

Subject: Urgency/Budget Labor Bills

Local Chambers:

The California legislature concluded its 2019-2020 legislative session Monday night. We wanted to provide you with an overview of several bills that ***go into effect immediately*** upon signature by the Governor so you have as much advanced notice as possible about the provisions of these bills. We fully expect the Governor's office to sign these bills.

SB 1159 (Hill) — Workers' Compensation/COVID-19

This bill establishes presumptions about whether an employee who tests positive for COVID-19 can successfully file for workers' compensation. The bill has three key components:

1. Establishes a disputable presumption that an employee suffered a workplace injury if they are: 1) diagnosed with COVID-19 or test positive for COVID-19 within 14 days after a day on which the employee worked at their place of employment (which does not include their residence) and 2) that date worked was between March 19, 2020, and July 5, 2020
 1. The employer has 30 days to reject the claim
 2. This section shall remain in effect until January 1, 2023
2. Establishes a disputable presumption that firefighters/rescue services, peace officers, certain medical providers, and providers of in-home supportive services have suffered a workplace injury if they: 1) test positive for COVID-19 within 14 days after a day on which the employee worked at their place of employment and 2) that date worked as after July 6, 2020.
 1. The employer has 30 days to reject the claim
 2. This section shall remain in effect until January 1, 2023
3. Establishes a disputable presumption that an employee suffered a workplace injury if they are: 1) diagnosed with COVID-19 or test positive for COVID-19 within 14 days after a day on which the employee worked at their place of employment (which does not include their residence); 2) that date worked was on or after July 6, 2020, 3) their employer has 5 employees or more, and 4) the positive test occurred during an "outbreak" at the employee's specific place of employment.
 1. What constitutes an "outbreak" depends on the size of the employer
 1. 100 employees or less – 4 employees or more have tested positive
 2. More than 100 employees – 4% of the workforce has tested positive
 2. "Specific place of employment" is defined as the building, store, facility, or agricultural field where an employee performs work at the employer's direction
 3. The employer has 45 days to reject the claim
 4. Includes specific reporting requirements to a claims administrator when the employer knows an employee has tested positive for COVID-19
 5. This section shall remain in effect until January 1, 2023

AB 2257 (Gonzalez) — Exemptions and Clarifications to AB 5

AB 2257 adds additional clarifications and exemptions to AB 5, a bill passed in 2019 that codified the Supreme Court's decision in *Dynamex Operations W. Inc. v. Superior Court* 4 Cal.5th 903 (2018). *Dynamex* held that workers should be classified as employees instead of

independent contractors unless they pass the “ABC Test”. AB 5 had exempted certain jobs from the rule and many groups worked this year to add clarifications to the law as well as more exemptions. AB 2257 adds the following:

1. Clarifications
 1. Added clarifications to the “business to business” exemption
 2. Added clarifications and requirements to the “referral agency” exemption and expanded the types of qualifying services to include graphic design, web design, tutoring, consulting, youth sports coaching, caddying, wedding planning, wedding and event planning, yard cleanup, captioning, and interpreting/translating services
 3. Added clarifications to the “professional services exemption” and added exemptions for those who work as a content contributor, advisor, producer, narrator, cartographer, master class teacher, real estate appraiser, professional foresters, freelance translators, and freelance copy editors
2. Exemptions
 1. Proofers and record directors in the music industry
 2. Persons who perform the following in the insurance industry: underwriting inspections, premium audits, risk management loss control work
 3. Home inspectors
 4. Work between two sole proprietors or separate entities for “single-engagement” events
 5. Individual performance artists
 6. Manufactured housing salespersons
 7. Competition judges
 8. Individuals engaged in international exchange visitor programs
 9. Data aggregators
 10. Recording artists
 11. Songwriters, lyricists, composer
 12. Recording artist managers
 13. Record producers
 14. Various musical engineers and creators of sound recordings
 15. Vocalists (with some exceptions)
 16. Photographers working on recording photo shoots, album covers, and other press and publicity purposes
 17. Independent radio promoters,
 18. Music publicists
 19. Still photographers, photojournalists, videographers, photo editors, freelance writers, editors, illustrators, newspaper cartoonists (if certain criteria are met)
3. Strikes submission cap of 35 times per year that had applied to still photographers, photojournalists, freelance writers, editors, illustrators, and newspaper cartoonists

AB 1867 (Budget Committee) — Mediation Pilot Program and Supplemental Paid Leave for COVID-19

AB 1867 includes the following provisions related to labor and employment and deals primarily with supplemental paid sick leave in relation to COVID-19:

1. DFEH Mediation Pilot Program

1. The DFEH is required to create a mediation pilot program for small business related to claims about paid family leave. Under that program, an employer or employee has the right to require that the parties participate in DFEH mediation if 1) the DFEH issues a right-to-sue notice to an employee where the employee's DFEH complaint is related to family leave and 2) the named employer has between 5-19 employees. This provision remains in effect until January 1, 2024.
2. Provisions related to employees in the food sector
 1. Employees working in any food facility must be permitted to wash their hands every 30 minutes and additionally as needed
 2. Codifies Executive Order N-51-20 by mandating supplemental paid sick leave for food sector workers if they are unable to work due to any of the specified reasons relating to COVID-19. This provision applies retroactively to April 16, 2020.
3. COVID-19 supplemental paid sick leave for certain other employees (generally companies with 500+ employees)
 1. Establishes supplemental paid sick leave for certain employees if they are unable to work due to any of the specified reasons relating to COVID-19. Covered employees include those employed by a private employer with more than 500 employees, certain health care providers, and certain emergency responders. The employee must leave their home or other place of residence to perform work for the employer to be eligible.
 2. Employers must update their wage statements to provide notice of the amount of paid sick leave available under this provision.
 3. Note: Although AB 1867 takes effect immediately upon signature, the requirement to provide leave takes effect no later than 10 days after the bill is signed. Any liability for updating wage statements will not take effect until the pay period following enactment.

There are a few items to note related to the COVID-19 supplemental paid sick leave provisions:

1. These provisions are effective until December 21, 2020, or upon expiration of any federal extension of the Emergency Paid Sick Leave Act established by the FFCRA, whichever is later.
2. These provisions run concurrently with other types of leave other than regular paid sick leave. Therefore, if an employer already provides the employee with a supplemental benefit, such as supplemental paid leave, that is payable for COVID-19 reasons identified in the statute, then the employer may count the hours of that other paid benefit or leave toward the total number of hours of COVID-19 supplemental paid sick leave that it is required to provide under this bill. Also, for the non-food worker provision, if an employer already provided supplemental paid leave but did not compensate the employee in an amount equal to or greater than the amount stated in this bill, the employer may retroactively provide supplemental pay to that covered worker.

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