Workers' Comp

New Presumption Laws Signed: California and New Jersey

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On September 14, 2020, New Jersey Governor Phil Murphy signed SB 2380 into law. The legislation creates a rebuttable presumption for “essential employees” who contract the coronavirus during the time an executive order declaring a public health emergency, and any subsequent extension by the Governor, remains in effect.

The definition of an essential employee includes employees in the public or private sector working in public safety or as first responders, medical and healthcare services, healthcare facilities, or functions that require close proximity to the public and are deemed essential, such as transportation services, hotel and other residential services, financial services, food, fuel and other necessities. Employees who were given the option to work at home but refused that option would not be considered essential. The bill says that claims paid under the act shall not be considered in determining an employer's experience modification or otherwise impact premium costs.

On the west coast, California Governor Gavin Newson signed SB 1159 into law on September 17, 2020. The California bill creates a “disputable” presumption that may be challenged by other evidence. Section 2 of the bill applies to all employees and defines an injury from COVID-19 that arises when an employee tests positive for the virus within 14 days after performing labor at their place of employment at their employer's direction between March 19, 2020, and July 5, 2020. The place of employment cannot include the employee's residence.

Section 3 of the California bill creates a “disputable” presumption for employees who are firefighters (both paid and volunteer) for a city, county, university, Department of Forestry or other political subdivision, peace officers, fire and rescue coordinators and health care workers with direct patient contact. Injury from COVID-19 arises when an employee tests positive for the virus within 14 days after performing labor at their place of employment at their employer's direction on or after July 6, 2020. If a claim under this section is not rejected within 30 days, the illness is presumed to be compensable. The place of employment cannot include the employee's residence.

Section 4 of the bill creates a “disputable” presumption for employees not covered under Section 3, who test positive during an outbreak at the employee's specific place of employment and whose employer has five or more employees. An outbreak is defined as four employees testing positive for companies with 100 or fewer employees, or four percent of the workforce for employers with over 100 employees. Injury from COVID-19 arises when an employee tests positive for the virus within 14 days after performing labor at their place of employment at their employer's direction on or after July 6, 2020. If a claim under this section is not rejected within 45 days, the illness is presumed to be compensable. The place of employment cannot include the employee's residence. The employer may produce evidence of COVID-19 mitigation efforts deployed in the workplace or evidence of non-occupational risk incurred by the employee to controvert the presumption. The provisions of the bill sunset on January 1, 2023.

The New Jersey bill SB 2390 can be found here.

The California bill SB 1159 can be found here.

For questions regarding this alert, or any other legislative or regulatory activity, please contact Brian Allen, vice president of government affairs, at Brian.Allen@mitchell.com or at 801.903.5754.



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