they will not see an employee for any COVID19 exposure or active symptoms. So, if you believe an employee has been exposed to COVID-19 or should someone wish to file a COVID-19 workers' compensation claim DO NOT send them to your usual Occupational Clinic. Rather, immediately send your employee home with the instructions to contact their private doctor or the county health department

- 3) **Occupational Clinics & Active Workers' Compensation Treatment** - For those employees who are actively treating or receiving services from your occupational clinic, please instruct them to call before they present for each of their appointments. If they are exhibiting any flu or cold like symptoms, their appointments will need to be rescheduled. Many clinics are locking their doors and setting up an alternative entrance to help with social distancing
- 4) **Telemedicine Platforms & Telephonic Triage** – For active medical treatment, for industrial and non-industrial injuries, illnesses or conditions, telehealth platforms are **strongly** being encouraged. On a non-industrial basis, vendors like Teladoc <https://www.teladoc.com/> are available. For industrial situations, many occupational clinics have this option available to their patients as do telehealth and triage vendors like HIB's strong partner Medcor <https://www.medcor.com/>. For more information in this regard, contact your Heffernan Team or reach out to our Risk Management Division at riskmanagement@heffins.com.

Some states are even moving towards allowing the use of a telemedicine platform for formal medical evaluations such as Independent Medical Evaluations (IME) and Qualified Medical Evaluations (IME). For example, California's Division of Workers' Compensation is encouraging Qualified Medical Evaluations (QME) to be done via a telehealth platform.

<https://www.dir.ca.gov/DIRNews/2020/2020-26.html>.

Overall, COVID-19 is having a direct effect on our workers' compensation system nationwide. The issues we discussed on page 5 of this document remain. Our Division continues to work closely with our clients to support them in this uncharted territory. Should you have any additional questions or need for assistance, please feel free to contact us at riskmanagement@heffins.com.

Bonus Resource: Should you need ergonomic assistance with your remote workers, please go to <https://aspenrmg.com/aspenwebinars/>. Our partner service provider, Aspen Risk Management Group, has webinars to assist your employees and management in this regard through April of 2020.

Coronavirus (COVID-19) Information

(COVID-19 Workers' Compensation System Information)

As of March 18, 2020

Update:

Since our last update, only 9 days ago, there have been tremendous changes in both the spread of the disease as well as measures put into place to stop the virus from spreading. For specifics and up-to-the-minute information, go to www.cdc.gov, www.who.int or <https://coronavirus.jhu.edu/map.html>.

“Social distancing” has become a very important practice in combating the spread of COVID-19. This premise has resulted in the closure of schools, bars, gyms, restaurants, sporting events, concerts and festivals. Cities and counties have even issued emergency “shelter in place” orders as of earlier this week. Many employers are moving to a “work-from-home” model if they can, while others face managing less labor hours.

HIB continues to promote “social distancing” as well as following our recommended and updated preventative measures found on page 9 and our “Best Practices for the Workplace” on page 11 of this document. In addition, we suggest that you closely monitor the websites of your local authorities to ensure you are following all governmental edicts.

COVID-19 & Workers' Compensation:

As previously noted in this document, industrial causation of COVID-19 is going to come down to the occupation and job duties of the affected employee and where the exposure occurred. Please see page x of this document for details.

As for non-COVID-19 workers' compensation claim issues, we are seeing some concerning situations arise that are having a significant impact on our clients workers' compensation programs as a whole. As follows:

- 1) Delays in Industrial Medical Care & Evaluations - If an employee with an active workers' compensation claim exhibits flu like symptoms, their medical appointment(s) will likely be rescheduled or cancelled indefinitely. This rings true for occupational clinics, primary treating physicians as well as formal medical evaluators [Independent Medical Evaluators (IME), Agreed Medical Evaluators (AME) or Qualified Medical Evaluators (QME)]. This could affect the life of the claim as well as the amount of benefits paid by the claims administrator.
- 2) Depositions - For litigated claims, depositions are being postponed or cancelled all together. This will inhibit a claims administrator's discovery capabilities which can affect both the cost and life span of a claim.
- 3) Jurisdictions - Workers compensation court jurisdictions are starting to only allow on-site hearings for very serious matters/issues. The remainder of all hearings, filings and appearances will need to be done via telephone or online systems until further notice. This will affect a claims administrator's ability to push settlements through quickly as well as defend multiple issues.
- 4) Possible Spike in Claims - It is possible that the number of reported workers' compensation claims to an employer (in general - non COVID-19 related) will increase. This is a common occurrence in challenging economic times. Employers will need to be sure to work closely with their

claims administrator to ensure the industrial nature of such claims in general.

- 5) Ergonomics & Working from Home - For employers with a workforce now working from home, ergonomic information on how to properly set up and work from home should be provided and monitored.

Heffernan's Risk Management Division is well equipped to assist and support our clients with the issues noted above. Although the effects of COVID-19 on our workers' compensation system is ever changing, we are here to act as your advocate and be a "voice of reason" in a challenging system.

Should you have any questions please reach out to your Heffernan Service team or our Risk Management Division at riskmanagement@heffins.com.

Coronavirus (COVID-19) Information

(Workers' Compensation & COVID-19 Compensability Information)

As of March 9, 2020

Update:

With cruise ships full of passengers being held at the dock in quarantine, Disney shutting down all of their theme parks in Asia, many counties and States declaring States of Emergency, to the S&P 500 loss of 11.49% the last week of February 2020, the Coronavirus (COVID-19) continues to affect our lives and our economy.

The best course of action to combat this virus still remains as prevention (see page 9) and continuing with the Best Practices in the Workplace measures (see page 11) that we recommended last week.

Updated Information & Terms:

Since the statistics on COVID-19 in the United States is so fluid at this time, we encourage you to check in with the Centers for Disease Control and Prevention at www.cdc.gov or the World health Organization at www.who.int. To follow are some updated information and terms that relate to COVID-19:

- Who is considered an “at risk population”:
 - Older adults
 - People who have serious chronic medical conditions (heart disease, diabetes, lung disease)
 - People with compromised immune systems

- What is an Emergency Declaration: When a city, county or state makes such a declaration it is not always because they have had a significant outbreak. It is made to guarantee the jurisdictions ability to ask for and secure aid from the state or other counties if their local resources are

exhausted in the event of such an occurrence. It is usually “preparation-based”.

COVID-19 & Workers’ Compensation:

As for COVID-19, and how this might play out in the workplace, this is a huge “gray” area since we haven’t had a lot of previous exposure to such epidemics.

However, in California, based on a number of Supreme Court cases the “test” is going to be that an employee must show that they were subjected to some special exposure that the general public was not exposed to. Taking this a step further, although an illness does not become an occupational disease simply because it is contracted on the employer’s premises, if the employment subjects a person to an increased risk compared to the general public, the injury would likely be compensable. Occupations that would fall within this area would be first responders, medical care providers, anyone mandated to travel on business and any employee who could prove that their exposure was directly related to their work. Please go to <https://www.lflm.com/wp-content/uploads/2020/03/03092020-COVID19-FLASH.pdf> for the legal opinion of our partner California workers’ compensation defense firm Laughlin, Falbo, Levy & Moresi.

Washington State is another example of this premise of COVID-19 and industrial exposure. On March 5, 2020, their Governor decreed that the “state is taking steps to ensure workers’ compensation protections for health care workers and first responders who are on the front lines of the COVIDS-19 outbreak”. In addition they clarified that they “will provide benefits to these workers during the time they’re quarantined after being exposed to COVID-19 on the job”.

Although every state workers’ compensation statute is different, they all fall under a “no-fault” premise. As a result, the examples that California and Washington are setting are strong ones for HIB to utilize to support our clients, in other state jurisdictions, should the need arise in regards to COVID-19.

At Heffernan Insurance Brokers, we are committed to helping our clients and their employees, through the COVID-19 situation. We continue to work closely with our partner carriers and service providers to ensure that all appropriate

workers' compensation benefits are paid timely and appropriately to anyone affected by this situation in the workplace. Should you need assistance in this regard, please feel free to reach out to your Heffernan Team or to our Risk management Division at riskmanagement@heffins.com.

Sources:

www.cdc.gov

<https://www.latimes.com/california/story/2020-03-04/california-coronavirus-spread-mergency-declarations>

<https://www.governor.wa.gov/news-media/inslee-announces-workers-compensation-coverage-include-quarantined-health-workersfirst>

Coronavirus (COVID-19) Information

(Covid-19 Facts & Best Practices for the Workplace)

As of February 27, 2020

Heffernan's Risk Management Division is committed to keeping our clients and their work forces safe while navigating through the current global outbreak of the Coronavirus Disease 2019 (COVID-19).

From here, we will be providing our clients with weekly updates or immediate notification of any significant changes. Should you have any additional questions or concerns, please feel free to reach out to your Heffernan Team or send your questions to riskmanagement@heffins.com.

What is COVID-19 & Where it Originated:

The Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by novel (new) coronavirus which has now been detected in 37 locations internationally including the United States. It originated in Wuhan, Hubei Province, China. Originally, patients diagnosed with COVID-19 were linked to the consumption of items from a large seafood and live animal market in this province of China. However, later, a growing number of patients reportedly did not have exposure to animal markets – indicating a person-to-person spread.

The Coronaviruses are a large family of viruses most common in animals like camels, cattle, cats and bats. Although rare, such viruses can infect people and then spread between person-to-person contact – think MERS-CoV and SARS-CoV from years past.

Why it's A Global Health Crisis:

On January 30th, 2020, the International Health Regulations Emergency Committee of the World Health Organization (WHO) declared this a public health

emergency. The Center for Disease Control (CDC) has also aggressively geared up for this global crisis including preparing for the potential of community spread within the United States. On January 31, 2020 Chinese health officials have reported nearly 10,000 confirmed cases of COVID-19. An additional 114 cases have been confirmed across 22 countries.

COVID-19 in the United States:

As of February 26, 2020, there have been a total of 14 confirmed cases of COVID-19 in the United States. 12 of which were travel related and 2 of which were as a result of person-to-person spread. Please visit <https://www.cdc.gov/coronavirus/2019-ncov/locations-confirmed-cases.html#map> for all locations being affected.

Facts:

Although there is still more to be learned about COVID-19, to follow is some information to arm yourself and your workplace against this virus.

How it Spreads:

- 1) Person-to-Person
 - a. Between people who are in close contact with one another (approx. 6 feet)
 - b. Via respiratory droplets produced when an infected person coughs or sneezes
 - c. Droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs
- 2) Spread from contact with infected surfaces or objects
 - a. COVID-19 may be contracted by touching a surface or object that has the virus on it and then touching their mouth, nose or possibly eyes

When Spread Happens:

- 1) People are considered to be most contagious when they are the most symptomatic (at their sickest)
- 2) Some spread might be possible before people show symptoms but this is not thought to be the main way the virus spreads

Symptoms:

- 1) Fever
- 2) Cough
- 3) Shortness of breath
- 4) CDC believes currently that these symptoms may appear in as few as 2 days or as long as 14 days after exposure
- 5) Should you experience any of these symptoms, before presenting for medical treatment, call your local health department or emergency room so they can prepare for your arrival

Prevention & Treatment:

There is currently no current vaccine nor medication to help prevent or treat this illness. The best mode of prevention is avoidance to exposure of the virus.

- 1) Engage “social distancing” (benchmark is 6 ft.)
- 2) Avoid close contact with people who are sick
- 3) Avoid touching your eyes, nose and mouth
- 4) Stay home when you are sick
- 5) Cover your cough or sneeze with a tissue then throw the tissue into the trash
- 6) Clean and disinfect frequently touched objects and surfaces using a regular household cleaning spray or wipe
- 7) Follow CDC’s recommendations of using a facemask should you show symptoms of the virus to help prevent the spread (CDC does not

recommend that people who are well wear a facemask to protect themselves).

- 8) Wash hands often with soap and water for at least 20 seconds. Especially after going to the bathroom, before eating and after blowing your nose, coughing or sneezing
- 9) If soap is not available, utilize an alcohol-based hand sanitizer with at least 60% alcohol

Travel Recommendations:

- 1) Avoid all nonessential travel to the People's Republic of China
- 2) Check with CDC at <https://www.cdc.gov/coronavirus/2019-ncov/travelers/index.html> for travel advisories before traveling. There are three levels of concern:
 - a. Warning Level 3 - CDC recommends total avoidance of all nonessential travel. These are currently China and South Korea
 - b. Alert Level 2 – Indicates destinations that are experiencing sustained community transmission of the virus. These are currently Iran, Italy and Japan
 - c. Watch Level 1 – Recommends cancelling or postponing travel to these destinations which is currently Hong Kong

Best Practices for the Workplace

- 1) Monitor and limit corporate travel of your employee, avoiding any nonessential trips to any of the locations denoted at Warning Level 3, Alert Level 2 or Watch Level 1.
- 2) Take this opportunity to educate your workforce on how to prevent any illness. Let them know that, although COVID-19 is a grave concern, the common flu is also something best to be avoided.
- 3) Screen essential employees as they report for work by taking their temperature (suggest nothing over 100 degrees be allowed to work) as well as asking if they feel ill or have been sick.
- 4) Have an alcohol-based hand sanitizer, with at least 60% alcohol, readily available in all common areas of your place of work.
- 5) Clean all common areas, such as employee lounges, lunch rooms, kitchens, rest areas and rest rooms, with household disinfectant products daily.
- 6) Place posters (see below links for links to COVID-19 posters) in these common areas reminding your employees to wash their hands or utilize the provided hand sanitizer.
- 7) Encourage individuals who call in sick to work, or appear ill while at work, to stay or go home until their symptoms subside. You may want to suggest that they do so for 14 days (which is the COVID-19's incubation period). To accomplish this, you may want to consider being more flexible with your time-off policies so as to encourage your employees to follow this request.
- 8) Put a business contingency plan in place should absenteeism rates greatly increase outside of what you experience during a normal flu Season.
- 9) Put a business contingency plan in place that will promote "social distancing" (benchmark is 6 ft.) to include work from home options if possible.
- 10) Set up an emergency communication plan should your workforce be exposed to COVID-19 and follow CDC and local health authority reporting requirements should this be confirmed.
- 11) Check COVID-19 websites daily and sign up for alerts when possible -
<https://www.cdc.gov/coronavirus/2019-ncov/communication/factsheets.html>
<https://www.medcor.com/covid-19/>

Additional Resources

Websites

Medcor COVID-19 Updates - <https://www.medcor.com/covid-19/>

“Share Facts, Not Fear” - <https://www.cdc.gov/coronavirus/2019-ncov/about/share-facts-stop-fear.html>

Posters

<https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf>

<https://www.cdc.gov/coronavirus/2019-ncov/downloads/sick-with-2019-nCoV-fact-sheet.pdf>

<https://www.cdc.gov/coronavirus/2019-ncov/downloads/stop-the-spread-of-germs.pdf>

<https://www.cdc.gov/coronavirus/2019-ncov/downloads/infographic-cdc-protects-508.pdf><https://www.cdc.gov/coronavirus/2019-ncov/downloads/COVID19-symptoms.pdf>

Videos

<https://www.cdc.gov/coronavirus/2019-ncov/communication/videos.html>

Sources: www.cdc.gov
www.medcor.com