

# WCIRB Bulletin

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## Summary of 2022 California Legislation – Bills Signed by the Governor

The California Legislature recessed for the year on August 31 and the Governor had until September 30 to sign or veto any bills passed by the Legislature. This Bulletin highlights those bills signed by the Governor that relate to workers' compensation insurance, as well as other bills that may be of interest.

### **Assembly Bill No. 1681**

This bill authorizes the Insurance Commissioner, or their designated deputy commissioner, to convene meetings with representatives of insurance companies or representatives of self-insured employers to discuss specific information concerning suspected, anticipated or completed acts of insurance fraud. This bill also authorizes a district attorney to convene a meeting with representatives of insurance companies or representatives of self-insured employers so long as the Commissioner, their designated Deputy Commissioner, or designated employees of the California Department of Insurance (CDI) Fraud or Legal Division attend such a meeting.

The bill protects a person sharing information pursuant to that authorization from civil liability for libel, slander, or any other relevant cause of action if the Commissioner, their designated Deputy Commissioner, or designated employees of the CDI's Fraud Division or the department's Legal Division are present at the meeting, they advise meeting participants of guidelines to ensure compliance with federal and state antitrust laws, and there is no fraud or malice on the part of the participants.

### **Assembly Bill No. 1751**

This bill extends the sunset of the existing COVID-19 presumption and claim requirements put in place by Senate Bill No. 1159 from January 1, 2023 to January 1, 2024.

### **Assembly Bill No. 2148**

Existing law allows an employer to commence a program under which disability indemnity payments are deposited in a prepaid card account for employees. This bill extends the authorization to deposit indemnity payments in a prepaid card account from January 1, 2023 until January 1, 2024.

### **Assembly Bill No. 2154**

This bill revises the provisions relative to bonds issued to discharge workers' compensation to additionally authorize the California Insurance Guarantee Association (CIGA) to ask the California Infrastructure and Economic Development Bank (Bank) to issue bonds if CIGA determines the insolvency of member insurers writing homeowners' and automobile insurance and other insurance will result in covered claim obligations in excess of CIGA's capacity to pay from current funds. If the board of CIGA asks the Bank to issue bonds, the bill requires the board to report information to the Assembly and Senate Committees on Insurance within sixty (60) days of the request and annually while the bonds remain outstanding. The bill authorizes CIGA to levy an assessment on member insurers writing homeowners' and automobile insurance and other insurance to pay the principal of, and interest on, the bonds issued for that claims category, which would be recouped through a surcharge on applicable policies.



This bill also specifies that obligations under a policy issued to cover cybersecurity are covered claims, if CIGA's total liability does not exceed \$1,000,000 or the policy limits, whichever is less. Finally, this bill requires the plan of operation to require a member insurer to recoup the premium charge amount, as determined by CIGA, through a surcharge on premiums, even if a premium charge has not yet been paid to CIGA because the member insurer had no direct written premium for that category of insurance for the prior year.

### **Assembly Bill No. 2693**

Assembly Bill No. 685 (AB 685) modified occupational safety standards to require employers to provide notice and report information related to COVID-19 workplace exposure within one day of notice of the exposure. The bill also expanded Cal/OSHA's authority to enforce COVID-19 related notice requirements and impose civil penalties for an employer's failure to comply. This bill extends the applicability of AB 685 from January 1, 2023 to January 1, 2024.

Among other provisions, the bill requires that if an employer receives notice of potential exposure to a "qualifying individual", the employer must take specific steps to notify employees within one business day. The bill also prohibits employers from requiring employees to disclose medical information unless otherwise required by law and from retaliating against a worker for disclosing a positive COVID-19 test or diagnosis or order to quarantine or isolate. Additionally, the bill provides that if an employer is notified that the number of its COVID-19 cases meets the definition of an outbreak, as defined by the California Department of Public Health, the employer must notify its local public health agency within 48 hours of the names, number, occupation and worksite of the "qualifying individuals".

Further, AB 685 included potential COVID-19 exposure as an imminent hazard and expanded Cal/OSHA's authority to prohibit entry into the workplace on this basis. Any restrictions imposed by Cal/OSHA must be limited to the immediate area where the imminent hazard exists and must not prohibit any entry within a workplace that does not cause a risk of infection. Finally, Cal/OSHA may not impose restrictions that would materially interrupt "critical government functions" essential to ensuring public health and safety, or the delivery of electrical power or water.

### **Assembly Bill No. 2848**

Existing law requires the Division of Workers' Compensation (DWC) to contract with an outside independent research organization to evaluate and report on the impact of the provision of medical treatment within the first thirty (30) days after a claim is filed, for claims filed on or after January 1, 2017, until January 1, 2019. Existing law also requires the report to be completed before January 1, 2020, and to be distributed to the DWC, the Senate Committee on Labor and Industrial Relations, and the Assembly Committee on Insurance. This bill changes the claim dates to between January 1, 2017 and January 1, 2021, and requires the report to be completed before July 1, 2023.

### **Senate Bill No. 216**

This bill requires concrete contractors holding a C-8 license, warm-air heating, ventilation and air-conditioning (HVAC) contractors holding a C-20 license, asbestos abatement contractors holding a C-22 license, or tree service contractors holding a D-49 license to also obtain and maintain workers' compensation insurance even if that contractor has no employees. After July 1, 2023, licensees with employees and without proper valid certification will have their licenses suspended. As of January 1, 2026, the bill would require all licensed contractors or applicants for licensure to obtain and maintain workers' compensation insurance unless they are organized as a joint venture and file a certificate of exemption.

### **Senate Bill No. 1002**

This bill includes a licensed clinical social worker (LCWS) as treatment the employer is reasonably required to provide, would expand the meaning of medical treatment to include the services of an LCWS, and would authorize an employer to provide an employee with access to an LCSW acting within the scope of their practice. The bill also authorizes medical provider networks (MPN) to add LCSWs to the physician providers listing, authorize an LCWS to treat or evaluate an injured worker only upon referral from a physician, as defined, and prohibits an LCSW from determining disability. Finally, this bill makes

legislative findings and declarations in support of allowing licensed clinical social workers to treat work-related mental and behavioral health issues.

#### **Senate Bill No. 1040**

Existing law authorizes the Insurance Commissioner to bring a superior court action to enjoin a person who is violating or about to violate the Insurance Code and to apply for a judgment to enforce an order requiring a person to pay a monetary penalty or reimburse the department for costs incurred by the department in prosecuting the matter.

This bill authorizes the Commissioner to seek a judgment to enforce an order for restitution and to order a respondent to provide restitution for a loss arising from the respondent's conduct. With a restitution order, and if the facts and equity permit, the bill authorizes the Commissioner to issue an order of rescission enforceable on any person subject to the Commissioner's jurisdiction, subject to judicial review.

#### **Senate Bill No. 1064**

This bill prohibits the Structural Pest Control Board from issuing, reinstating or continuing to maintain any structural pest control operator company registration under this chapter unless the applicant or existing company has filed a current and valid Certificate of Workers' Compensation Insurance as evidence of current and valid Workers' Compensation Insurance coverage, or a statement certifying that they have no employees and are not required to obtain or maintain workers' compensation insurance.

The bill also requires the insurer, including State Compensation Insurance Fund, to report to the registrar of the Structural Pest Control Board the company name, registration number, policy number, dates that coverage is scheduled to commence and lapse, and cancellation date if the policy is canceled for specified reasons. Finally, the bill provides that willful or deliberate disregard and violation of workers' compensation insurance laws constitute a cause for disciplinary action, and that a violation of these provisions is not a misdemeanor.

#### **Senate Bill No. 1127**

This bill:

- Amends the investigatory period from 90 to 75 days for law enforcement and first responders subject to a presumption.
- For firefighters and peace officers claiming illness or injury related to cancer, the bill increases the number of compensable weeks to 240 weeks of temporary disability benefits as opposed to the 104 compensable weeks available to other injured workers.
- Increases the fine for unreasonable delay of benefits to be 5 times the amount of benefits up to maximum liability of \$50,000 from the current standard of up to 25% or \$10,000.
- Requires the DWC to identify and amend its existing data collection processes to include collection of the date on which the claimant is notified of acceptance, denial or conditional denial of liability for a claim.

#### **Senate Bill No. 1242**

Existing law requires an insurer that reasonably believes or knows that a fraudulent claim is being made to send a prescribed form and additional information about the fraudulent claim to the CDI's Fraud Division within sixty (60) days after determination by the insurer that the claim appears to be a fraudulent claim. This bill instead requires an insurer to send that form and information within sixty (60) days after it has determined, after the completion of an investigation, that it reasonably suspects or knows an act of insurance fraud may have occurred or might be occurring.

Among other things, the bill also requires an agent or broker to use the electronic form within the Fraud Division's Consumer Fraud Reporting Portal before placing an insurance application with an insurer to report if they reasonably suspect or know that a fraudulent application is being made. If the agent or broker reasonably suspects or knows that fraud has been perpetrated after an insurance application has been placed with an insurer, the bill requires the agent or broker to report that information directly to the insurer's special investigative unit. Finally, the bill requires the Insurance Commissioner to submit

fingerprints for, in addition to others, property casualty broker license applicants to the Department of Justice for analysis and to be required to take courses on insurance fraud in addition to other ethics course requirements.

### **Other Bills of Interest**

#### **Assembly Bill No. 257**

The FAST Recovery Act establishes the Fast Food Council, subject to a petition signed by 10,000 fast food restaurant employees, which will be responsible for creating and establishing sector-wide minimum standards on wages, working hours and other working conditions related to the health, safety and welfare of, and supplying the necessary cost of proper living to, fast food restaurant workers, as well as effecting interagency coordination and prompt agency responses in this regard.

The bill also defines the characteristics of a fast food restaurant, including that the establishment be part of a set of fast food restaurants consisting of thirty (30) or more establishments nationally that share a common brand, or that are characterized by standardized options for decor, marketing, packaging, products and services. Additionally, a fast food restaurant is defined as, in its regular business operations, primarily providing food or beverages (1) in disposable containers; (2) for immediate consumption either on or off the premises; (3) with limited or no table service; and (4) to customers who order or select items and pay before eating.

#### **Assembly Bill No. 1643**

This bill requires that the Labor and Workforce Development Agency, on or before July 1, 2023, establish an advisory committee to study and evaluate the effects of heat on California's workers, businesses and economy. The bill also requires the advisory committee to recommend a study that addresses prescribed topics relating to data collection, certain economic losses, injuries and illnesses, and methods of minimizing the effect of heat on workers.

#### **Assembly Bill No. 2243**

This bill would require the Division of Occupational Safety and Health, before January 1, 2024, to submit to the standards board a rulemaking proposal to consider revising the heat illness standard to include an ultrahigh heat standard for employees in outdoor places of employment for heat in excess of 105 degrees Fahrenheit and require employers to distribute copies of the Heat Illness Prevention Plan. The bill would similarly require a rulemaking proposal to consider revising the wildfire smoke standard to reduce the existing air quality index threshold for PM2.5 particulate matter at which control by respiratory protective equipment becomes mandatory.

The bill would require the standards board to review the proposed changes and consider adopting revised standards on or before December 31, 2025. The bill would further require the division to consider regulations, or revising existing regulations, relating to protections related to acclimatization to higher temperatures, as provided.