CHUBB®

EMPLOYER RESPONSIBILITY TO REPORT COVID-19 OUTBREAKS TO CHUBB UNDER CALIFORNIA SB 1159

NOTICE for Chubb Insureds whose Workers' Compensation claims are handled by Chubb Adjusters (Chubb is hereinafter referred to as "Claims Administrator" and/or "Chubb").

Chubb Insureds for whom Workers' Compensation claims are handled by a Third-Party Administrator ("TPA") should contact the TPA directly for reporting instructions.

If you are a Chubb agent or broker, we recommend you communicate this information to your client(s) to make them aware of their responsibilities as an employer to report Covid-19 outbreaks under California SB 1159.

The material presented herein is not intended to provide legal or other expert advice, but rather is presented for general information only and to assist you in your review of your obligations under the law which relate to third party administrators. You should consult knowledgeable legal counsel or other knowledgeable experts as to any legal or technical questions you may have to determine your full obligations to comply with the law.

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California SB 1159 was signed into law by Governor Gavin Newsom on September 17, 2020 and took effect immediately. This bill codified Executive Order N-62-20 and created a new set of guidelines and presumption for Covid-19 related claims for dates of injury after July 6, 2020.

For the purposes of codification, SB1159 now takes its place as Labor Code §3212.86 et seq., Labor Code §3212.87 et seq. and Labor Code §3212.88 et seq.

Labor Code §3212.86 et seq. sets forth the rebuttable presumption requirements and §3212.87 et seq. focuses on the applicability of a presumption of compensability applying to Covid-19 cases involving frontline workers including but not limited to firefighters, peace officers, hospital employees and individuals at health facilities including nurses, emergency medical technicians, paramedics, direct patient care agencies, etc.

Labor Code §3212.88 et seq. applies to non-frontline employees not covered under Labor Code §3212.87.

For the purposes of this memorandum, focus is being placed on the employer's responsibilities relative to reporting Covid-19 (outbreaks) to Claims Administrators. This memorandum does not purport to provide an in-depth analysis of all the provisions set forth in Labor Code §3212.86, §3212.87 and §3212.88.

The new legislation establishes a presumption that under certain circumstances, a diagnosis of Covid-19 is a compensable condition under the California Workers' Compensation statutes if it can be traced to a Covid-19 "outbreak", which has occurred at a specific place of employment. Among various stringent requirements, the law now requires employers to report Covid-19 "outbreaks" that occur at the specific place of employment to their Claims Administrators and to report specific instances of a diagnosis of

Covid-19. A worksite outbreak exists if, within fourteen (14) calendar days, one of the following occurs at a specific place of employment:

1. At companies with more than 100 employees, at least 4% of the employees have tested positive for Covid-19; or
2. At companies with 100 or fewer employees, at least four (4) employees have tested positive for Covid-19.

<u>Reporting Requirements</u>

Employers are now required to report the following information listed below to their Claims Administrators. It should be noted that if an employer or other person acting on the employer's behalf intentionally submits false or misleading information or fails to submit information when reporting, they may be subject to a civil penalty in the amount of up to $10,000.00 to be assessed by the Labor Commissioner.

1. **Employees diagnosed from July 6, 2020 through September 17, 2020:**

   Any employer who is aware of an employee testing positive for Covid-19 on or after July 6, 2020 and prior to September 17, 2020 shall report to their Claims Administrator, in writing via electronic mail or facsimile, **within thirty (30) business days from September 17, 2020**, the following information:

   (1) An employee has tested positive. For purposes of this reporting, the employer shall not provide any personally identifiable information regarding the employee who tested positive for Covid-19 unless the employee asserts the infection is work related or has filed a claim form pursuant to Section 5401. (Note: *Although not specified within the new legislation, it is critically important to maintain confidentiality of the identity of individuals who are not asserting Covid-19 as work related. Although there is an affirmative obligation to notify the Claims Administrator of a positive test result, protection of patients' identities remains critically important*).

   (2) The date employee tests positive, which is the date the specimen was collected for testing.

   (3) The specific address or addresses of the employee's specific place of employment during the fourteen (14) days preceding the date of the employee's positive test.

   (4) And, the highest number of employees who reported to work at the employee's specific place of employment in the forty-five (45) days preceding the last day the employee worked at each specific place of employment.

2. **Employees diagnosed from September 18, 2020 through December 31, 2022:**

   When an employer knows or reasonably should know that an employee has tested positive for Covid-19 during the above time period, the employer shall report to their Claims Administrator in writing via electronic mail or facsimile, **within three (3) business days** of such knowledge, the following information:

   (1) An employee has tested positive. For purposes of this reporting, the employer shall not provide any personally identifiable information regarding the employee who

tested positive for Covid-19 unless the employee asserts the infection is work related or has filed a claim form pursuant to Section 5401. (Note: *Although not specified within the new legislation, it is critically important to maintain confidentiality of the identity of individuals who are not asserting Covid-19 as work related. Although there is an affirmative obligation to notify the Claims Administrator of a positive test result, protection of patients' identities remains critically important*).

(2)   The date employee tests positive, which is the date the specimen was collected for testing.

(3)   The specific address or addresses of the employee's specific place of employment during the fourteen (14) days preceding the date of the employee's positive test.

(4)   And, the highest number of employees who reported to work at the employee's specific place of employment in the forty-five (45) days preceding the last day the employee worked at each specific place of employment.

To enable our clients to satisfy these reporting requirements, Chubb has created the attached reporting form. The form must be completed for each positive Covid-19 test and emailed to customer_reporting_for_ca_wc_presumption_law@chubb.com. Chubb will refer to this information when adjusting workers' compensation claims in order to establish whether an outbreak has occurred and if a Covid-19 presumption is applicable for occupational (work-related) claims as defined by SB 1159.

To reiterate, ALL positive test results for Covid-19 that have occurred since July 6, 2020, regardless of whether they are determined to be occupational or non-occupational, must be reported using the attached form.

In addition, please note that the reporting of positive test results through this new California reporting procedure is not a substitute for the existing workers' compensation claims reporting protocol. To report a workers' compensation claim, you must continue to follow your normal claim reporting processes in addition to complying with these new reporting requirements.

Should you have any questions, please do not hesitate to contact Chubb at customer_reporting_for_ca_wc_presumption_law@chubb.com.