

TECHNICAL TALK:

CALIFORNIA

SB 1159 & AB 685

What You Need To Know

PRESENTED BY ICW GROUP
CLAIMS & RISK
MANAGEMENT TEAMS



Today's Presenters



Mary Beth Vine

- › Claims Customer Relations Manager
- › Work Comp Claims



Liza Barlev CSP, ARM, MBA

- › Regional Manager
- › Risk Management Services

Agenda

- Introduction
- **SB 1159:** *Presented by Mary Beth Vine*
 - Executive Order Codified
 - COVID-19 Claims
 - 9/17/20 Changes
- **AB 685:** *Presented by Liza Barlev*
 - Employer's Responsibilities
 - Infectious Disease Prevention & Response Plan (IDPRP)
- Website Resources



Agenda

- **Introduction**
- **SB 1159:**
 - Executive Order Codified
 - COVID-19 Claims
 - 9/17/20 Changes
- **AB 685:**
 - Employer's Responsibilities
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- Website Resources



SB 1159 VS AB 685

SB 1159

- Went into effect immediately
- Creates presumption of workers' compensation coverage for employees who contract COVID-19 in workplace in specified industries, and, in case of outbreak, for all employers.
- Imposes new reporting obligations for all employers.

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COVID-19 Presumption Reporting tracks

Labor Code	Impacts	Effective Dates
LC 3212.86	All Employees	3/19/2020 - 7/05/2020
LC 3212.87	Frontline and Healthcare Workers	7/6/2020 - 12/31/2022
LC 3212.88	All other Employees	7/6/2020 - 12/31/2022

COVID-19 Presumption Reporting tracks



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LC 3212.86 - The Executive Order Codified

Labor Code	Impacts	Effective Dates
LC 3212.86	All Employees	3/19/2020 - 7/05/2020


- For ALL Employees who worked at Employer's direction, but not at their home/residence, between 3/19/2020 - 7/05/2020, presumption of work related COVID-19 exists.
- They must test positive for COVID-19 or diagnosed with COVID19 within 14 days of last day worked.
- If diagnosed with COVID-19, must be corroborated with positive test within 30 days from date of diagnosis.

LC 3212.86 - The Executive Order Codified

Labor Code	Impacts	Effective Dates
LC 3212.86	All Employees	3/19/2020 - 7/05/2020

- COVID-19 diagnosis can be provided by MD and DO, PA or NP can also provide diagnosis if they are working under licensed physician. Physician does not have to be licensed in California.
- Last Day Worked is Date of Injury.
- COVID-19 test can be serology/antibody test.
- This presumption is rebuttable.

COVID-19 Presumption Reporting tracks

Labor Code	Impacts	Effective Dates
LC 3212.86	All Employees	3/19/2020 - 7/05/2020
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LC 3212.87 – Frontline & Healthcare Workers

Labor Code	Impacts	Effective Dates
LC 3212.87	Frontline and Healthcare Workers	7/6/2020 - 12/31/2022

POLICE - FIRE - HEALTHCARE WORKERS

- Doctors & Nurses, Medical Technicians, Paramedics, EMTs, Employees who provide direct patient care.
- Custodial workers in health facility in direct contact with possible COVID-19 patients and most Home Health Workers.

LC 3212.87 – Frontline & Healthcare Workers

Labor Code	Impacts	Effective Dates
LC 3212.87	Frontline and Healthcare Workers	7/6/2020 - 12/31/2022

- COVID-19 Claims are presumed work related:
 - › Employee must test positive for COVID-19 within 14 days of last day worked at Employer's Direction.
 - › Employee's positive COVID-19 test cannot be serology / antibody test.

LC 3212.87 – Frontline & Healthcare Workers

Labor Code	Impacts	Effective Dates
LC 3212.87	Frontline and Healthcare Workers	7/6/2020 - 12/31/2022

- They **do NOT need** medical report diagnosing COVID-19.
- Last Day Worked is Date of Injury.
- COVID-19 Pay must be exhausted before Total Temporary Disability is payable; there is no Waiting Period.
- Discovery Period is 30 days from when DWC-1 Claim Form is filed.
- This presumption is rebuttable.

COVID-19 Presumption Reporting tracks

Labor Code	Impacts	Effective Dates
LC 3212.86	All Employees	3/19/2020 - 7/05/2020
LC 3212.87	Frontline and Healthcare Workers	7/6/2020 - 12/31/2022
LC 3212.88	All other Employees	7/6/2020 - 12/31/2022



LC 3212.88 – All other Employees

Labor Code	Impacts	Effective Dates
LC 3212.88	All other Employees	7/6/2020 - 12/31/2022

This section of law applies to any employee who tests positive during an “**Outbreak**” at employer’s place of business and if employer has **5 or more employees**.

LC 3212.88 – All other Employees

Labor Code	Impacts	Effective Dates
LC 3212.88	All other Employees	7/6/2020 - 12/31/2022

- “Outbreak” is defined as:
 - › Employer has 100 or fewer Employees at location, 4 or more Employees must test positive for COVID-19 within 14-day period.

or

 - › Employer has more than 100 Employees at location, 4% or more Employees must test positive within 14-day period.

or

 - › Employer’s premises ordered closed by public health official.

LC 3212.88 – All other Employees

Labor Code	Impacts	Effective Dates
LC 3212.88	All other Employees	7/6/2020 - 12/31/2022

- COVID-19 is presumed work related if employee worked at employer's place of business at employer's direction on or after July 6, 2020 and following two elements are met:
 - › They test positive for COVID-19 with FDA approved RNA test equivalent to or with higher sensitivity as PCR test (cannot be Serology/Antibody Test).
 - › Their test is taken within 14 days of Last Day of Work and during "Outbreak" at Employer's Premises.

LC 3212.88 – All other Employees

Labor Code	Impacts	Effective Dates
LC 3212.88	All other Employees	7/6/2020 - 12/31/2022

- Last Day Worked is Date of Injury.
- COVID-19 Pay must be exhausted before any Total Temporary Disability is payable.
- The Discovery period is 45 days from date DWC-1 is filed.

LC 3212.88 – All other Employees

Labor Code	Impacts	Effective Dates
LC 3212.88	All other Employees	7/6/2020 - 12/31/2022

- COVID-19 positive claims are presumed work related, however:
 - › Presumption is rebuttable.
 - › If there is no “Outbreak” there is no presumption.
- Evidence to overcome presumption may include:
 - › Employer efforts to reduce potential transmission with PPE, enhanced cleaning programs, employee temperature checks, etc.

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Work-related COVID-19 Claim Requirements

If employee tests positive for COVID-19 and they think they contracted it at work:

1. Provide DWC-1 claim form
 2. Report to **855.442.9252**
- Or: firstnotice@icwgroup.com

EMAIL PRINT CLEAR

State of California
Department of Industrial Relations
DIVISION OF WORKERS' COMPENSATION
WORKERS' COMPENSATION CLAIM FORM (DWC 1)

Empleado: Complete the "Employee" section and give the forms to your employer. Give a copy and mark it "Employee's Temporary Receipt" until you receive the signed and dated copy from your employer. You may call the Division of Workers' Compensation and have recorded information at (800) 744-7447. An explanation of workers' compensation benefits is included in the Notice of Potential Eligibility, which is the cover sheet of this form. Detach and save this notice for future reference.
You should also have received a pamphlet from your employer describing workers' compensation benefits and the procedures to obtain them. You may receive written notice from your employer or its claims administrator about your claim. If your claims administrator offers to send you notices electronically, and you agree to receive these notices only by email, please provide your email address below and check the appropriate box. If you later decide you want to receive the notices by mail, you must inform your employer in writing.

Any person who makes or causes to be made any knowingly false or fraudulent material statement or material representation for the purpose of obtaining or securing workers' compensation benefits or payments is guilty of a felony.

Empleado: Complete la sección "Empleado" y entregue la forma a su empleador. Déjale con la copia marcada "Recibo Temporal del Empleado" hasta que Ud. reciba la copia firmada y fechada de su empleador. Ud. puede llamar al División de Compensación al Trabajador al (800) 744-7447 para ser informado por escrito. Una explicación de los beneficios de compensación de trabajadores está incluida en la Notificación de Posible Elegibilidad, que es la hoja de portada de esta forma. Guarde y póngala esta notificación como referencia para el futuro.
Ud. también debería haber recibido de su empleador un folleto describiendo los beneficios de compensación al trabajador lesionado y los procedimientos para obtenerlos. Es posible que reciba notificación escrita de su empleador o de su administrador de reclamos sobre su reclamo. Si su administrador de reclamos ofrece enviarse notificaciones electrónicamente, y usted acepta recibir estas notificaciones solo por correo electrónico, por favor proporcione su dirección de correo electrónico abajo y marque la caja correspondiente. Si usted decide después que quiere recibir las notificaciones por correo, usted debe de informar a su empleador por escrito.

Toda aquella persona que o persuade a otros a hacer o se produce cualquier declaración o representación material falsa o fraudulenta con el fin de obtener o asegurar beneficios o pagos de compensación a trabajadores lesionados es culpable de un crimen mayor "felony".

Employee—complete this section and see the notice above. Today's Date: Fecha de Hoy

1. Name: Nombre _____
2. Home Address: Dirección Residencial _____
3. City: Ciudad _____ State: Estado _____ Zip: Código Postal _____
4. Date of Injury: Fecha de la lesión (accidente) _____ Time of Injury: Hora en que ocurrió _____ a.m. _____ p.m.
5. Address and description of where injury happened. Dirección lugar donde ocurrió el accidente _____
6. Describe injury and part of body affected. Describe la lesión y parte del cuerpo afectado _____
7. Social Security Number: Número de Seguro Social del Empleado _____
8. Check if you agree to receive notices about your claim by email only. Marque si usted acepta recibir notificaciones sobre su reclamo solo por correo electrónico. Employee's email: Correo electrónico del empleado _____
You will receive benefits notices by regular mail if you do not check, or your claims administrator does not offer, an electronic service option. Usted recibirá notificaciones de beneficios por correo ordinario si usted no marca, o si su administrador de reclamos no le ofrece una opción de servicio electrónico.
9. Signature of employee: Firma del empleado _____
Employee—complete this section and see note above. Employer—complete this section and see the notice above.
10. Name of employer: Nombre del empleador _____
11. Address: Dirección _____
12. Date employer first knew of injury: Fecha en que el empleador supo por primera vez de la lesión o accidente _____
13. Date claim form was provided to employee: Fecha en que se le entregó al empleado la petición _____
14. Date employer received claim form: Fecha en que el empleador recibió la petición al empleador _____
15. Name and address of insurance carrier or adjusting agency: Nombre y dirección de la compañía de seguros o agencia administradora de seguros _____
16. Insurance Policy Number: El número de la póliza de Seguros _____
17. Signature of employer representative: Firma del representante del empleador _____
18. Title: Título _____ 19. Telephone: Teléfono _____
Employee: You are required to date this form and provide copies to your insurer or claims administrator and to the employee, dependent or representative who filed the claim within one year from the date of receipt of the form from the employee.
Employer: Se requiere que Ud. feche esta forma y que proporcione copias a su compañía de seguros, administrador de reclamos, o dependiente/representante de reclamos, al empleado que haya presentado esta petición dentro del plazo un año desde el momento de haber sido recibida la forma del empleado.
SIGNING THESE FORMS NOT AN ADMISSION OF LIABILITY
EL FIRMAR ESTA FORMA NO SIGNIFICA ADMISIÓN DE RESPONSABILIDAD
 Employee copy/Copia del Empleado Employee copy/Copia del Empleado Claims Administrator/Administrador de Reclamos Temporary Receipt/Recibo del Empleado
Rev. 11/2016

NON Work-related COVID-19 Claim Requirements

When employee tests positive for COVID-19 and they are NOT asserting it to be work related:

1. Complete SB1159 Reporting form.
 2. Send to firstnotice@icwgroup.com
- Or report to: 855.442.9252**

ICWGROUP
Insurance Companies

SB 1159 California Employer Reporting Form

If you have an employee testing positive for COVID-19, use this form to ensure you're in compliance with the latest California legislation. We'll use information provided to determine if an outbreak occurred between 7/6/20 and 12/31/22, for the purpose of applying presumption criteria.

For all reports:

- DONT include personal information about the employee - unless infection is work related or they've filed a claim.
- Complete the below and send to:
 - firstnotice@icwgroup.com (use the below Email button)
 - OR fax: 858.436.8916
 - OR call 877.442.9669 - we're happy to assist!

SB 1159 Reporting Information

1) Please check one. Note reporting date requirements and information about specific place of employment.*

* "Specific place of employment" means building, store, facility or agricultural field where employee performed work at employer's direction. Does not include employee's home or residence, unless employee provides home health care services to another individual at employer's home or residence.

My Employee tested positive for COVID-19 PRIOR to 9/17/20 - Report within 30 business days or before 10/29/20. If between 7/6/20 - 9/16/20, highest number of employees who reported to work at each of employee's specific places of employment on any given work day between 7/6/20 - 9/17/20: _____

My Employee tested positive for COVID-19 on or AFTER 9/17/20 - Report within 3 business days of knowledge. Highest number of employees reporting to work at employee's specific place of employment in 45-day period preceding last day employee worked at each specific place of employment: _____

2) Company: _____ Policy number: _____

3) Employer's date of knowledge*: _____ * Or, date reasonably should have known employee tested positive.

4) If employee asserts work-related infection or has filed claim, please add employee's name or unique identifier*: _____

* If not, DON'T provide any personally identifiable information regarding employee who tested positive for COVID-19.

5) Date employee took COVID-19 test resulting in a "positive":* _____

* "COVID-19 test" is defined as Polymerase Chain Reaction (PCR) test approved for use or approved for emergency use by U.S. Food and Drug Administration to detect the presence of viral RNA. A "COVID-19 test" does not include serologic testing, also known as antibody testing. Further, "COVID-19 test" may include any other viral culture test, approved for use or approved for emergency use by U.S. Food and Drug Administration to detect presence of viral RNA, having same or higher sensitivity and specificity as PCR test.

6) Last date employee worked at place of employment at employer's direction: _____

7) Specific address(es) of employee's specific place of employment during 14-day period preceding date of employee's positive test: _____

8) Yes No - The above specific place of employment has been ordered closed by local public health department, State of Department of Public Health, Division of Occupational Safety and Health, or school superintendent due to risk of infection with COVID-19.

9) Person completing this report: _____

Name: _____ Title: _____ Date: _____

Disclaimer - An employer or other person acting on behalf of an employer who intentionally submits false or misleading information or fails to submit information when reporting is subject to a civil penalty in the amount of up to ten thousand dollars (\$10,000) to be assessed by the Labor Commissioner. If upon inspection or investigation, the Labor Commissioner determines an employer or other person has intentionally submitted false or misleading information, the Labor Commissioner may issue a citation to the person in violation.

[Send as Email](#)

ICW Group includes Insurance Company of the West and Explorer Insurance Company

4/9/2020

NON Work-related COVID-19 Claim Requirements

We'll utilize information reported to determine:

- If an outbreak has occurred for claims between **7/6/2020** and **12/31/2022**.
- And for purpose of applying presumption criteria.

ICWGROUP
Insurance Companies

SB 1159 California Employer Reporting Form

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Highest number of employees reported to work at employee's specific place of employment in 45-day period preceding last day employee worked at each specific place of employment: _____

2) Company: _____ Policy number: _____

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7) Specific address(es) of employee's specific place of employment during 14-day period preceding date of employee's positive test: _____

8) Yes No - The above specific place of employment has been ordered closed by local public health department, State of Department of Public Health, Division of Occupational Safety and Health, or school superintendent due to risk of infection with COVID-19.

9) Person completing this report:
Name: _____ Title: _____ Date: _____

Disclaimer - An employer or other person acting on behalf of an employer who intentionally submits false or misleading information or fails to submit information when reporting is subject to a civil penalty in the amount of up to ten thousand dollars (\$10,000) to be assessed by the Labor Commissioner. If upon inspection or investigation, the Labor Commissioner determines an employer or other person has intentionally submitted false or misleading information, the Labor Commissioner may issue a citation to the person in violation.

[Send as Email](#)

ICW Group includes Insurance Company of the West and Explorer Insurance Company

4/9/2020

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Reporting

Within 30 business days of 9/17/2020 (or by 10/29/20)

- Report to ICW Group, in writing via email or fax, all employees testing positive for COVID-19 between 7/6/2020 and 09/16/2020, **regardless if work-related or not.**
- Do **NOT** include personally identifiable information regarding employee - unless they assert infection is work-related or have filed claim form.

As of 9/17/2020

When you know or reasonably should know an employee tested positive for COVID-19:

- You shall report this in writing via email or fax to ICW Group **within 3 business days.**
- Do NOT include personally identifiable information about employee unless employee asserts infection is work-related or filed claim form.

Civil Penalties for Not Reporting

- An employer or person acting on behalf of an employer who intentionally submits false or misleading information, or fails to submit information when reporting, is subject to a **civil penalty in the amount of up to ten thousand dollars (\$10,000)** to be assessed by the Labor Commissioner.
- The non-compliant employer may **also be issued a citation.**

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SB 1159 VS AB 685

AB 685

- Goes into effect January 1, 2021
- Increases potential Cal/OSHA exposure concerning COVID-19 by implementing new reporting requirements.
- Eliminates need for advance notice of potential serious and willful violations.

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AB 685 – CAL/OSHA & Citations

Citations for serious violations

- Cal/OSHA can issue citations for serious violations related to COVID-19 without giving employers 15-day notice before issuance.
- Cal/OSHA penalties for serious citation are **higher** than Fed/OSHA and all other states.

Maximum \$25,000 fine and mandatory minimum \$18,000 fine for accident-related serious citations

CAL/OSHA and Orders Prohibiting Use (OPU)

- Cal/OSHA **can issue OPU** to shut down entire worksites or specific worksite areas exposing employees to imminent hazard related to COVID-19.
- Cal/OSHA **can now exercise authority** at any place of employment where risk of exposure to COVID-19 constitutes an imminent hazard, and would remove employees from the risk of harm until employer can effectively address hazard.

Outbreak Definition

- Different definition of outbreak from SB 1159.
- The California Department of Public Health defines an outbreak in **non-healthcare** or **non-residential** congregate setting workplaces as:

“Three or more laboratory-confirmed cases of COVID-19 among employees who live in different households within a two-week period.”

Starting 1/1/2021 – Reporting Outbreaks

- Employers **must notify local public health agencies** of outbreaks within 48 hours of becoming aware.
- Employer **must notify local public health agency** in jurisdiction of worksite of employees who may have COVID-19, or are under COVID-19 isolation order.
- Employers must also report business address and **NAICS industry code** of worksite.

Starting 1/1/2021 – Reporting Outbreaks

- If employer has outbreak subject to provisions, they must continue to give notice to the local health department of subsequent laboratory-confirmed cases of COVID-19 at worksite.
- No definitive length of time to keep reporting subsequent cases to department of health.
- In place 1/1/2021 to 1/1/2023.

Notifications Of Potential Exposure

- Employers must provide written notices to all employees and employers of subcontracted employees:
 - › Who were on premises at same worksite as person who was infectious with COVID-19 or;
 - › Who was subject to COVID-19-related quarantine order.

Notifications Of Potential Exposure

- After becoming aware of potential exposure because someone at worksite was infectious with COVID-19:
 - › Employers must **immediately** (within **one business day**) provide written notice to employees and employers of subcontracted employees.

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Why Do You Need A Plan?

- Ability to rebut presumed California exposures and many other states is dependent on following CDC recommended guidelines for workplace opening.
- Possibly avoid worksite closures or significant fines by Department of Health or Cal-OSHA.
- Avoid unwanted publicity by significantly reducing likelihood of outbreaks at your facility or worksite.
- Legislation beginning to require companies follow CDC Guidelines – *It's the Law*

What's Required By CDC?

Infectious Disease Preparedness & Response Plan

- Prepare to implement basic infection prevention measures.
- Develop policies and procedures for prompt identification and isolation of sick people, if appropriate.
- Develop, implement, and communicate workplace flexibilities and protections.

What's Required By CDC?

Infectious Disease Preparedness & Response Plan

- Implement workplace controls
 - › Engineering controls
 - › Administrative controls
 - › Work practice controls
 - › PPE

ICW Group IDPRP Toolkit

Roadmap to assess and implement controls, including notifications and reporting



Updated for California - available after webinar!



Supports SB1159 Reporting & AB 685

- Reporting form for WC Claims (SB 1159), with required information listed.
- Reporting for CA Department of Health if **outbreak** occurs, defined as 3 or more COVID positive in 2-week period.
- Notification form for affected employees, and employers of contractors and vendors, who may have been exposed to qualified individual.



Includes Checklists

To ensure implementation

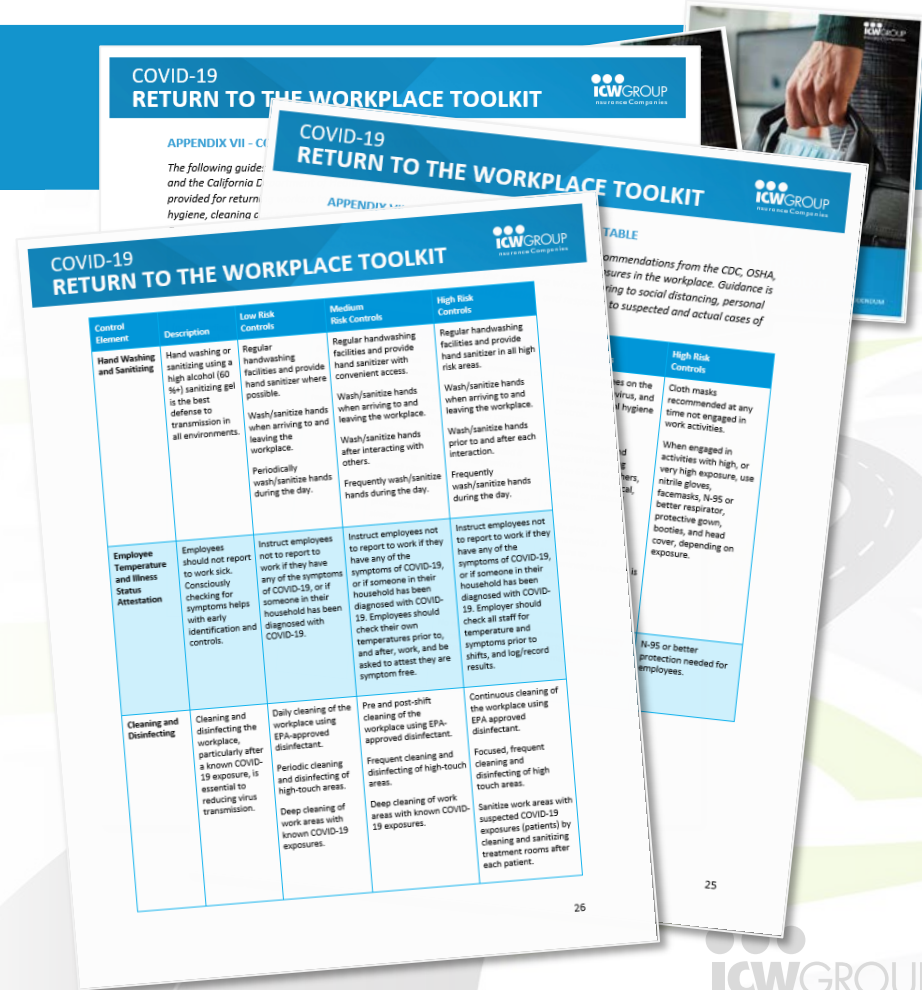
- ✓ Response team responsibilities
- ✓ Organizational concerns
- ✓ Handling exposures
- ✓ Staff training



Control Grids

Ready to apply to occupation/position

- Assessment of risks & classifications.
- Identifies appropriate controls for employees at risk level.



Employee Notification Letter

Ready to use to notify employees of exposure

- Keep compliant with new rules.

Important: Notice must be given within one day of the date of exposure.
This sample notice must be customized for your company and unique situation. This notice was reviewed on September 28, 2020 but is subject to change at any time.

Dear [employee name/subcontracted employee name/name of exclusive representative]:
Be advised that [Company name] was notified that [a customer/employee/other] [tested positive for/had been diagnosed with/insert circumstances] COVID-19 on [MM/DD/YYYY] and you may have been exposed to the virus. As an immediate response to protect the health and safety of our workforce, we are providing this notice and [physically excluding you from the workplace/enforcing home quarantine for 14 days/telework option/insert circumstance as applicable].

The following COVID-19 related [benefits and options](#) (as applicable) are available to you [employers must provide specific details about the available benefits and options]:

- [California Family Rights Act](#): Job-Protected Leave
- [California Paid Sick Leave](#)
- [California COVID-19 Supplemental Paid Sick Leave for Food Sector and Non-Food Sector Workers](#)
- [Federal Families First Coronavirus Response Act \(FFCRA\)](#):
 - Emergency Paid Family and Medical Leave
 - Emergency Paid Sick Leave
- [Pandemic Unemployment Assistance](#)
- [State Disability Insurance and Paid Family Leave](#)
- [State Workers' Compensation](#)

See also a California Department of Industrial Relations (DIR) [side-by-side comparison](#) of COVID-19 paid leave.

We are also taking the following steps that are compliant with the federal Centers for Disease Control and Prevention (CDC) [disinfecting and safety plan](#):

- [Closing off areas used by the person who is sick.]
- [Opening outside doors and windows.]
- [Waiting 24 hours before cleaning and disinfecting.]
- [Cleaning and disinfecting all areas used by the person who is sick.]
- [Vacuuming the space, if needed, with HEPA filter, if available.]
- [Specific processes, PPE, cleaning chemical, complying with OSHA standards, etc.]

We also ask that you abide by the following CDC guidelines to protect your health and those around you:

- Wash your hands often with soap and water for at least 20 seconds. Key times to wash your hands include:
 - After blowing your nose, coughing, or sneezing.
 - After using the restroom.
 - Before eating or preparing food.



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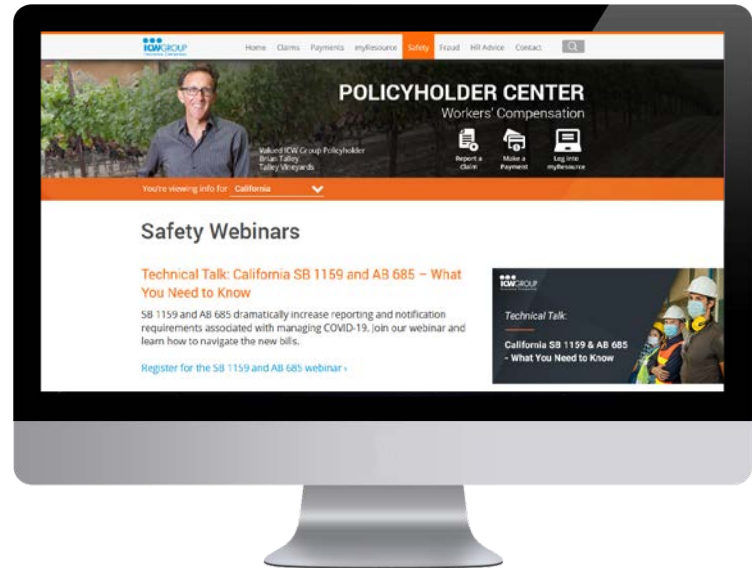
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ICW Group Policyholder Website!

icwgroup.com/safety

- Safety and Risk Management area!
- Safety Webinars
- California SB 1159 and AB 685 – What You Need to Know



ICW Group Policyholder Website!

icwgroup.com/safety

- Find toolkits for both California and all other states.
- Contains templates, risk grids and more.



ICW Group Policyholder Website!

icwgroup.com/safety

- This presentation, PLUS...
 - › Posters,
 - › Reports,
 - › References
 - › Resource links.

Everything you need!



ICW Group Policyholder Website!

icwgroup.com/safety

- Links to COVID-19 page:
 - › Communications
 - › Safety Talks
 - › Planning articles
 - › HR resources & webinars

RISK MANAGEMENT MONITOR

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Posted on July 31, 2020 by Rick Fineman

Q&A
It's no later

Planning and Risk Assessment
Returning to Work From Closures

begin having their employees return to work, navigating the undoubtedly be a challenge. Not only does keeping life take on new meaning, but sorting through rapidly overwhelming at best.

Returning to work after coronavirus-related closures, the

SAFETY WEBINAR SERIES
RETURNING TO THE WORKPLACE DURING COVID-19

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Insurance Companies

Think HR
with Humility

Compliance Matters: Layoffs, Furloughs, and Recalls
Presented by Kara Govro, JD, SPHR

ECONOMICS FOR YOUR ORDINARY HOME OFFICE

els Better
important. Organizations that plans in place performed better than organizations that have planned

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TECHNICAL TALK:
CALIFORNIA
SB 1159 & AB 685

QUESTIONS?



TECHNICAL TALK:
CALIFORNIA
SB 1159 & AB 685

THANK YOU!

