

## The News Keeps Breaking

### California Passes Two Bills On COVID-19 Related Rights Of Employees And Also Expands CFRA Leave

On Thursday, September 17, 2020, Governor Newsom signed two new bills, one extending a policy that makes it easier for certain employees to receive worker's compensation if they contract COVID-19 and another imposing new COVID -19 notice requirements. New legislation expands CFRA leave requirements to most employers.

#### PRESUMPTION THAT EMPLOYEE CONTRACTED COVID-19 AT WORK

SB 1159, which takes effect immediately, creates a presumption that a covered worker's illness or death from COVID-19 is work-related and entitles them to worker's compensation, putting the onus on their employer to rebut the presumption.

The bill introduces three new Labor Code sections that apply to three cross sections of employees:

1. *All Employees.* Labor Code section 3212.86 creates a presumption that all employees contracted COVID-19 at work if (1) the employee tested positive or was diagnosed with COVID-19 within 14 days of working for the employer; and (2) the date of work within 14 days of the diagnosis or positive test was between March 19, 2020 and July 5, 2020. Any positive diagnosis must be done by a licensed physician.

2. *Frontline Workers.* Labor Code section 3212.87 creates a presumption that frontline workers contracted COVID-19 at work if (1) the employee tested positive or was diagnosed with COVID-19 within 14 days of working for the employer; and (2) the date of work within 14 days of the diagnosis or positive test was any time after July 6, 2020.

The Code section lists several types of frontline workers including firefighters, peace officers, employees who provide direct patient care, employees of health facilities, and in-home health providers.

3. *Any Employees during an "Outbreak."* The third Code section, 3212.88, creates a presumption that any employee of a company with five or more employees contracted COVID-19 at work if (1) the employee tested positive or was diagnosed with COVID-19 within 14 days of working for the employer; (2) the date of work within 14 days of the diagnosis or positive test was any time after July 6, 2020, and (3) there was an "outbreak" at the employee's specific place of employment.

An "outbreak" occurs if (1) the employer has 100 employees or less at one location and 4 or more employees test positive, (2) if the employer has more than 100 employees and 4% of the employees test positive, or (3) the employers location is ordered closed by a public health department for COVID-19 related reasons. The positive tests must occur within a 14 day period.

If an employee tests positive during an outbreak, the employer must report it to the employees' worker's compensation claims administrator within three business days. If the positive test occurred between July 6th and September 17th then the employer has to report it to the claims administrator within 30 business days.

If an employee tests positive and fits into one of the three categories above, then there is a rebuttable presumption that the employee contracted COVID-19 at work. Employees are entitled to worker's compensation coverage for hospitalization, medical treatment, disability indemnity, and death benefits. If

the employee has paid sick leave benefits available, then those benefits must be exhausted before using any other temporary disability benefits. (For more information go to [COVID-19 Paid Sick Leave For Employers with 500+ Employees, Child Care Leave, Payroll Tax Deferrals And New EEOC COVID-19 Guidelines](#).)

Employers can rebut this presumption by pointing to measures they took to reduce the potential transmission of the disease or showing a worker's non-occupational risks of COVID-19 infection. For workers in health care facilities, there is no presumption if the employer can show the employee didn't come into contact with a patient who tested positive in the last 14 days.

This rebuttable presumption will remain in place until January 1, 2023.

## NEW COVID-19 EXPOSURE NOTICE REQUIREMENT

AB 685, which does not go into effect until January 1, 2021, requires employers to provide written notice within one business day of receiving notice that an employee had a potential exposure to COVID-19. The notice must go to all employees on the same premises as the exposed employee within the period that they may have been exposed to the virus. The notice may be sent by any method which will be received within one business day of sending. Employers must also provide each employee who receives the notice with information relating to COVID-19 benefits to which they may be entitled, and a description of the employer's disinfection and safety plan.

Employers must also notify local public health officials within 48 hours if the number of cases they have meets the state's definition of an outbreak (see definition above). This notice must include all the same information as in an incident report on a Cal/OSHA Form 300, including information on the number of COVID-19 cases at the worksite, the names and occupation employees who contracted COVID-19, and other pertinent information. Employers will then need to continue working with the local health department and provide updates on new laboratory-

confirmed COVID-19 cases.

These requirements apply to all employees except those who, as part of their duties, conduct COVID-19 testing or screening or provide direct patient care or treatment to individuals who are known to have tested positive for COVID-19.

The new law also adds COVID-19 as an imminent hazard sufficient for declaring a place of employment hazardous under Cal/OSHA. Cal/OSHA has the explicit authority to shut down businesses it believes are exposing their workers to a risk of COVID-19 infection to the point that they're an imminent hazard to employees.

Additionally, the new law adds COVID-19 as a basis for issuing a "serious violation." Being cited by Cal/OSHA for a "serious violations" carries increased penalties and more severe penalties if an employer is subsequently cited for another serious violation. For COVID-19 hazards and violations only, the new law allows Cal/OSHA to issue a citation alleging a serious violation without requiring the agency to solicit information from the employer to rebut the presumption of a serious violation (as they would for other violations). However, employers will still have the opportunity to rebut the agency's finding of a serious violation within 15 days after it is issued.

## CALIFORNIA EXPANDS CFRA LEAVE TO SMALLER EMPLOYERS

California enacted SB 1383 to expand CFRA rights to employers with 5 or more employees. This aligns the employer size threshold under the California Family Rights Act (CFRA) with the employer size threshold in the Pregnancy Disability Leave law. Additionally, SB 1383 eliminates the requirement that employees work within 75 miles of the worksite, a requirement that still exists under the FMLA.

The new law will be effective on January 1, 2021. In addition to expanding CFRA rights to employees of smaller employers, SB 1383 also makes some other key changes:

1. In addition to protected time off to bond with a child, the new law allows employees to take 12 weeks of CFRA leave to care for themselves or a family

member. SB 1383 significantly expands the definition of family members beyond the current minor child, spouse or parent, and now includes grandparents, grandchildren, siblings, or domestic partners due to a serious health condition. The employee's serious health condition does not include leave taken for disability on account of pregnancy, childbirth, or related medical conditions. The definition of "child" is also expanded to cover all adult children and children of a domestic partner.

2. SB 1383 expands the definition of "family member" and "child" beyond the current definition in the FMLA and CFRA, an employee may be entitled to take 12 weeks of leave to care for the serious health condition of a sibling (for example), which is not afforded under the FMLA. However, the law specifies that "the aggregate amount of leave taken under this section or the FMLA, or both, except for leave taken for disability on account of pregnancy, childbirth, or related medical conditions, shall not exceed 12 workweeks in a 12-month period."

3. Beginning January 1, 2021, employers of five or more employees who employ both parents of a child, must to grant 12 weeks of leave to each employee in connection with the birth, adoption or foster care placement of a child. Previously, if both parents were employed by the same employer they could only take 12 weeks of leave combined.

4. The new law also makes it unlawful for any employer to refuse to grant leave due to a qualifying exigency related to the covered active duty or call to covered active duty of an employee's spouse,

domestic partner, child, or parent in the Armed Forces.

5. In addition, the new law eliminates the option for an employer to refuse reinstatement to salaried employees who are among the highest 10% of the employees and where the refusal is necessary to prevent substantial and grievous economic injury.

6. The new law requires that the employer must provide the employee, upon granting the leave request, a guarantee of employment in the same or a comparable position upon the termination of the leave.

Similar to existing law, to be eligible for the leave the employee must have worked for the employer for more than 12 months and have at least 1,250 hours of service with the employer during the previous 12-month period. The new law also expands these leave rights to certain employees employed by an air carrier as a flight deck or cabin crew member.

Similar to existing law, the leave does not have to be paid, but employers must maintain the employee's group healthcare coverage plan during the leave and continue the employer's contribution. An employer may also require the employee to substitute any accrued vacation or paid time for CFRA leave, as well as substitute accrued sick leave when the leave is due to the employee's own serious health condition.

Employers large and small should look to update their CFRA policies before January 1, 2021 to incorporate these new requirements.

## We are available to assist

Please do not hesitate to reach out to us for assistance in dealing with the effects of the COVID-19 pandemic on your company.

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