



CONSTRUCTION EMPLOYERS' ASSOCIATION



Advanced Medical Technology Association

AFRICAN-AMERICAN



CALIFORNIA HOSPITAL ASSOCIATION



ASSOCIATION OF CALIFORNIA HEALTHCARE DISTRICTS



ASSOCIATION OF CALIFORNIA SCHOOL ADMINISTRATORS





June 5, 2020

The Honorable Lorena Gonzalez
California State Assembly
State Capitol, Room
Sacramento, CA 95814

Subject: AB 196 (Gonzalez) – Conclusive WC Presumption for COVID-19
OPPOSE

Dear Assemblymember Gonzalez,

The organizations listed below are respectfully **OPPOSED** to your **AB 196**, which would create a permanent and indisputable legal presumption that all COVID-19 infections suffered by “essential workers” are work related for purposes of workers’ compensation benefit eligibility. This proposal violates any reasonable standard of fairness that could possibly be expected by employers across our state, and it would divert vital resources away from recovering businesses and stretched state and local budgets. We respectfully urge you to abandon this legislation.

Many of the undersigned organizations delivered a letter dated 4/26/2020 to Governor Gavin Newsom and the legislative leaders in both the Senate and Assembly. The purpose of that letter was to provide a common voice to the concerns from all corners of California’s public and private sectors about the possibility of shifting the medical and social costs of this pandemic onto California’s workers’ compensation system through the enactment of a workers’ compensation presumption. We believe that the existing workers’ compensation system is certainly capable of effectively and efficiently meeting the needs of workers who are indeed infected while in the course and scope of their employment. In fact, there hasn’t even been a clearly established “problem” with the operation of the current system relative to COVID-19.

Notwithstanding employer concerns or a demonstrated problem with acceptance of claims, Governor Newsom issued Executive Order N-62-20 on May 6 to establish a rebuttable presumption for confirmed positive cases of COVID-19 among any California worker who reported to work outside of their home between March 19 and July 5. With such a broad presumption now in place for workers during the period in which the greatest number of Californians were ordered to stay home, we urge the legislature to thoughtfully consider the problems that need to be addressed beyond the broad scope of the Executive Order. Expansion of such extraordinary measures take California’s workers’ compensation system further away from its intended design and purpose and shift greater liability for the pandemic onto California employers.

AB 196 proposes a broad-based permanent and conclusive presumption for all essential workers. Below we have outlined our major concerns with the policy as contained in AB 196.

Basics of California Workers' Compensation

California's workers' compensation system is a [no-fault](#), employer-funded system that must be [liberally-construed](#) by the courts with the purpose of extending benefits to workers who claim an injury or illness is work-related. This means that California's system has been designed and consistently operates in a manner that broadly extends benefits for injuries and illnesses that occur on the job. Under existing rules, there needs to be some medical evidence that the illness was related to work. Therefore, employers are currently accepting COVID-19 claims, but some claims are likely to be denied because they are simply not work related or even lack any diagnosis of COVID 19. California law also requires employers to pay for health care services up to \$10,000 while the claim is reviewed, even if it is ultimately denied.

California's system is specifically designed to address workplace injury and illness and is limited to that sole purpose. To meet that important threshold, workers need to establish some reasonable factual basis for asserting workplace causation of an injury or illness. With a no-fault standard that awards benefits without consideration of negligence, and a statutory directive that the courts must construe the state's laws in favor of providing benefits, California workers' compensation claims are accepted by employers at a rate of roughly 90%.

Employers in California's workers' compensation system, which had a cost of \$23.5 Billion in 2018, are approximately 67% insured and 30.2% self-insured (the State of California makes up 2.8%). It is important to note that for many large employers and nearly all public entities, the cost of workers' compensation is largely self-funded and come directly out of those organizations' annual budgets.

Conclusive v. Rebuttable Presumption

The function of a legal presumption in workers' compensation law is to shift the burden of proof from the employee to the employer. Currently a worker claiming work-related COVID-19 would need to offer some reasonable basis to support their claim that they contracted COVID-19 at work, or that their work put them at a special risk for contracting COVID-19, and their claim would be evaluated as described above. A presumption, whether rebuttable or conclusive, would shift the burden onto the employer and require them to *prove that the employee did not get sick at work*.

When the burden of proof is shifted to the employer through a presumption the law also needs to establish what standard overcomes the presumption. In other words, what legal standard must an employer meet in order to demonstrate under the law that an infection is not work related and therefore not eligible for workers' compensation benefits?

A **"conclusive presumption"** would clearly declare, as a matter of law, that employers must provide workers' compensation benefits for eligible employees even if the evidence clearly indicates that the infection did not occur at work.

The California Department of Public Health (CDPH) noted in their [April 8, 2020 Press Release](#) that, "Since COVID-19 is moving rapidly within the community, health care workers now appear just as likely, if not more so, to become infected by COVID-19 outside the workplace." Nearly every day since that press release CDPH has noted in their daily update that hospital workers continue to contract COVID-19 both through the workplace and community exposure. A conclusive presumption, or anything that operates like a conclusive presumption, would unquestionably push these non-industrial infections into the workers' compensation system.

A **"rebuttable presumption"** would shift the burden of proof onto employers as described above but wouldn't allow benefits for infections that could be proven to be unrelated to work. This would be accomplished by establishing a standard of evidence for the employer to meet – typically in a rebuttable presumption the burden can be overcome by establishing non-industrial causation through a

preponderance of the evidence. Even under a rebuttable standard we expect that employers would still ultimately provide workers' compensation benefits for a substantial number of COVID-19 infections that are not work related.

AB 196 establishes a conclusive presumption that would inarguably shift nonoccupational COVID-19 infections into California's workers' compensation system. This is violative of 100 years of common understanding of the purpose of the workers' compensation system, and quite possibly unconstitutional.

Time Limited

Any policy proposal that fundamentally alters how our workers' compensation system works relative to COVID-19 should be considered a temporary and extraordinary measure with a clearly defined end date. Even under the statewide shelter-in-place order it would seem, again based on the CDPH press release linked above, that even employees with an elevated occupational risk are prone to contract COVID-19 through community spread. As California re-opens in stages and people across the state return to their lives the evidence would suggest that community spread is and will continue be a probable source of COVID-19 infections.

AB 196 proposes to enact a broad-based conclusive legal presumption that forces employers to pay for infections that did not occur at work, and it does so in perpetuity. Our coalition is opposed to this sort of broad and permanent shift of pandemic-related costs onto a system that was designed to treat and compensate workers hurt on the job. Additionally, AB 196 maintains the legal presumption for 90 days after termination of service from the employer.

Scope of Workers

Many workers are doing heroic work at this time to care for the sick, produce food and other essentials, and make deliveries so most Californians can stay at home. At the same time, continuation of work during the shelter-in-place directive, by itself, should not be used as a proxy for exposure risk. Workers face a wide range of risk, from front-line, public-facing workers, to those who work in relative isolation and adequate social distancing.

Therefore, any suspension of existing causation standards should be targeted to workers who face a demonstrably higher risk of exposure. We oppose proposals that would apply a presumption for COVID-19 to every worker that has reported to work outside of the home during the statewide shelter-in-place order, because such a policy would significantly increase the number of non-work claims shifted into the workers' compensation system.

Presumption policy typically applies to small subsets of workers and injuries / illnesses and we believe that a narrow scope is appropriate here, as well. AB 196 takes the opposite approach and grants a conclusive presumption based on inclusion on a "essential workers" list from a March executive order that was issued under very different circumstances than exist now or might exist into the future.

Looking Ahead

These are important issues and we commend your attention to these matters as you, your colleagues, and your staff work diligently to keep California on track. However, any legislative proposal needs to focus on extending benefits for *work-related* injuries and illnesses. We believe AB 196 fundamentally violates this premise and we oppose the bill for that reason.

Sincerely,

Acclamation Insurance Management Services, Inc
Advanced Medical Technology Association
African American Farmers of California
Agricultural Council of California
Alliant Insurance Services, Inc.

Allied Manager Care, Inc.
American Property Casualty Insurance Association
Associated General Contractors
Association of California Healthcare Districts

Association of California Life & Health Insurance Companies
 Association of California School Administrators
 Association of Claims Professionals
 Auto Care Association
 breckpoint
 California Advanced Biofuels Alliance
 California Alliance of Self Insured Groups
 California Apple Commission
 California Association of Joint Powers Authorities
 California Association of Sheet Metal and Air Conditioning Contractors National Association
 California Attractions and Parks Association
 California Bankers Association
 California Beer and Beverage Distributors
 California Blueberry Association
 California Blueberry Commission
 California Building Industry Association
 California Chamber of Commerce
 California Citrus Mutual
 California Coalition on Workers' Compensation
 California Cotton Ginners and Growers Association
 California Farm Bureau Federation
 California Farm Labor Contractor Association
 California Framing Contractors Association
 California Fresh Fruit Association
 California Grocers Association
 California Hospital Association
 California Land Title Association
 California League of Food Producers
 California Legislative Conference of the Plumbing, Heating and Piping Industry
 California Manufacturers & Technology Association
 California Municipal Utilities Association
 California Professional Association of Specialty Contractors
 California Restaurant Association
 California Retailers Association
 California Rice Commission
 California Schools Joint Powers Authority
 California Special Districts Association
 California Staffing Professionals
 California State Association of Counties®
 California Travel Association
 California Trucking Association
 California Wild Rice Advisory Board
 CAWA – Representing the Automotive Parts Industry
 CompAlliance
 Construction Employers' Association
 County of Monterey
 CSAC Excess Insurance Authority
 Family Business Association of California
 Far West Equipment Dealers Association
 Gilroy Chamber of Commerce
 National Association of Insurance & Financial Advisors – California
 National Association of Mutual Insurance Companies
 National Electric Contractors Association
 National Federation of Independent Business
 Nisei Farmers League
 Northern California Allied Trades
 Official Police Garages Association of Los Angeles
 Olive Growers Council of California
 Personal Insurance Federation of California
 Residential Contractors Association
 Southern California Glass Management Association
 Special District Risk Management Authority
 United Contractors
 Urban Counties of California
 Wall and Ceiling Alliance
 Western Agricultural Processors Association
 Western Growers Association
 Western Insurance Agents Association
 Western Plant Health Association
 Western Wall & Ceiling Contractors Association