# WCIRB Bulletin

**Bulletin No. 2021-17** **October 13, 2021**

1221 Broadway, Suite 900 • Oakland, CA 94612 • 415.777.0777 • Fax 415.778.7007 • www.wcirb.com • wcirb@wcirb.com

## Summary of 2021 California Legislation – Bills Signed by the Governor

The California Legislature recessed for the year on September 10, 2021 and the Governor had until October 10, 2021 to sign or veto any bill passed by the Legislature. The following highlights the bills signed by the Governor that relate to workers' compensation insurance and may be of interest.

<u>Assembly Bill No. 654</u>
Under existing law, if an employer receives a notice of potential exposure to COVID-19, within one business day the employer is required to provide written notice to all employees on the premises at the worksite that they may have been exposed to COVID-19. If notified of enough cases that meet the definition of an "outbreak" – in a non-healthcare workplace, at least three COVID-19 cases among workers at the same worksite within a 14-day period – the employer must similarly notify the local public health agency within 48 hours. Existing law further requires the California Department of Public Health (DPH) to make COVID-19 outbreak information available online in a manner that allows the public to track the number and frequency of outbreaks and the number of COVID-19 cases and outbreaks by industry reported by any workplace. This bill requires that the employer, when giving notice to the local public health agency of an outbreak, to give that notice within 48 hours or one business day, whichever is later. The bill removes the requirement for the DPH to post data on its website to allow for tracking the frequency of COVID-19 outbreaks and it also expands the employers exempt from the outbreak reporting requirement to various licensed entities, such as community clinics, adult day health centers, community care facilities, and child daycare facilities. This bill took effect immediately as an urgency statute when it was signed on October 5, 2021 and repeals these provisions on January 1, 2023.

<u>Assembly Bill No.1511</u>
Under current law, insurers must notify policyholders 10 days before canceling a policy for unpaid premium, failure to report payroll, making a material misrepresentation or failing to cooperate with a claim investigation. Insurers must notify policyholders 30 days before canceling a policy for not complying with federal or state safety orders or written recommendations from the insurer's loss-control representative. Additionally, insurers must notify policyholders 30 days before policy cancellation when a change in ownership or the nature of business increases the hazard for frequency or severity of loss, requires additional or different class calculations or contemplates an activity excluded by the insurer's reinsurance treaties.

Effective January 1, 2022, this bill extends those deadlines by 5 calendar days if the notice is mailed to an address in the state, by 10 days if the notice is mailed elsewhere in the U.S. and by 20 days if mailed outside the U.S. The WCIRB will be updating its policy cancellation form in order to account for these new notice periods.

The bill also has provisions related to State Compensation Insurance Fund (State Fund) and other admitted insurer investments. With respect to State Fund, until January 1, 2025, existing law authorizes State Fund to invest or reinvest an aggregated maximum of 20% of its surplus funds into stock and

WCIRB California®
Objective.Trusted.Integral.

mortgage-related investment instruments. This bill extends that investment authorization until January 1, 2027 and authorizes State Fund to make discretionary investments in properties, securities and money market mutual funds.

As it relates to other insurer investments, the California Organized Investment Network (COIN) within the California Department of Insurance has been established under existing law to, among other things, pursue active measures to encourage insurers to make investments in California's underserved and low-to-moderate-income communities. A domestic incorporated insurer is authorized to make discretionary investments after investment of an amount equal to its required minimum paid-in capital in securities. These discretionary investments may include purchases or loans of properties and securities but are limited to the lesser of 5% of the insurer's admitted assets or 50% of the excess of admitted assets over the sum of capital paid up, liabilities, and a required surplus. This bill, until January 1, 2027, increases the 5% limitation if the Insurance Commissioner has approved the amount and terms of the investment in advance and COIN has identified the investment in an investment opportunity bulletin or otherwise deemed it to be a qualified investment. The bill requires the Insurance Commissioner to submit a report to the Senate and Assembly Insurance Committees on or before December 31, 2025, regarding the investments made due to the increased limitation.

<u>Assembly Bill No. 1541</u>
Existing law gives the California Insurance Guarantee Association (CIGA) the ability to request the issuance of bonds by the California Infrastructure and Economic Development Bank to provide for the payment of covered claims arising from the insolvencies of insurance companies providing workers' compensation insurance more expeditiously and effectively. Under current law, any bonds that provide funds for covered workers' compensation claim obligations must be issued prior to January 1, 2023. This bill extends the date for these bonds to be issued to January 1, 2026.

*<u>Employment-Related Bills</u>*

<u>Assembly Bill No. 701</u>
This bill pertains to warehouse employees and requires employers to provide nonexempt employees with a written description of each quota to which the employee is subject and any potential adverse employment action that could result from failure to meet the quota. Among other things, the bill provides that an employee cannot be required to meet a quota that prevents compliance with legally mandated protections such as meal or rest periods, use of bathroom facilities, or occupational health and safety requirements. The bill also requires that any action taken by an employee to comply with occupational health and safety laws or standards be considered time on task and productive time for the purposes of any quotas or monitoring system.

This bill requires the California Labor Commissioner to enforce these provisions by engaging in coordinated and strategic enforcement efforts with the Department of Industrial Relations, including the Division of Occupational Safety and Health (OSHA) and the Division of Workers'' Compensation (DWC). The bill permits the Labor Commissioner access to DWC data including employer-reported injury data and enforcement actions in warehouses, the identity of uninsured employers, and employers who are committing workers'' compensation fraud, wage theft, or other information relevant to the Labor Commissioner's authority.

The bill also requires the Labor Commissioner to report to the Legislature by January 1, 2023, the number of claims filed, data on production quotas in warehouses where the annual employee injury rates are above the industry average, the number of investigations undertaken and enforcement actions initiated per employer.

Lastly, the bill requires OSHA or the DWC to notify the Labor Commissioner if a particular warehouse worksite or employer is found to have an annual employee injury rate of at least 1.5 times higher than the warehousing industry's average annual injury rate. The Labor Commissioner is then required to determine whether an investigation of violations pursuant to these provisions is appropriate.

Assembly Bill No. 1506

For the purposes of wages, workers' compensation and other benefits, existing law creates a presumption that an entity's workers are employees unless the worker meets three conditions, known as the "ABC Test". Specifically, in order for a worker to be considered an independent contractor, the hiring entity must demonstrate that all of the following conditions are satisfied:

A. The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

B. The person performs work that is outside the usual course of the hiring entity's business.

C. The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

Existing law temporarily exempts several occupations and business relationships from the application of the ABC Test and provides that these exemptions are governed by the multifactor test set forth in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341. This bill extends the application of the existing temporary exemption for newspaper distributors from January 1, 2022, to January 1, 2025. It also requires newspaper publishers and distributors that hire or directly contract with newspaper carriers to submit payroll tax and wage rate information related to employees and independent contractors to the Labor and Workforce Development Agency on an annual basis starting March 1, 2022 until March 1, 2024.

Assembly Bill No. 1561

As addressed above, there are numerous business types and relationships that are exempt from application of the ABC Test under existing law. Among other things, this bill extends the operative dates for the exemption for licensed manicurists and subcontractors in the construction industry from January 1, 2022 to January 1, 2025. The bill also extends the exemption for underwriters, auditors, risk managers and loss control personnel licensed by the California Department of Insurance to also include claim adjusters and third-party administrators.

Senate Bill No. 62

This bill prohibits an employer from paying its employees engaged in garment manufacturing on a piece rate basis and requires adherence to an hourly pay rate. Among other things, the bill creates a rebuttable presumption in a claim filed with the Labor Commissioner to recover unpaid wages, if an employee has provided the Labor Commissioner with labels or other information that the Labor Commissioner finds credible relating to the identity of any brand guarantor or garment manufacturer that shows liability for any amounts due to the employee. The bill also gives the Labor Commissioner authority to enforce these provisions by issuing a stop order or a citation.