

Coronavirus (COVID-19) Information

Back to Work Resources & Insight into California Governor's Recent Executive Order

May 8, 2020

COVID-19 Back to Work Services & Resources

As our Nation's non-essential workers look at returning back to work, and essential workers continue on-the-job, employers are facing some very significant challenges with safely allowing non-essential workers back, while making sure that they provide their employees with a safe, healthy and supportive work environment. Just as important to employers is going to be their ability to effectively document their efforts and compliance with all necessary Federal, State and County specific pandemic regulations. If an employer cannot do so, then this will open them up to the possibility of employment and labor law related exposures.

Heffernan's Risk Management Division wants to help our clients keep both their employees and organizations safe during this challenging time! To do so, we have the following services and resources available for our clients:

- **futureWork Health & Safety Platform:**

futureWork is a cutting edge health and safety platform that turns an employee's cell phone into a telemetric device allowing it to capture, measure and analyze body movements. This allows management to hone in on proper body mechanics and ergonomic challenges by employee. ***In relevance to COVID-19, it allows employers a place to record and track employee temperatures as they report to work in accordance with the CDC guidelines.*** This platform is also expected to have more pandemic related features in the near future. Special HIB pricing has been negotiated with futureWork for this platform. Please contact your Heffernan Producer, our Risk Management Division or go to www.altumAi.com for more details.

- **Medcor COVID-19 Return to Work Services:**

Medcor, our Telephonic Triage partner, has developed a virtual Return to Work program for both Essential workers and the general population. This service can be utilized to clear newly returning workers back to the workplace, employees who recently traveled (business or personal), employees who called out sick and want to return to work, and those that become ill while working. Medcor nurses will screen employees, based upon the current CDC guidelines and make a determination as to whether or not an employee is safe to return back to the workplace or if they need further attention/actions. It also allows for excellent documentation for our clients. Special HIB pricing has been negotiated with Medcor for this service. Please contact your Heffernan Producer, our Risk Management Division or go to <https://www.medcor.com/covid-19/> for more details.

- **KPA's COVID-19 Return to Work Support Services:**

KPA has two options for our clients to utilize. The first is their COVID-19 Loss Control/Return to Work Support Service product that provides “hands-on” help with the development, implementation and monitoring of a COVID-19 Return to Work program. The second option is a more “do-it-yourself” online platform that provides our clients with the needed information and allows them to develop what they need for their organization. Please see the links below for more information. Special HIB pricing has been negotiated with KPA. Please contact your Heffernan Producer, our Risk Management Division or visit the links below for more details.

- **COVID-19 Loss Control/Return to Work Support Information**

https://info.kpa.io/hubfs/KPA%20Coronavirus/KPA%20-%20Coronavirus%20-%20Return%20to%20Work%20Safely%20Datashet.pdf?utm_campaign=covid19&utm_medium=email&hsmi=87406950&hsenc=p2ANqtz-94VosuMcNSL2fhSONeygQQEq7Td1aK61rgsOjet0KDt7_4j1jPGwsrbqH2IP3t4CDloEQd&utm_content=87406950&utm_source=hs_automation

- **COVID-19 Return to Work Self-Service Center**

<https://www.kpa.io/return-to-work-safely-program>

KPA also has an excellent COVID-19 Resource Center, which includes complimentary COVID-19 webinars, videos and additional information, available to everyone at:

<https://www.kpa.io/insights/covid-19-coronavirus-resource-center>

- **HomeCareConnect – On-Site Temperature Screening Services:**

HomeCareConnect will come onsite to an employer's location to provide touchless temperature screening services. This can be done for employees as well as visitors at a workplace. Their services are available 24/7 throughout the United States and include formal documentation as to the screening. Special HIB pricing has been negotiated with KPA. Please contact your Heffernan Producer, our Risk Management Division or reach out to Info@homecareconnect.com for details.

- **CDC COVID-19 Website:**

Because the CDC COVID-19 Guidelines can change quickly, we highly recommend that our clients sign up for daily CDC updates. In addition, the CDC has some great poster options for the workplace which we highly recommend that they display. Please visit their website at:

https://www.cdc.gov/coronavirus/2019-ncov/index.html?deliveryName=USCDC_2067-DM27717

- **OSHA COVID-19 Website:**

OSHA also has some great information and workplace posters regarding COVID-19. Please visit their website at:

<https://www.osha.gov/SLTC/covid-19/>

California’s COVID-19 “Rebuttable Presumption” **in Workers’ Compensation**

(Written by: Daniel Nevarez, Esq., Executive Risk Management Consultant)

On May 6, 2020, California Governor, Gavin Newsom, issues an executive order creating a rebuttable presumption of workplace exposure for workers diagnosed with COVID-19.

1. Governor Gavin Newsom issued Executive Order N-62-20 creating a rebuttable presumption of occupational exposure for workers diagnosed with COVID-19. The Executive Order mandates provision of workers’ compensation benefits under a certain set of criteria and applies to claims retroactive to March 19, 2020. It is effective for the next 60 days (through July 5, 2020). Other governors and state legislatures have issued orders or passed laws broadening the scope of workers’ compensation benefits in light of the COVID-19 pandemic. However, this order will likely make CA a leader in granting benefits to workers who have contracted the virus.

To qualify for benefits, the injured worker must meet a four part test. They must show:

- a. The COVID-19 diagnosis was made within 14 days of the last day the employee worked at the employer’s place of employment at the employer’s direction;
 - b. The work at the employer’s location occurred on or after March 19, 2020;
 - c. The place of employment was NOT the employee’s home or residence; AND
 - d. The COVID-19 diagnosis was made by a physician holding a physician and surgeon license from the California Medical Board AND the diagnosis was confirmed by further testing within 30 days of the date of diagnosis.
2. The Order also reduces the standard 90-day investigation period for workers’ compensation claims down to a 30-day period for these COVID claims. In the absence of a timely denial, the claim will be presumed compensable.
 3. The Order states that a claimant would have to exhaust state and federal sick leave as well as any COVID-related paid leave offered by the employer before being entitled to Temporary Disability benefits.
 4. Apportionment for pre-existing conditions under Labor Code 4663/4664 does still apply. The Order also modifies Labor Code 4706.5 so that death benefits are not owed to the DIR for persons without any surviving dependents who pass from COVID-19.

5. It should be mentioned that while this order is a temporary mandate impacting claims retroactively from March 19, 2020, through (for now) July 5, 2020, there are two separate pieces of state legislation that are being considered at this time that would codify the state's approach to the COVID-19 pandemic. First is Assembly Bill 664, which focuses primarily on creating a **conclusive presumption** for certain state and local firefighters, peace officers, hospital workers, and other certain workers who were exposed to or contracted COVID-19. This law would be retroactive to January 1, 2020.

The second bill is Senate Bill 1159 which would create a **rebuttable presumption** for "critical workers" who contracted the virus while in service of an essential critical infrastructure employer. This bill appears to focus on those employees of "essential businesses" that remained open following the initial stay-at-home mandate. Likely businesses to be affected here are grocery stores, pharmacies, mail delivery, etc.

Bottom line impact for employers:

With many employers re-opening, or contemplating re-opening, their businesses due to relaxation of some stay-at-home orders throughout the state, this executive order comes at a particularly stressful time. As employees return to the workplace, their exposure to COVID-19 will likely increase. This order puts the burden on the employer should any worker actually contract the virus. By making the presumption for industrial causation, the order makes it difficult to prove that the injured worker contracted the disease elsewhere. In addition, the reduction of the investigation period drastically speeds up the timeline to accept or deny the claims, making it all the more likely that denials will be harder to come by.

It is important to note that the order only extends to workers who are required to leave their home to work, not to workers who elect to leave the home but have the option to work remotely. The order is only effective for cases contracted between the dates of 3/19/2020 and 7/5/2020 for now. Furthermore, the Order does put into place specific requirements that must be met for applicants to receive benefits. Theoretically, these requirements will limit benefits to legitimate COVID patients with a legitimate positive diagnosis.

While this order is a temporary mandate that applies to nearly all employees in the workforce across any industry, there is pending legislation that may have an even more significant impact to certain identified industries of workers. More to follow as those pieces of legislation take shape.

Employer Best Practices:

Given the timing of this Order coupled with the abbreviated investigation period, we recommend the following steps for our clients to protect their interests:

- If a specific job/occupation/position can be performed by the worker remotely, do not require them to return to the workplace. Only bring back workers, that must be in the workplace, to perform the essential functions of their job until this Order expires – which is currently July 5, 2020).
- For those that must return to the workplace, put a strong “Back to Work” program in place with specific measures to prevent, manage, identify and contain any COVID-19 diagnosis. Please see the resources noted above, in this document, for assistance with this. Document all efforts!
- If a positive COVID-19 diagnosis comes to your management’s attention, provide that employee with a DWC-1 Claim Form and file a claim with your workers’ compensation carrier/claims administrator immediately. Since an employer’s date of knowledge is what starts the shortened 30-day timeframe to investigate (not when it is sent to the workers’ compensation claims administrator) taking quick action here is going to be key to mitigating this risk.
- Once reported to the workers’ compensation carrier/claims administrator, provide them with as much information as possible as to whether or not you feel the exposure happened at work vs. elsewhere. Since this presumption is “rebuttable”, this information is going to be important when it comes to determining the compensability issue.
- Engage your broker advocate so they can immediately start working closely with your workers’ compensation carrier/claims administrator to make sure a COVID-19 compensability finding is appropriate under the circumstances.

HIB’s Risk Management Division is here to support our clients and their workers’ compensation programs in regards to this Executive Order. We are your advocate! Should you have any questions or need for assistance, please feel free to contact your Heffernan Producer or our team directly at riskmanagement@heffins.com.