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State: Calif.

How WC System Handles COVID Claims Will Depend on Legislation and Litigation, Expert Say: Top [2020-04-27]

There are many questions about how California's workers' compensation system will handle a possible deluge of claims related to the COVID-19 pandemic. For now, frustrated and curious stakeholders must wait for answers to some of their most pressing queries.



Mark Webb

"We don't know what we don't know," said Jeff Adelson, a Southern California-based workers' compensation defense attorney who moderated a discussion Friday during WorkCompCentral's first online conference.

A wait-and-see approach was a common refrain from some of the five panelists, who cited a much-anticipated but so far not released executive order from Gov. Gavin Newsom.

California labor advocates have urged Newsom to either adopt an executive order or work with legislators to pass a law creating presumptions for essential workers during the pandemic.

Two state legislators also have co-authored Assembly Bill 664, which would create conclusive presumptions for first responders and some hospital staff but not for other essential workers at this time.

"We're waiting for Newsom to issue an executive order," said Mark Webb, owner of workers' compensation consulting firm Prop 23 Advisors. "We're waiting to see if, besides first responders, it includes those critical infrastructure jobs."

Last week, the State Compensation Insurance Fund announced that essential workers suffering from COVID-19 no longer had to prove they contracted the virus on the job.

That may prove invaluable, as new reports state the virus may have arrived sooner than previously thought, said Bill Zachry, a member of the California State Compensation Insurance Fund board of directors and chairman of State Fund's Audit Committee.

“Antibody testing now shows that the virus was here earlier than we thought,” Zachry said. “There's a larger percentage of people than we realized who were exposed to the virus.”

Zachry said carriers should attempt to “remove any friction to workers who need benefits,” meaning that, more likely than not, claims filed by essential workers will be approved.

“The theory is that it's the right thing to do,” Zachry said. “And, quite honestly, in this environment, it's likely that if an employee from a designated industry goes before an appeals court, there's a good chance the appeals court is going to rule it was work-related. It's about making as little friction as possible for those on the front lines while we're all sheltering in place.”

Webb added, “COVID-19 is a public health emergency, and that requires taking actions that normally people wouldn't consider taking.”

Beyond first responders and health care workers, the panel discussed whether employees such as grocery store workers were likely to receive compensation for working during the pandemic.

Unless Newsom or legislators cast a wide net by approving a conclusive presumption, the question could be decided on a case-by-case basis.

Brian Freeman, a Southern California-based applicants' attorney, said it was “more probable than not” that grocery workers could prove their diagnosis was work-related.

Long Beach-based workers' compensation defense attorney Zarina Hora, however, said it might not be so cut and dried.

“Every case and client is different,” Hora said. “A defense attorney can ask, ‘Was this grocery store worker a cashier who was interacting with hundreds of people every day, or were they someone in the warehouse driving a forklift who had very little interaction?’ Each case is going to be fact-specific. There still has to be a positive finding of a positive diagnosis of COVID-19. Symptoms do not necessarily mean someone has COVID-19.”