

2020 Year-End Report

on the Final Activities of the California State Legislature



Presented by our
Legislative Advocate
on October 2020



The Topsy Turvy 2020 Legislative Session

How best to sum up the 2020 legislative session in one sentence? Certainly, it will be written into the books as **THE** most disjointed and unpredictable in the state's 170-year history. Indeed, who would have ever imagined that on August 31st (which was the last day of the session) 10 of the 11 GOP Senators would be quarantined for potential COVID exposure and forced to vote by Zoom? Or that the Speaker of the Assembly would force an Assembly member, Buffy Wicks (who had just given birth to her baby the previous week) to attend and participate in the Assembly floor session holding her newborn baby throughout the hearing?

Why would the Speaker require Assembly Member Wicks to physically attend the last-day session? Politics, of course! The highly contentious SB 1383 (the measure which the governor ultimately signed into law that will require employers of 5 or more employees to provide up to 12 weeks of protected leave to qualified employees under the California Family Rights Act) needed every vote possible as midnight (the official end of the session) neared.

Ironically, under SB 1383, if a small employer with only five employees did the same and asked a worker to come back to handle a surge in orders or to deal with a last-minute emergency—even if the employee was completely willing to do so—the employer would face legal trouble. Talk about a classic ‘do as I say, not as I do!’

While California's lawmaking form was unusual, its substance remained ‘business as usual.’ Virtually NOTHING of substance was accomplished. As one colleague noted to me “instead of the Legislature rising to myriad needs resulting from the pandemic, the Legislature instead took refuge in the warm embrace of its special interests, legislating as if millions of residents weren't jobless and thousands of small businesses were not bankrupted.”

Certainly, COVID played a huge role in the outcome of the 2020 session. To wit, in a year when the coronavirus pandemic upended every aspect of normal life, the impact in the California Capitol was also dramatic. Lawmakers took an unprecedented two-month pause in the spring, when Gov. Gavin Newsom issued a statewide order for people to stay home to prevent the spread of the virus. They returned to the Capitol in May, passed a state budget shrunken by the pandemic-induced recession and began setting aside hundreds of bills that would no longer make the cut in this truncated year. Faced with less time to hold hearings and less money to spend on new initiatives, lawmakers eliminated about **three-quarters of the bills** introduced at the beginning of the year.

Given the realities they faced, the leadership had the golden opportunity to focus on **THE** most important issues, such as working with businesses to help bring workers back as quickly as possible without facing liability from worker lawsuits (in other words, employer

indemnification); and, reductions in regulations from over-zealous state agencies that penalize employers for minor infractions rather than assisting with ways to help encourage job growth and penalty reductions! Instead, the Legislature passed a handful of new, unnecessary business regulations, which is not unusual for a typical year, but particularly inappropriate during a pandemic crisis.

If the leadership had only looked back to past legislative responses to economic crisis. For example, during the 1991–93 recession, the governor and legislature offset temporary tax increases with tax reforms and incentives, regulatory reforms and aggressive economic development efforts and resources. During the Great Recession in the last decade, the Governor and Legislature created additional tools for regulatory oversight and some additional economic development tax benefits.

But in response to the current recession, the worst in terms of unemployment in the post-war era, the new burdens the Legislature has voted to place on small business vastly overwhelm the few beneficial crumbs they provided!

New Business Laws Take Effect January, 1, 2021

With labor and applicant attorneys virtually ‘owning’ the legislature, here are bills that passed and were ultimately signed by the governor. Some take effect immediately, others on January 1, 2021 as noted:

COVID-19-Related Laws

The legislature responded to the COVID-19 pandemic with several new laws. Governor Newsom signed **SB 1159**, which establishes a rebuttable workers’ compensation presumption for workers that contract COVID-19 under certain conditions and requires employers to report COVID-19 cases to their workers’ compensation carriers. The bill went into effect **immediately** upon signing and remains in effect until January 1, 2023.

AB 685 establishes stringent COVID-19 recording and reporting requirements when employers receive notice of a potential COVID-19 exposure at the workplace. Among other things, AB 685 requires employers to provide a number of notices to different groups of employees within one business day after receiving notice of a potential COVID-19 exposure. Employers must also notify their local public health department if an “outbreak” occurs at the worksite. The bill increases the California Division of Occupational Safety and Health’s (Cal/OSHA) enforcement authority related to COVID-19. **AB 685 takes effect January 1, 2021.**

Leaves of Absence

SB 1383 significantly expands the California Family Rights Act (CFRA) beginning **January 1, 2021**. Notably, this bill expands employer coverage to include all employers with **five** or more employees, which is much fewer than the previous 50 or more employees' requirement. This is a major development. Small businesses will need to quickly get up to speed on CFRA's requirements in order to be ready by **January 1**.

SB 1383 also expands the definition of "family members" beyond what is covered under the federal Family and Medical Leave Act (FMLA), which will impact larger employers who will have to administer CFRA and FMLA separately in some cases. For example, an employee can take 12 weeks of leave to care for a sibling under the CFRA and then another separate 12 weeks to cover an illness under the FMLA for total of 24 weeks of protected leave. Employers, big and small, should become familiar with the law's details and be prepared to revise or implement compliant policies and practices by 2021.

AB 2992 expands the prohibition on discrimination and retaliation against employees that are victims of crime or abuse when they take time off for judicial proceedings or to seek medical attention or related relief for domestic violence, sexual assault, stalking or other crime that causes physical or mental injury.

Currently, an employee can use up to half of their accrued sick leave to care for a family member, also known as "kin care." **AB 2017** revises the law to clarify that the employee has the right to designate sick leave as kin care, or not, in order to avoid a designation error and unintentional draw down of kin care time when the sick days were actually taken for personal sick leave.

Worker Classification

It was only last year that the biggest labor law development was the new worker classification law, AB 5, which codified the California Supreme Court's *Dynamex* ruling, using the ABC test to determine whether a worker is an employee or independent contractor, while at the same time creating numerous exceptions to the test. Early in this year's legislative session, roughly 30 bills were introduced to either repeal or revise AB 5. In the end, only one bill survived and was signed into law, **AB 2257**. The bill doesn't change the underlying framework of AB 5, but it makes some revisions and clarifications to some of the existing exceptions and added new ones. AB 2257 went into effect when it was signed on **September 4, 2020**.

Wage and Hour

Notably, **AB 1947** extends the time an individual can file a complaint of discrimination or retaliation with the California Division of Labor Standards Enforcement (DLSE), also known as the California Labor Commissioner. Under current law, workers alleging they were discriminated or retaliated against in violation of any Labor Commissioner-enforced law have six

months to file a complaint with the Labor Commissioner, but beginning **January 1, 2021**, AB 1947 extends that time to one year.

Pay Data

Another notable signed bill is **SB 973**. This bill requires a private employer, that has 100 or more employees and is required to file an annual Employer Information Report (EEO-1) under federal law, to submit a pay data report to the Department of Fair Employment and Housing (DFEH) that contains information about employees' race, ethnicity and gender in various job categories on or before **March 31, 2021**. The DFEH is given related enforcement authority. This essentially creates California's version of the federal EEO-1 information that some employers must submit to the federal Equal Employment Opportunity Commission (EEOC).

California Consumer Privacy Act (CCPA)

The CCPA provides California consumers rights over how and whether the personal data they provide to businesses is collected, retained and sold. Because its definitions are broad, employee data that employers collect for employment purposes was included. **Last year**, AB 25 largely exempted employee data from the CCPA for one year, and now **AB 1281** extends the exemption for one more year to the end of 2021. Employers must still comply with the CCPA's requirement to provide notice before, or at the time of, collecting personal information from an applicant or employee that describes every category of information that will be collected and the purposes for which it will be used. **CCPA regulations** describing how employers can give a compliant notice are now in effect.

How's Gavin Doing?

Since the COVID pandemic struck California there is hardly a day that goes by when you don't see Gavin Newsom conducting a press conference or having the local news reporting on his activities. And, it certainly is 'paying-off' in terms of the governor's popularity. According to a recent statewide poll, nearly two-thirds of California voters (64%) approve of the job Gavin Newsom is doing — up seven points from his 57% approval rating last year.

The governor gets relatively high marks for his handling of the ongoing threat posed by COVID-19. But on the bread-and-butter issues Californians say they're most concerned about, specifically housing and homelessness, he's not so popular.

The poll, conducted in mid-September by the Institute of Governmental Studies at UC Berkeley (IGS), found that 49% of voters say the governor is doing an excellent or good job managing the coronavirus, while just 28% give him a poor or very poor rating. On housing costs, however, only 12% of voters say he's doing an excellent job while 46% say he's doing a poor or very poor job. The numbers are even worse on homelessness, with just 11% of voters giving him top marks and a whopping 55% rating the job he's doing poor or very poor.

The deadly and destructive wildfires continuing to plague the state aren't helping Newsom either. While a quarter of the state's voters say he's doing a good or excellent job handling them, 39% feel he's doing a poor or very poor job of managing them.

Predictably, the former San Francisco mayor polls strongest among Democrats and in the San Francisco Bay Area. While support for Newsom is relatively stable across all age groups, his approval ratings are particularly high among Black voters and he receives more support from women than men.

While the governor may be popular my colleagues who work closely with both the governor and his staff say that the workings of his administration are in total disarray. Just as he comes across as a 'policy wonk' who likes to 'dive-deep' into the 'weeds,' his obsession with detail is so 'over-the-top' that the office is in complete and total disfunction, focusing on few instead of many issues at once.

As California continues to deal with COVID, fires, homelessness, jobs, housing and so much more, it will be interesting to watch how things 'play out' with the governor and his staff. Stay tuned!

ALL BILLS SIGNED BY THE GOVERNOR THAT IMPACT YOUR BUSINESS BY SUBJECT MATTER

Following are the highlights of bills signed by the governor that I tracked on your behalf this session, sorted according to subject matter. To access the complete text of a bill, click on the blue bill number link and then on the Chaptered PDF. All Chaptered bills become law effective January 1, 2021 unless it states it is an urgency measure which means it became law immediately upon the governor's signature; OR lists another effective date.

Business

[AB 979](#) (Holden) Chapter 316, Statutes of 2020. - Corporations: boards of directors: underrepresented communities.

Current law, no later than the close of the 2019 calendar year, requires a publicly held domestic or foreign corporation whose principal executive office is located in California to have a minimum of one female director on its board. Current law, no later than the close of the 2021 calendar year, additionally requires such a corporation with 5 directors to have a minimum of 2 female directors and such a corporation with 6 or more directors to have a minimum of 3 female directors. Existing law authorizes the Secretary of State to impose fines for violations of these provisions, as specified, and requires the moneys from these fines to be available, upon appropriation, to offset the cost of administering these requirements. This bill would require, no later than the close of the 2021 calendar year, such a corporation to have a minimum of one director from an underrepresented community, as defined.

Cal Consumer Privacy Act

[AB 713](#) (Mullin) Chapter 172, Statutes of 2020. - California Consumer Privacy Act of 2018.

The California Consumer Privacy Act of 2018 (CCPA) grants a consumer various rights with regard to personal information relating to that consumer collected by a business. The act also grants a consumer the right to request a business to delete any personal information about the consumer collected by the business and requires a business to do so upon receipt of a verified request, except as specified. The act excepts certain categories of personal information and entities from its provisions, including medical information, as specified. This bill would except from the CCPA information that was deidentified in accordance with specified federal law, or was derived from medical information, protected health information, individually identifiable health information, or identifiable private information, consistent with specified federal policy, as provided.

[AB 1281](#) (Chau) Chapter 268, Statutes of 2020. - Privacy: California Consumer Privacy Act of 2018.

The California Consumer Privacy Act of 2018, until January 1, 2021, exempts from its provisions certain information collected by a business about a natural person in the course of the natural person acting as a job applicant, employee, owner, director, officer, medical staff member, or contractor, as specified. The act also, until January 1, 2021, exempts from specified provisions personal information reflecting a written or verbal communication or a transaction between the business and the consumer, if the consumer is a natural person who is acting as an employee, owner, director, officer, or contractor of a company, partnership, sole proprietorship, nonprofit, or government agency and whose communications or transaction with the business occur solely within the context of the business conducting due diligence regarding, or providing or receiving a product or service to or from that company, partnership, sole proprietorship, nonprofit, or government agency. This bill would extend both exemptions until January 1, 2022.

Employer/Employee

[AB 1731](#) (Boerner Horvath) Chapter 209, Statutes of 2020. - Unemployment insurance: work sharing plans.

Current law provides for the payment of unemployment compensation benefits to eligible persons who are unemployed through no fault of their own. Current law deems an employee unemployed in any week if the employee works less than their usual weekly hours of work for the employee's regular employer as the result of the employer's participation in a work sharing plan that meets specified requirements and has been approved by the Director of Employment Development, pursuant to which the employer, in lieu of layoff, reduces employment and stabilizes the workforce. Current law requires an employer who wishes to participate in the work sharing program to submit to the director a signed, written work sharing plan application form that meets specified requirements. This bill, until January 1, 2024, would create an alternative process for the submission and approval of employer work sharing plan applications. The bill would require the Director of Employment Development to accept an application to participate in, or renew participation in, the work sharing program that is submitted electronically and would require the Employment Development Department to create a portal on its internet website for the provision and receipt of these applications.

[AB 1947](#) (Kalra) Chapter 344, Statutes of 2020. - Employment violation complaints: requirements: time.

Current law creates the Division of Labor Standards Enforcement, which is headed by the Labor Commissioner, and commits to it the general authority to enforce the requirements of the Labor Code. Current law generally authorizes people who believe that they have been discharged or otherwise discriminated against in violation of any law enforced by the Labor Commissioner to file a complaint with the Division of Labor Standards Enforcement within 6 months after the occurrence of the violation. Existing law generally requires the Labor Commissioner to commence actions to enforce labor standards within 3 years of their accrual, as specified. This bill would extend the period of time within which people may file complaints subject to the 6-month deadline, described above, to within one year after the occurrence of the violations.

[AB 2017](#) (Mullin) Chapter 211, Statutes of 2020. - Employee: sick leave: kin care.

Current law requires an employer who provides sick leave for employees to permit an employee to use the employee's accrued and available sick leave entitlement to attend to the illness of a family member and prohibits an employer from denying an employee the right to use sick leave or taking specific discriminatory action against an employee for using, or attempting to exercise the right to use, sick leave to attend to such an illness. This bill would provide that the designation of the sick leave taken under these provisions is at the sole discretion of the employee.

[AB 2143](#) (Stone, Mark) Chapter 73, Statutes of 2020. - Settlement agreements: employment disputes.

Current law prohibits an agreement to settle an employment dispute from containing a provision that prohibits, prevents, or otherwise restricts a settling party that is an aggrieved person, as defined, from working for the employer against which the aggrieved person has filed a claim or any parent company, subsidiary, division, affiliate, or contractor of the employer. This bill would require the aggrieved person to have filed the claim in good faith for the prohibition to apply.

[AB 2992](#) (Weber) Chapter 224, Statutes of 2020. - Employment practices: leave time.

Current law prohibits an employer from discharging, or discriminating or retaliating against, an employee who is a victim of domestic violence, sexual assault, or stalking, for taking time off from work to obtain or attempt to obtain relief to help ensure the health, safety, or welfare of the victim or victim's child. Current law authorizes an employee to file a complaint with the Division of Labor Standards Enforcement for a violation of that prohibition, and makes it a misdemeanor for an employer to refuse to rehire, promote, or restore an employee who has been determined to be so eligible by a grievance procedure or legal hearing. This bill would expand the above provision to prohibit an employer from discharging, or discriminating or retaliating against, an employee who is a victim of crime or abuse for taking time off from work to obtain or attempt to obtain relief, as prescribed.

[AB 3075](#) (Gonzalez) Chapter 357, Statutes of 2020. - Wages: enforcement.

Current law requires a statement of information to contain certain information, including specified statements regarding the general type of business that constitutes the principal business activity of the corporation or limited liability company. Current law provides that an individual who signs a statement of information for any limited liability company or foreign limited liability company affirms under penalty of perjury the information stated in the statement is accurate.

This bill, beginning January 1, 2022, or upon certification by the Secretary of State that California Business Connect is implemented, whichever is earlier, would require the statement of information to also contain a statement indicating whether any officer or any director, or, in the case of a limited liability company, any member or any manager, has an outstanding final judgment issued by the Division of Labor Standards Enforcement or a court of law, for which no appeal therefrom is pending, for the violation of any wage order or provision of the Labor Code.

AB 3216 (Kalra) Vetoed by the Governor - Unemployment: rehiring and retention: state of emergency.

Would require an employer, as defined, to offer its laid-off employees specified information about job positions that become available for which the laid-off employees are qualified, and to offer positions to those laid-off employees based on a preference system, in accordance with specified timelines and procedures. The bill would define the term “laid-off employee” to mean any employee who was employed by the employer for 6 months or more in the 12 months preceding the state of emergency giving rise to the application of the bill’s provisions, and whose most recent separation from active service was due to a public health directive, government shutdown order, lack of business, a reduction in force, or other economic, non-disciplinary reason related to the state of emergency, as defined.

Governor's Message: To the Members of the California State Assembly: I am returning Assembly Bill 3216 without my signature. This bill would provide a right of recall and retention for specified employees previously laid-off due to a local, state, or federal declaration of a public health-related state of emergency. It would require specified employers to offer the same or similar jobs to laid off employees or those which the laid off employee could be trained to do, based on seniority. The bill additionally would require employers who hire an individual other than a laid-off employee to provide that laid-off employee with the name of the individual who was hired and all the reasons for that decision. It would also require successor employers in these specified industries, regardless of the existence of a state of emergency, to give preference in hiring to employees of the incumbent employer by seniority. I recognize the real problem this bill is trying to fix-to ensure that workers who have been laid off due to the COVID19 pandemic have certainty about their rehiring and job security. But, as drafted, its prescriptive provisions would take effect during any state of emergency for all layoffs, including those that may be unrelated to such emergency. Tying the bill's provisions to a state of emergency will create a confusing patchwork of requirements in different counties at different times. The bill also risks the sharing of too much personal information of hired employees. There must be more reasonable tools to effectively enforce the recall provisions. Finally, the hospitality industry and its employees have been hit hard by the economic impacts of the pandemic. I believe the requirements of this bill place too onerous a burden on employers navigating these tough challenges, and I would encourage the legislature to consider other approaches to ensure workers are not left behind. Sincerely, Gavin Newsom

SB 973 (Jackson) Chapter 363, Statutes of 2020. - Employers: annual report: pay data.

Current law establishes within the Department of Industrial Relations the Division of Labor Standards Enforcement, which is vested with the general duty of enforcing various labor laws, including provisions prohibiting wage rates that discriminate on the basis of gender or race. This bill would authorize the DFEH to receive, investigate, conciliate, mediate, and prosecute complaints alleging practices unlawful under those discriminatory wage rate provisions. The bill

would require the DFEH, in coordination with the division, to adopt procedures to ensure that the departments coordinate activities to enforce those provisions.

SB 1102 (Monning) **Vetoed by the Governor. In Senate. Consideration of Governor's veto pending. - Employers: Labor Commissioner: required disclosures.**

Current law requires an employer to provide an employee, at the time of hiring, a written notice including specified information in the language the employer normally uses to communicate employment-related information to the employee. Current law requires the Labor Commissioner to prepare a template that includes the specified information mentioned above and to make the template available to employers in the manner as determined by the commissioner. This bill would require an employer to include in their written notice to all employees, specified information required in the event of a federal or state declared disaster or applicable to the county or counties in which the employee will be employed. The bill would prohibit an employer from retaliating against an employee for raising questions about the declarations' requirements or recommendations.

Governor's Message: To the Members of the California State Senate: I am returning Senate Bill 1102 without my signature. SB 1102 would require an employer of H2-A employees to provide a specified notice about state and federal declared disaster information about the counties where the employees may be working. This bill would additionally require an employer to provide an H-2A employee a written notice in Spanish containing specified information relative to an H-2A employee's rights pursuant to federal and state law. SB 1102 would also amend the Labor Code to include the full language of the required notice and requires the agency to issue a template that is "substantially similar." While I applaud the intent of this bill to create accessible and easy to understand notifications, this statutory construction departs from previous H2-A notice requirements like those found in Labor Code Section 2810.5 and prevents the agency from amending the template when new laws are passed or new court decisions affect the rights and obligations of H2-A employers and workers. Therefore, I am directing my Labor and Workforce Development Agency to develop and maintain a template contemplated in this bill to make available to H2-A employers, and I am returning SB 1102 without my signature. Sincerely, Gavin Newsom

SB 1383 (Jackson) Chapter 86, Statutes of 2020. - Unlawful employment practice: California Family Rights Act.

Would expand the California Family Rights Act to make it an unlawful employment practice for any employer with 5 or more employees to refuse to grant a request by an employee to take up to 12 workweeks of unpaid protected leave during any 12-month period to bond with a new child of the employee or to care for themselves or a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner, as specified. The bill would require an employer who employs both parents of a child to grant leave to each employee.

SB 1384 (Monning) Chapter 239, Statutes of 2020. - Labor Commissioner: financially disabled persons: representation.

Current law provides that the Labor Commissioner, may upon request, represent a claimant who is financially unable to represent themselves in a hearing where an employer is appealing an order of the commissioner, where the claimant is attempting to uphold the order of the commissioner. This bill would extend the authority of the commissioner to also represent a claimant who is financially unable to represent themselves in a hearing where a court order has

compelled arbitration to determine the claim and the commissioner has determined that the claim has merit. The bill would also require that a petition to compel arbitration pursuant to specified statutes be served on the Labor Commissioner.

HEALTH CARE

[AB 890](#) (Wood) Chapter 265, Statutes of 2020. - Nurse practitioners: scope of practice: practice without standardized procedures.

Would establish the Nurse Practitioner Advisory Committee to advise and give recommendations to the Board of Registered Nursing on matters relating to nurse practitioners. The bill would require the committee to provide recommendations or guidance to the board when the board is considering disciplinary action against a nurse practitioner. The bill would require the board, by regulation, to define minimum standards for a nurse practitioner to transition to practice independently. The bill would authorize a nurse practitioner who meets certain education, experience, and certification requirements to perform, in certain settings or organizations, specified functions without standardized procedures, including ordering, performing, and interpreting diagnostic procedures, certifying disability, and prescribing, administering, dispensing, and furnishing controlled substances.

Taxes

[AB 103](#) (Committee on Budget) Chapter 22, Statutes of 2020. - Unemployment compensation benefits: COVID-19.

Would, for the duration of all federal unemployment benefit programs specifically created to respond to the COVID-19 pandemic, prohibit unemployment compensation benefits paid to an unemployed individual from being charged against the reserve account of a tax-rated employer, unless the employer or an agent of the employer was at fault, as prescribed. Under the bill, this prohibition would become inoperative on January 1, 2021, unless the Director of Employment Development makes a specified determination.

[SB 972](#) (Skinner) **Vetoed by the Governor. In Senate. Consideration of Governor's veto pending. - Corporation taxes: disclosure.**

Would, on or before April 1, 2021, and on and before each April 1 thereafter, require the Franchise Tax Board to compile a list of all taxpayers subject to tax under the Corporation Tax Law, with gross receipts of \$5,000,000,000 or more, as measured by gross receipts, less returns and allowances, for the taxable year reported on a return in the previous calendar year. The bill would require the list to include the name and tax liability of each taxpayer, the taxable year for which the return is filed, the total gross receipts for that taxable year, and the amount and types of credits claimed for that taxable year. The bill would require the Franchise Tax Board to provide the information to specified committees of the Legislature by May 1, 2021, and each May 1 thereafter, in a list that includes specified information.

Governor's Message: To the Members of the California State Senate: I am returning Senate Bill 972 without my signature. This bill would require the Franchise Tax Board (FTB) to provide certain information about corporate tax filings to two legislative committees. This bill is unnecessary, as current law already authorizes the FTB, upon request, to disclose taxpayer data to legislative committees. The committee, its officers and employees are required to maintain the confidentiality of the information provided. I am not persuaded that enactment of this bill would provide additional value to future policy deliberations. Sincerely, Gavin Newsom

Workers Compensation

AB 685 (Reyes) Chapter 84, Statutes of 2020. - COVID-19: imminent hazard to employees: exposure: notification: serious violations.

Would authorize the Division of Occupational Safety and Health, when, in its opinion, a place of employment, operation, or process, or any part thereof, exposes workers to the risk of infection with severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2, also known as COVID-19), so as to constitute an imminent hazard to employees, to prohibit the performance of that operation or process, or entry into that place of employment. The bill would require the division to provide a notice thereof to the employer, to be posted in a conspicuous place at the place of employment. The bill would require such a prohibition to be limited to the immediate area in which the imminent hazard exists, as specified. The bill would require such a prohibition to be issued in a manner so as not to materially interrupt the performance of critical governmental functions essential to ensuring public health and safety functions or the delivery of electrical power or water.

SB 1159 (Hill) Chapter 85, Statutes of 2020. - Workers' compensation: COVID-19: critical workers.

Would define "injury" for an employee to include illness or death resulting from the 2019 novel coronavirus disease (COVID-19) under specified circumstances, until January 1, 2023. The bill would create a disputable presumption, as specified, that the injury arose out of and in the course of the employment and is compensable, for specified dates of injury. The bill would limit the applicability of the presumption under certain circumstances. The bill would require an employee to exhaust their paid sick leave benefits and meet specified certification requirements before receiving any temporary disability benefits or, for police officers, firefighters, and other specified employees, a leave of absence. The bill would also make a claim relating to a COVID-19 illness presumptively compensable, as described above, after 30 days or 45 days, rather than 90 days.

Other Workers' Comp Issues that May Appear In 2021

At this juncture in the pandemic, it is difficult to predict what the 2021 session will look like, particularly in the workers' comp arena. Certainly, both labor and the attorneys would like to focus on amending or eliminating Utilization Review (UR); and, the same for Independent Medical Reviews (IMR). Realistically, however, any comp reform efforts will likely focus on how well the implementation of both SB 1159 and AB 685 are working. So too, there likely will be clean-up legislation, certainly as noted in Senator Hill's letter to the journal that he submitted shortly after the passage of SB 1159. Here's a reprint of the letter:

LETTER STARTS ON NEXT PAGE (AND WRAP UP IMMEDIATELY

THEREAFTER ON THE NEXT PAGE)

August 31, 2020

Ms. Erika Contreras
Secretary of the Senate
State Capitol, Room 400
Sacramento, CA 95814

RE: Letter of Legislative Intent to the Senate Journal RE: Senate Bill 1159

Dear Ms. Contreras:

I have authored Senate Bill 1159, which creates both a series of workers' compensation presumptions for specified employees who contract COVID-19 at the workplace. I submit this letter to the Senate Journal for the purposes of clarifying the intent of SB 1159.

First, the term "tested positive" is used in both subdivisions (i) and (k) of Section 3212.88 of the bill to trigger several affirmative responsibilities on the part of an employer. Unfortunately, this phrase is not defined in order to bring this bill into alignment with existing and pending COVID-19 employer reporting requirements, which was not my intention. As the definition of an occupational outbreak begins with the first of four or more positive tests, I must clarify my intent on when an employer has an affirmative responsibility under this bill. Additionally, I plan to work with both the administration and stakeholders to resolve this issue through regulations and, if necessary, future clean-up legislation.

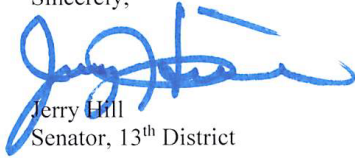
Second, subsequent to the amendment deadline, I learned that the definition used In-Home Supportive Services (IHSS) employees did not cross-reference all current definitions of IHSS workers. It was not my intent to exclude any group of eligible IHSS employees, including Waiver Personal Care Service providers, or alter existing Department of Social Services policies. I plan to work with the administration to address any inequity.

Finally, SB 1159 includes in the definition of an occupational COVID-19 outbreak the closure of a "specific place of employment" due to a risk of infection with COVID-19. This includes school campuses and community colleges, and SB 1159 uses the phrase of a "school superintendent" to denote that the appropriate school administrator must trigger the closure. In using this term, it was not my intent to limit the presumption to K-12 schools, rather than community colleges.



Thank you for the opportunity to clarify this intent.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jerry Hill", with a stylized flourish at the end.

Jerry Hill
Senator, 13th District

What is absolutely certain is that labor and the attorneys will attempt to make any bill introduced to 'tweak' SB 1159 a 'Christmas Tree' with lots of other 'reforms.' Hold on to your hats! It is going to be a long two-year session starting in January!

ADDITIONAL SERVICES PROVIDED

I want to remind you of your having direct access through me into "the government" to resolve **any and all** problems; or, to address **any** need that may arise. Regardless of the problem or issue, **call me!** Even if I don't have the immediate answer or solution, my almost, ugh, 48 years in Sacramento means that I most likely know someone who can assist us with your problem or issue! [REDACTED]

Thank you for allowing me to serve as your legislative advocate. It is truly an honor and a privilege!