PARMA
COVID Conversations

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DISCLAIMER

Facts and law change frequently. Please consult your attorney for the most recent laws affecting your decisions and claims handling strategies.

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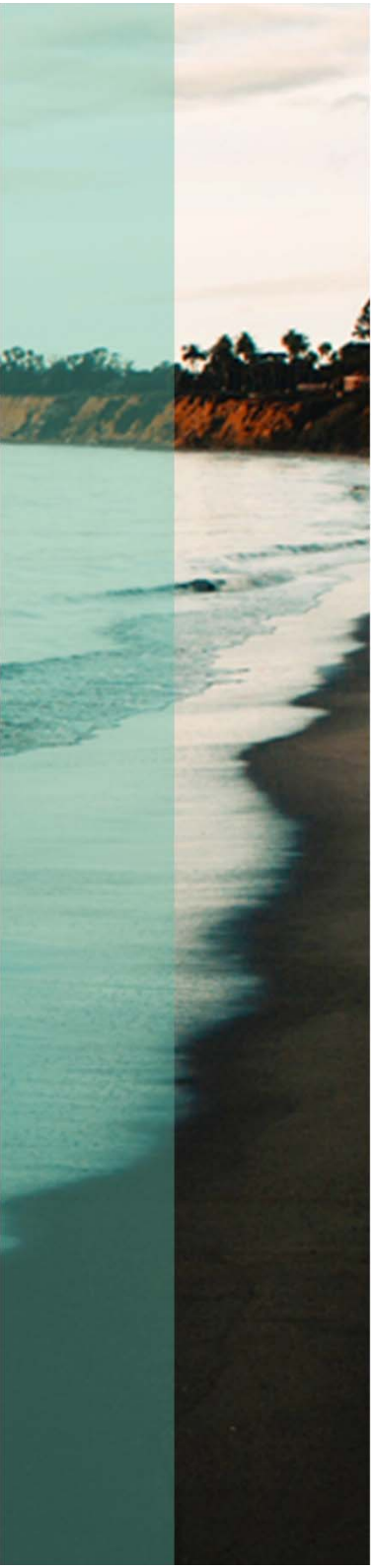

The Impact of SB 1159: Initial Thoughts (We'll get back to this…)

SB 1159 Establishes 3 Distinct Presumptions

- **Codification of the Executive Order (N-62-20, 5/06/20)**
- **Safety Officer and Healthcare Workers**
- **All Other Employees (Outbreak required)**

ANALYSIS:

1. Identify the date of injury
2. Identify the type of work / job duties
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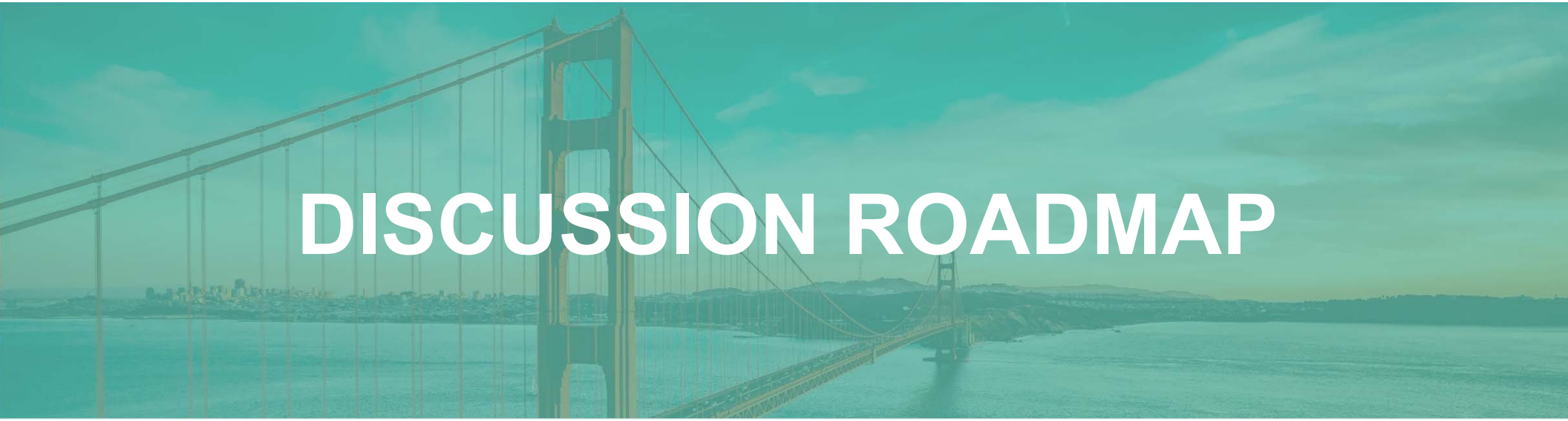

DISCUSSION ROADMAP

Senate Bill 1159

- Codification of the Executive Order
- Creation of 2 new presumptions
- Immediate Adjustments and Action
- Defense Strategies

Date of Injury

- Determining Date of Injury
- Latency Arguments

Contribution

- Arguments

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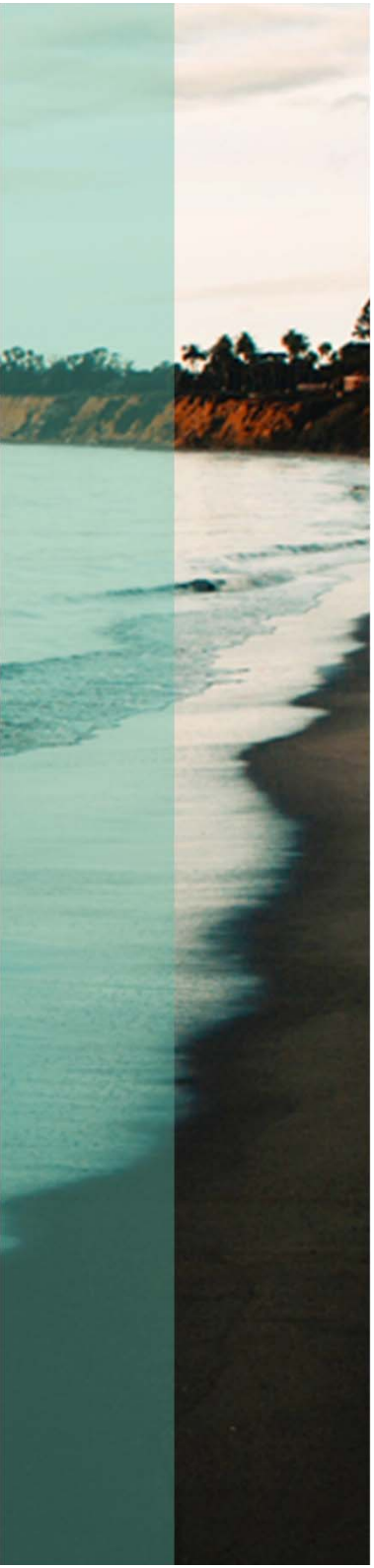

Legislative Outcome

Senate Bill 1159 passed

- Its passage is the result of a final senate session which extended through midnight and from non-stop negotiations and debate.
- It now lies on Governor Newsom's desk for signature.
- If signed, it becomes effective immediately.
- Deadline for signature is September 30, 2020.

Assembly Bills 196 and 664 failed.

- Each would have expanded the presumptions and employer obligations.
- Both "died on the floor" nearly concurrent with the passage of SB 1159

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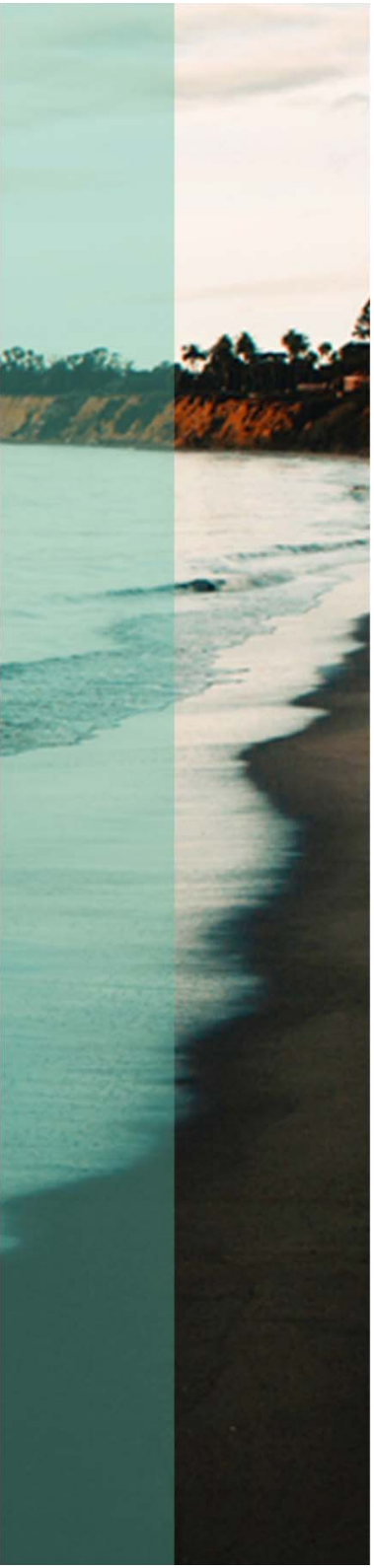

Senate Bill 1159 – Five Sections

(1)
COVID-19 Claims Impact Study

(2)
Codification of the Executive Order

(3)
Presumption for Safety Officers & (Certain) Healthcare Workers

(4)
Presumption for All Other Workers during "Outbreaks"

(5)
Urgency → Immediately Effective

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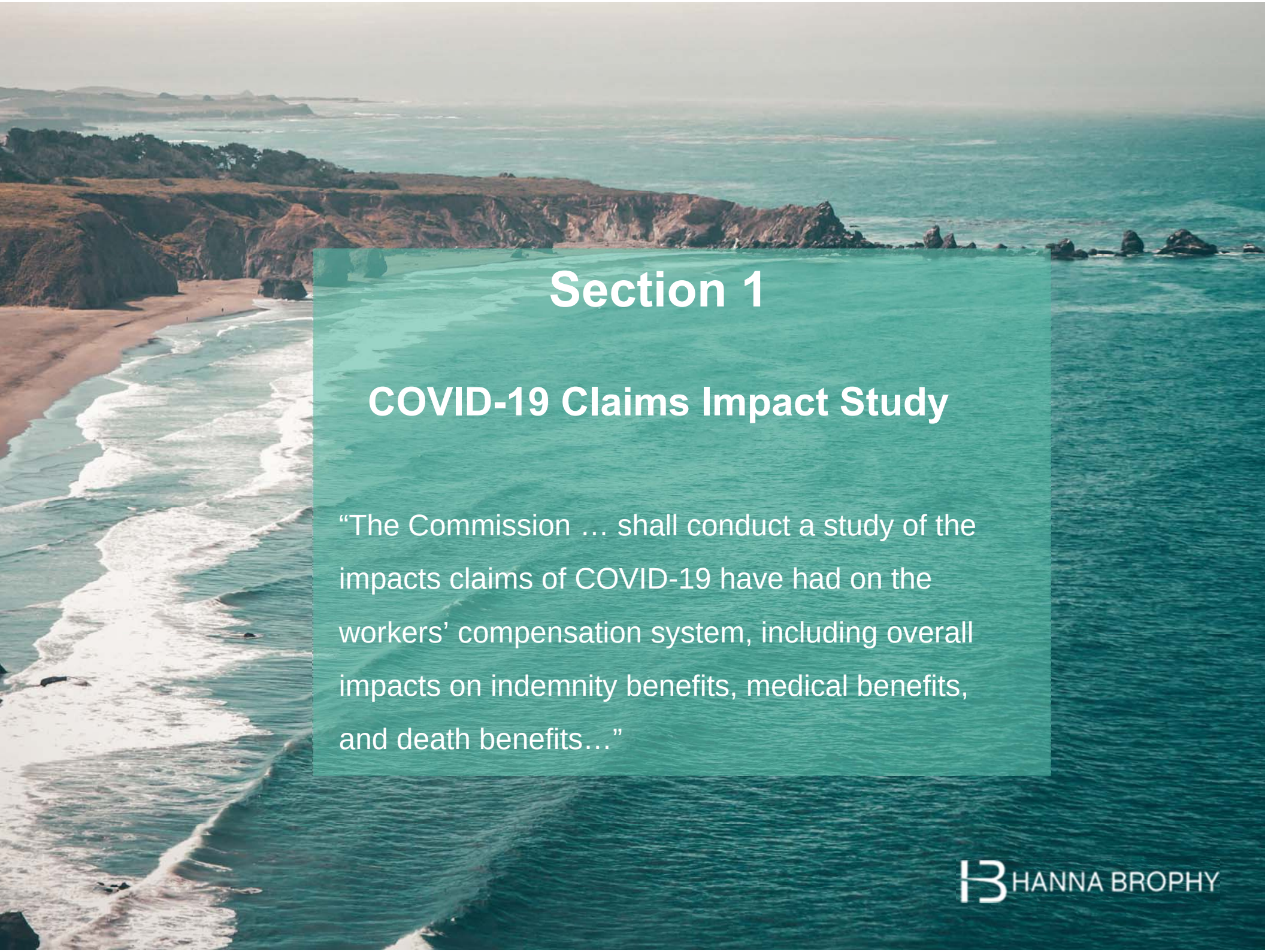

Section 1

COVID-19 Claims Impact Study

"The Commission … shall conduct a study of the impacts claims of COVID-19 have had on the workers' compensation system, including overall impacts on indemnity benefits, medical benefits, and death benefits…"

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Section 2

Codification of the Executive Order

Creates Labor Code § 3212.86 to closely mimic the prior executive order presumption and its applicable time periods

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Section 2:
Codification of the Exec. Order

- Applies to dates of injury through 07/05/2020
- 30 day investigation/decision period
- Positive COVID-19 test required
- Rebuttable presumption
- Temporary disability rules identical to the executive order

Changes

- Defines “date of injury” → the last day worked **prior to the positive COVID test.**
- MPN enforceability for medical treatment and temporary disability certifications

CISA
CYBER+INFRASTRUCTURE

Section 3

Safety Officers & Specified Healthcare Workers

Rebuttable Presumption for first responders and healthcare workers in **direct contact** with COVID-19 patients and for custodial workers **in contact** with COVID-19 patient, who work at a health facility and for some EMT/Paramedics and home health workers.

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Section 3: Application & Features

H.C. 1250. As used in this chapter, "health facility" means any facility, place, or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more person, to which the persons are admitted for a 24-hour stay or longer, and includes the following types: …

(a) "General acute care hospital" …

(b) "Acute psychiatric hospital" …

(c) "Skilled nursing facility" …

(d) "Intermediate care facility" …

(e) "Intermediate care facility/developmentally disabled habilitative" facility …

(f) "Special hospital" …

(g) "Intermediate care facility/developmentally disabled" …

(h) "Intermediate care facility/developmentally disabled –nursing" …

(i) "Congregate living health facility" …

(j) "Correctional treatment center" …

(k) "Nursing facility" …

1250.3. …"Chemical dependency recovery hospital" ...

https://www.dhcs.ca.gov/provgovpart/Pages/LicensedHealthFacilitiesCaliforniaHSCode.aspx

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Section 3: Application & Features

- **A COVID-19 injury is presumed compensable for safety officers and specified healthcare workers if they test positive for COVID-19 within 14 days after working at their place of employment**

  - "Date of injury" defined as the last day worked **prior to the positive COVID test**. (Is this a CT or a specific??)

  - Test is must be a "Polymerase Chain Reaction" (PCR) type approved for use by the FDA for detecting viral RNA

    "Antibody tests" are not sufficient

- **Applies to dates of injury <u>on/after 07/06/2020</u>**

- **Rebuttable Presumption with a <u>30-day decision/investigation period</u>**

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Section 3: Application & Features

- **Temporary Disability / 4850 administration remains consistent with the prior executive order:**

  - No waiting period;

  - Exhaustion of “paid sick leave benefits specifically available in response to COVID-19” prior to payment of TD/4850

- **Employee must have been working at their place of employment and at the employer’s direction**

- **Post-termination Provision:**

  Covered employees get the presumption up to 14 days following termination, starting with the last day actually worked (*not* 14 days following the end of the employment relationship)

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Section 3: Covered Employees

Safety Officers / First Responders

- Firefighting members & Peace Officers (broadly defined
- Definition consistent with existing “safety officer presumptions”

Certain Healthcare Workers – 5 Classifications

- “Employees who provide direct patient care, or a custodial employee in contact with COVID-19 patients who works at a health facility”
- Registered nurse and emergency medical technicians/paramedics
- Employees providing direct patient care to a home health agency
- Providers of in-home supportive services if they provide care outside of their own residence
- Employees of health facilities (other than direct patient care of custodians)

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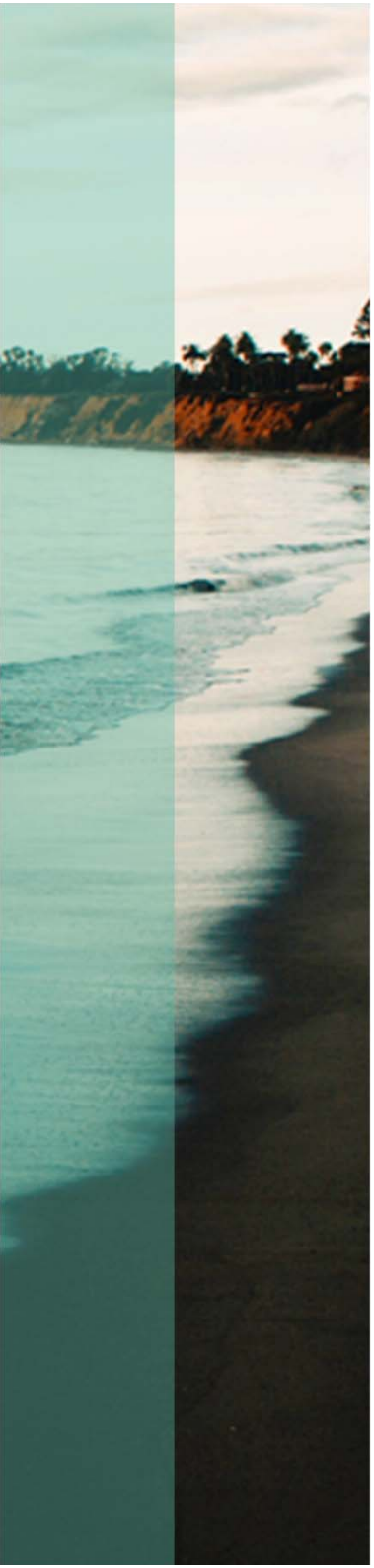

Section 3: Covered Employees

The catch-all coverage of the presumption for "employees of health facilities" is quite broad!

In recognition of this, the statute grants employers a specific defense to the presumption for those employees.

For those workers, "the presumption shall not apply **if the employer can establish that the employee did NOT have contact with a health facility patient within the last 14 days who tested positive for COVID-19."**

This defense applies only to healthcare workers who are not involved in direct patient care, not to custodians in contact with COVID-19 patients.

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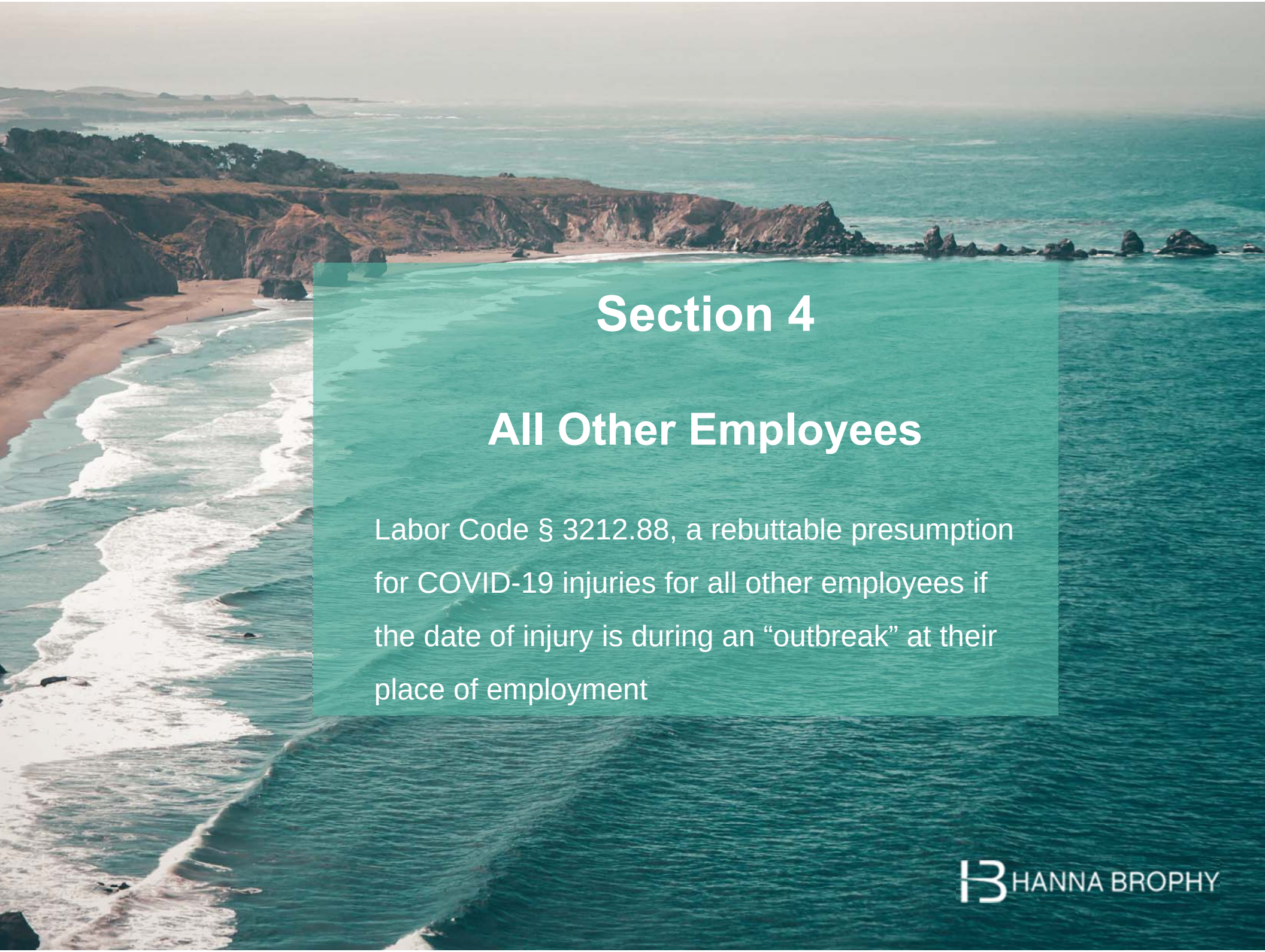

Section 4

All Other Employees

Labor Code § 3212.88, a rebuttable presumption for COVID-19 injuries for all other employees if the date of injury is during an “outbreak” at their place of employment

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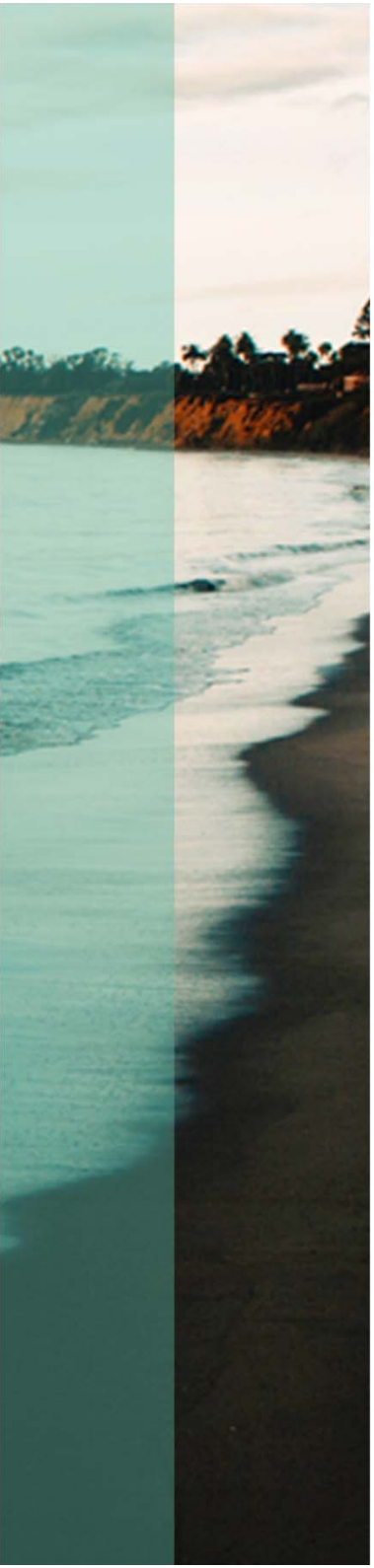

Section 4: Primary Features

Rebuttable Presumption with a 45-day decision/investigation period

Temporary Disability

- No waiting period;
- Exhaustion of "paid sick leave benefits specifically available in response to COVID-19" prior to payment of TD

Post-Termination Claims

- Presumption extends up to 14 days following termination, starting with the last day actually worked (*not* 14 days following the end of the employment relationship)

Employers with 4 or fewer employees excluded from the presumption (5+ required to trigger the presumption).

Date of Injury: Last day worked at place of employment prior to positive COVID test (CT or specific??)

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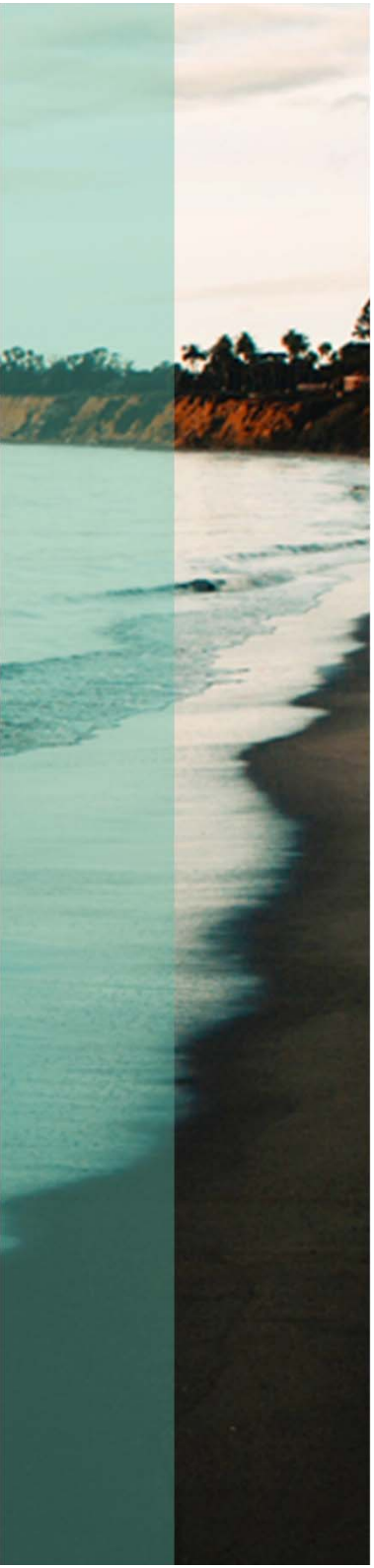

Section 4: Triggering the Presumption

Who Does it Apply to?

- Any employee **other than** a first responder or healthcare worker covered by the Section 3's presumption

How is the Presumption Triggered?

- Date of injury on/after 07/06/2020;
- Employee tests positive for COVID-19 within 14 days after performing labor/services at their place of employment under the employer's direction;
- The date of the positive test occurred "during a period of an ***outbreak*** at the employee's specific place of employment"

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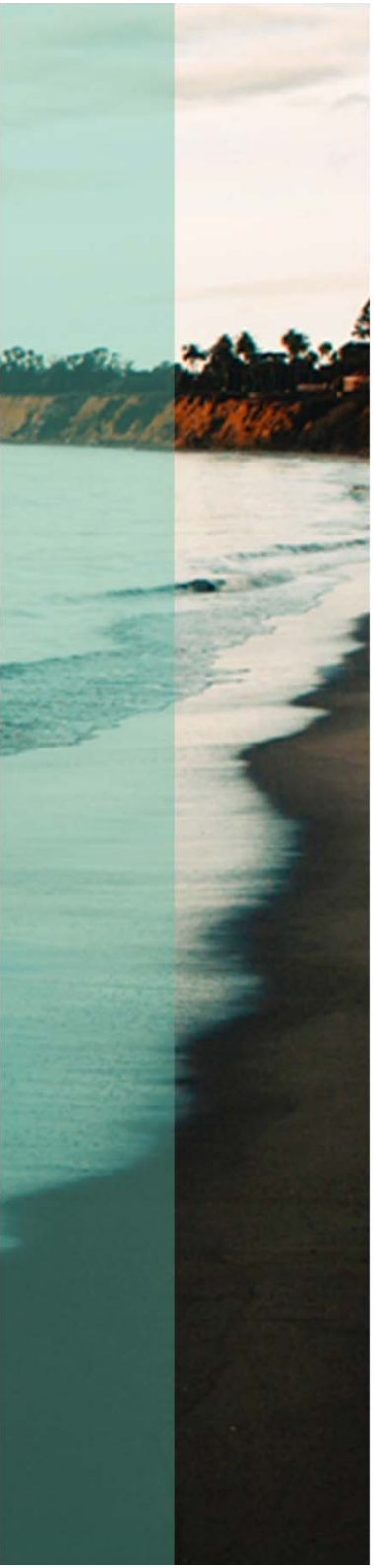

Who Determines if there is an "Outbreak"

You do.
(…if you're a claims administrator)

"The claims administrator shall use information reported … to determine if an outbreak has occurred for the purposes of administering a claim pursuant to this section."

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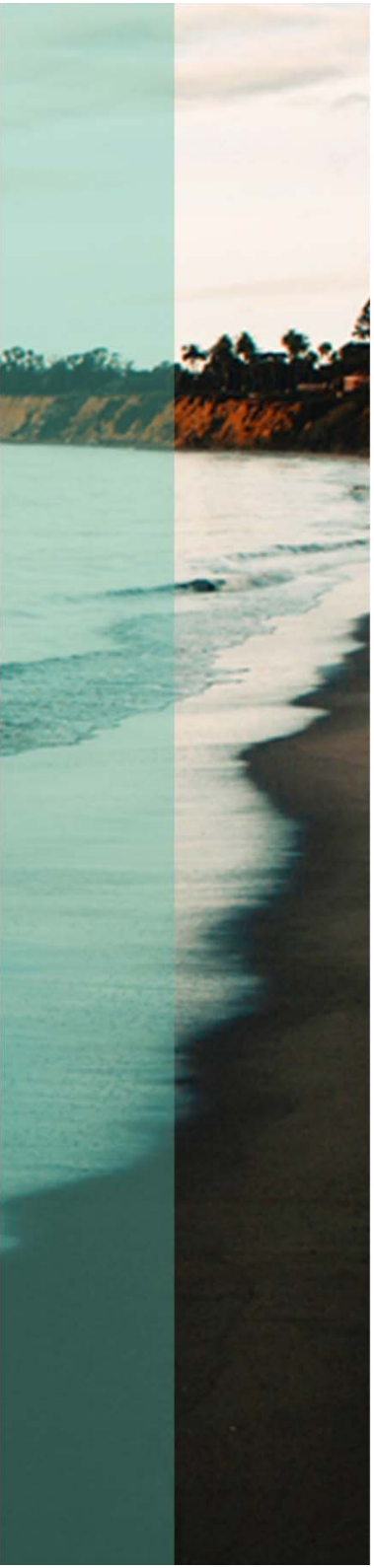

Assessing "Outbreaks" Criteria → Size (of ER) Matters

An "outbreak" exists ***if one of the following occurs*** at a specific place of employment ***within a 14-day period:***

(i) If the employer has 100 employees or fewer at a specific place of employment, and 4 employees test positive

OR

(i) If the employer has more than 100 employees at a specific place of employment, 4 percent of the number of employees who reported to that specific place of employment test positive for COVID-19

OR

(i) A specific place of employment is ordered to close by a local public health department, the State Department of Public Health, the Division of Occupational Safety & Health, or a school superintendent due to a risk of infection with COVID-19

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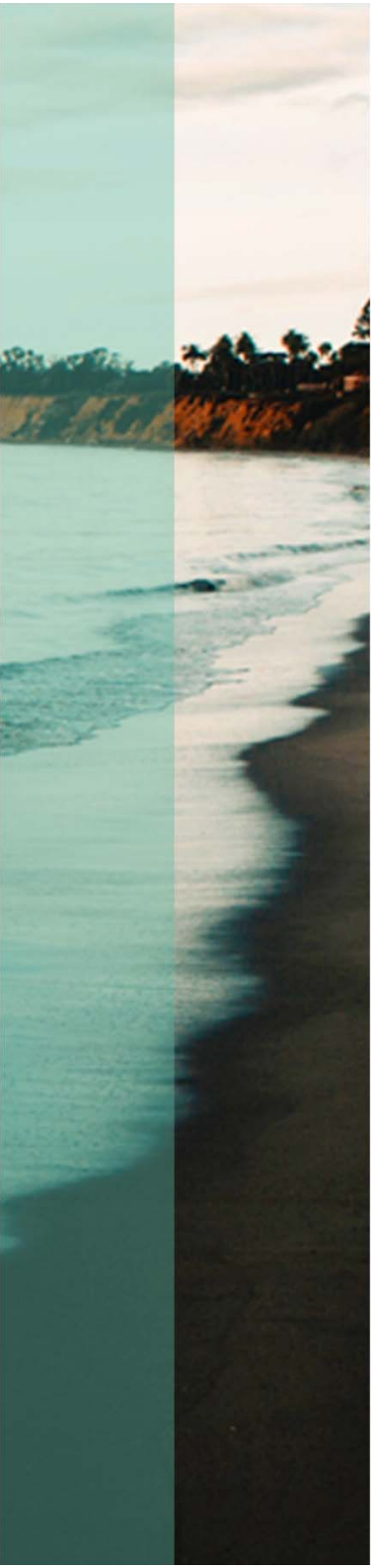

Assessing Outbreaks: Defining "Specific Place of Employment"

"'A specific place of employment' means the building, store, facility, or agricultural field where an employee performs work at the employer's direction."

"A specific place of employment does not include the employee's home or residence, ***unless*** the employee provides home health care services to another individual at the employee's home or residence."

What if the employee works at multiple locations?

> "In the case of an employee who performs work at the employer's direction in multiple places of employment within 14 days of the employee's positive test, the employee's positive test shall be counted for the purpose of determining an outbreak at each of those places of employment."
>
> If an outbreak exists an any of those places of employment, that location is also considered the employee's specific place of employment

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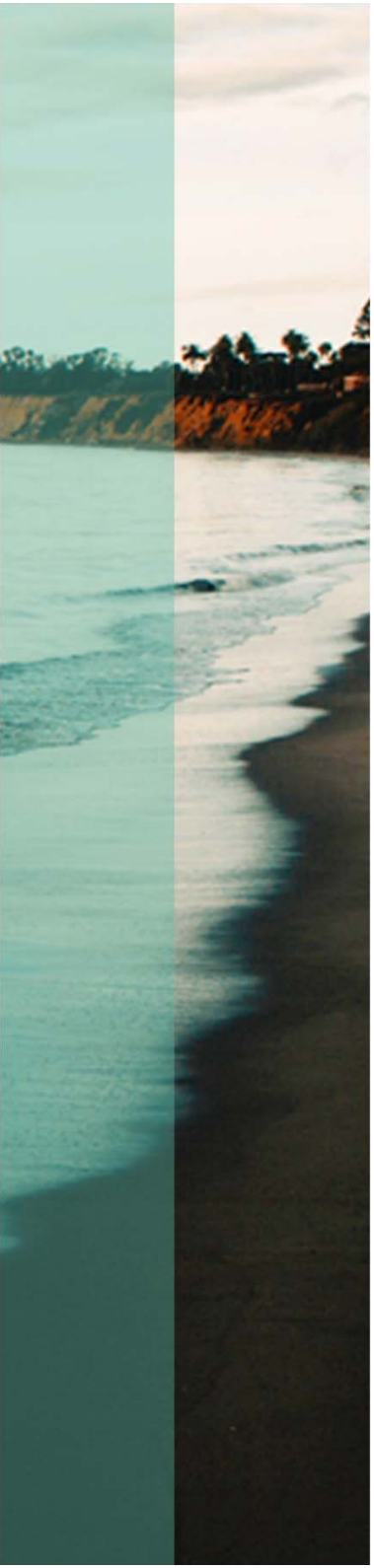

Ongoing Duty to Assess "Outbreaks"

"The claims administrator shall continuously evaluate each claim to determine whether the requisite number of positive tests have occurred during the surrounding 14-day period."

Newly reported COVID claims (verified by a positive test within 14 days of the last day worked) can trigger the presumption for previously filed claims

For Example:

- Employer with 100 employees and 1 business location.

- 3 verified COVID infections on Day 1. None would be covered by the presumption at that point.

- 1 more verified COVID infection on Day 10.

- That makes 4 cases within a 14 day period. *All 4 cases would get the presumption.*

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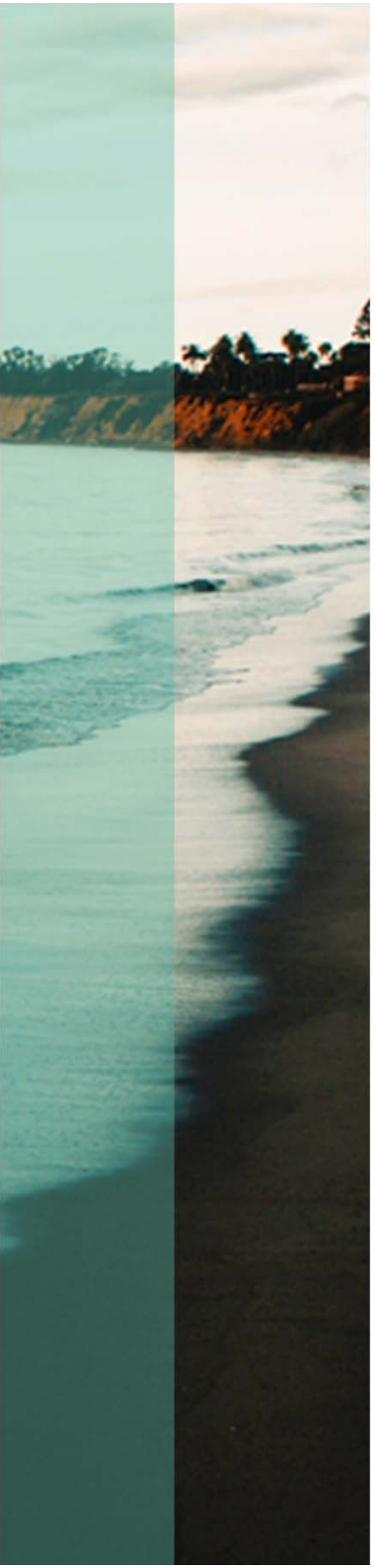

Ongoing Duty to Assess "Outbreaks"

Math that even a lawyer can do…..

14 days before DOI *and* 14 days after DOI.

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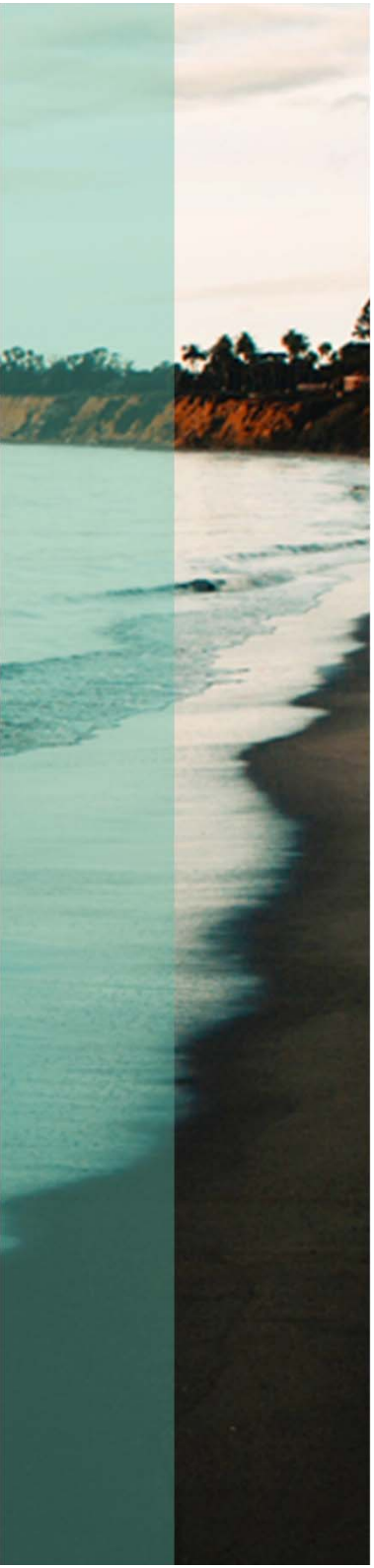

What About Claims During Non-Outbreak Periods?

Non-applicability of the COVID presumption ≠ No COVID Claim!

COVID claims filed outside of a 14-day "outbreak" period would not benefit from the rebuttable presumption of industrial causation due to a outbreak.

BUT the employee may still pursue a workers' comp claim subject to a 90-day decision/investigation period (LC5402).

If not presumptive, the burden lies with the employee to establish industrial causation of their COVID infection by a preponderance of the evidence.

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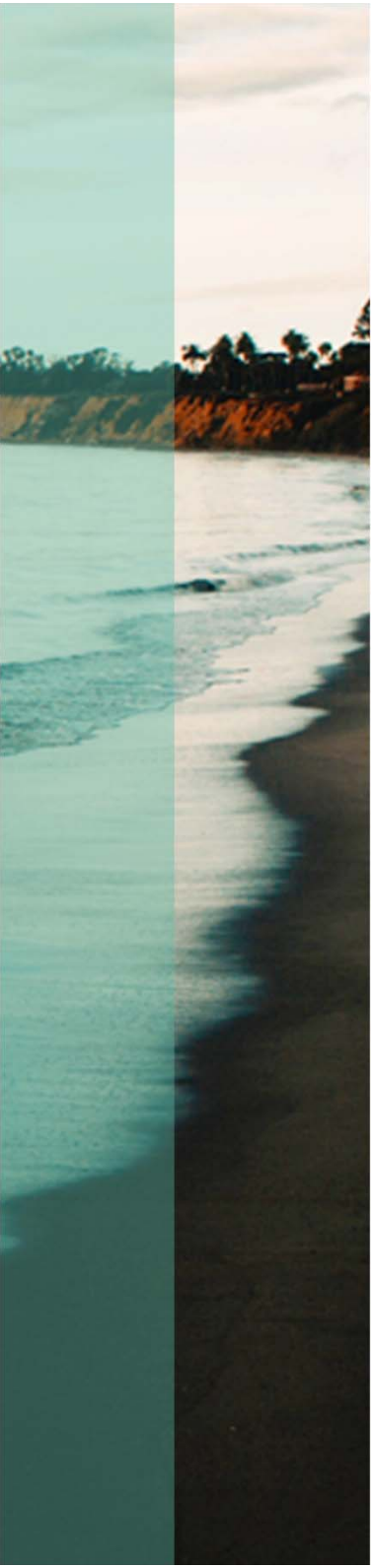

Employer Reporting:

How does the claims administrator obtain information to assess outbreak periods?

Employers are required to provide it (and face penalties if they don't)

"When the employer knows or reasonably should know that an employee has tested positive for COVID-19, the employer shall report to their claims administrator in writing via electronic mail or facsimile within 3 business days *all* of the following:"

(1) An employee has tested positive

(important: employer *shall not* provide any personally identifiable information regarding the employee unless the employee is asserting the infection is work related or has filed a claim)

(2) The date the employee tests positive (date specimen was collected for testing)

(3) Specific address(es) of the employee's specific place of employment during the 14-day period preceding the positive test.

(4) The highest number of employees who reported to work at the employee's specific place of employment in the 45-day period preceding the last day of employment the employee worked at each location.

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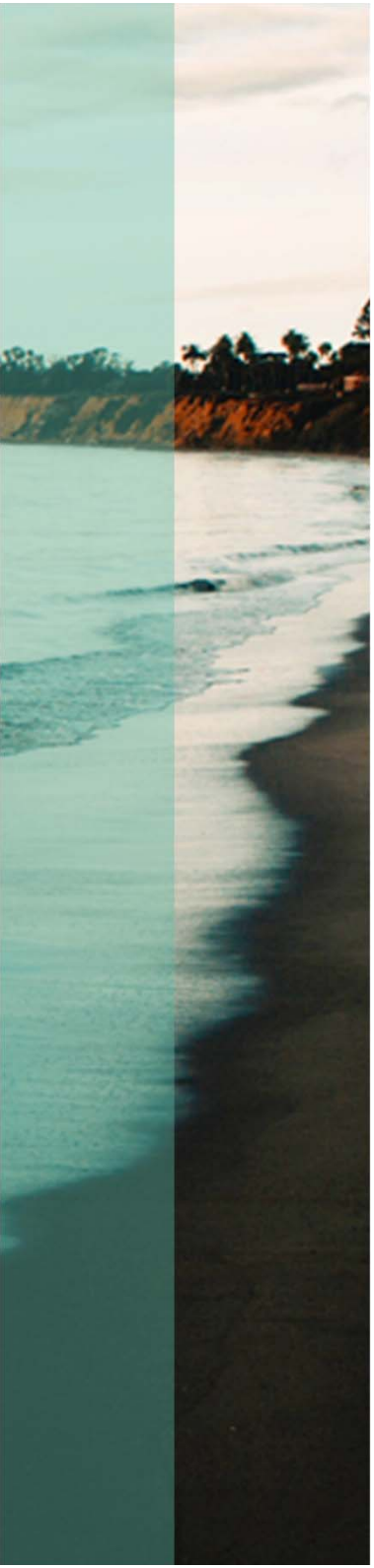

Employer Reporting: Consequences of Non-Compliance

What if an employer doesn't report?

"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 $10,000 to be assessed by the Labor Commissioner."

Citation & Appeal Process:

- Labor Commissioner issues citation to employer
- Employer must either pay the citation or contest it within 15 days.
- If contested, a hearing will be set within 30 days.
- Decision issued within 15 days after hearing.
- Employer may further contest the hearing decision by filing a writ of mandate in Superior Court.
- However, if the writ is unsuccessful, employer is liable for costs and attorneys fees incurred by the Labor Commissioner associated with the appeal to superior court.

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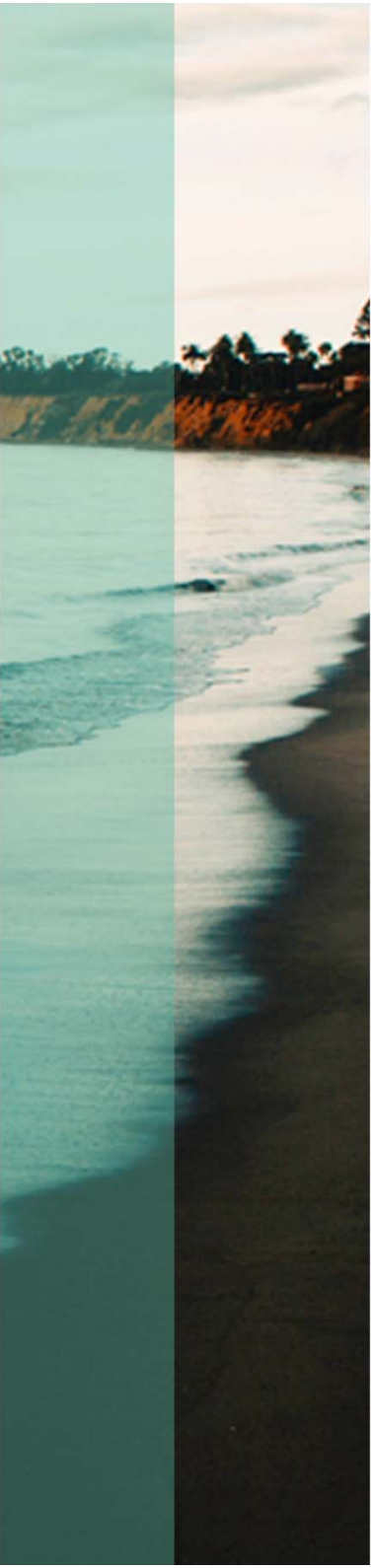

Employer Reporting: Getting "Current"

What about the "gap" period from 07/06/2020 – Present?

- 30 day "safe harbor" period for employers to provide all of the information to their administrators spanning the past 2 months:

  - # of employees who tested positive

  - Date of the positive test for each employee

  - Address(es) of employment for each positive employee for the 14-days preceding the positive test

- Employers must also provide information regarding the highest number of employees who reported to work *at each of the employer's specific places of employment "on any given work day between July 6, 2020 and the effective date of this section."*

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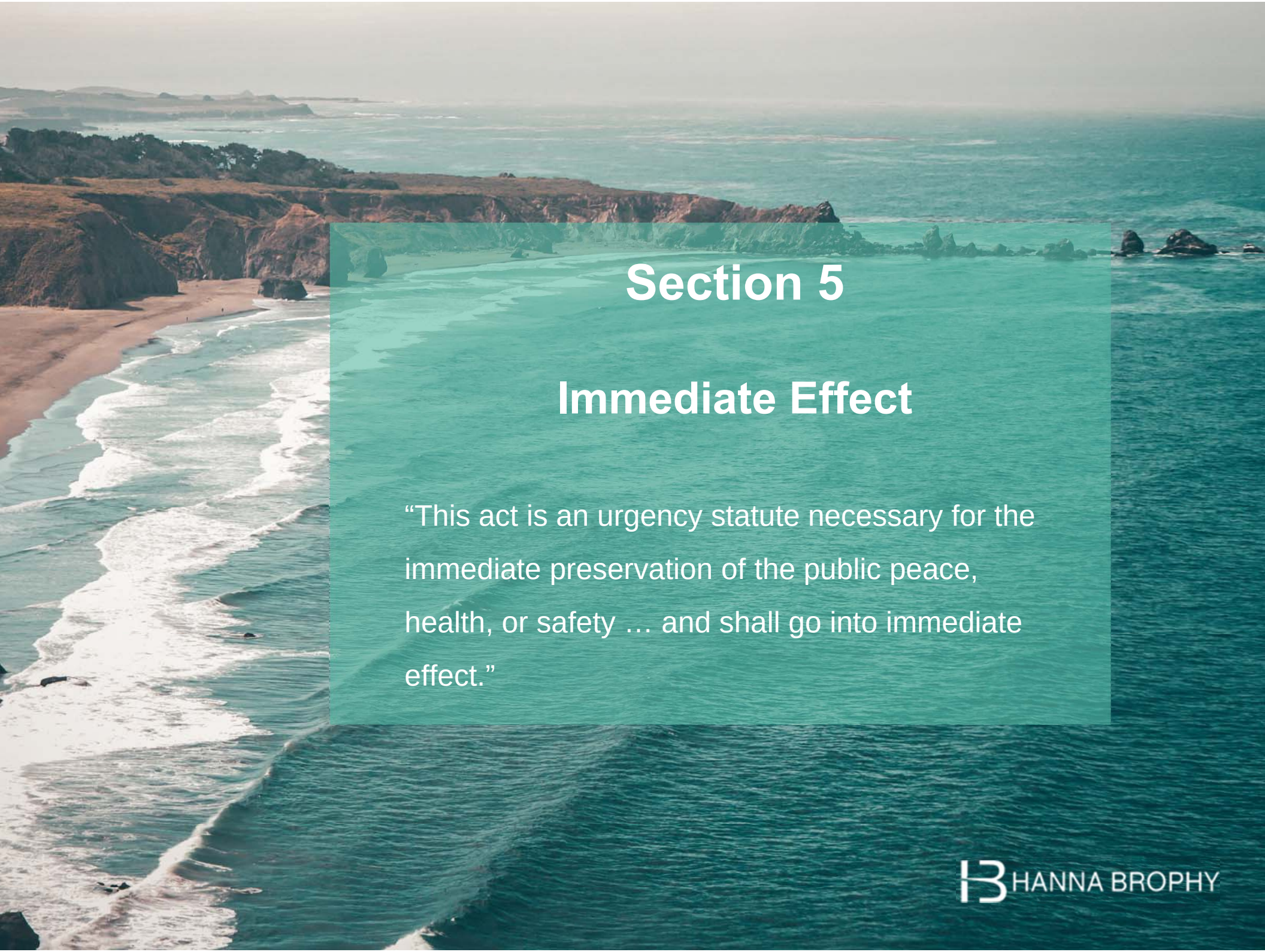

Section 5

Immediate Effect

"This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety … and shall go into immediate effect."

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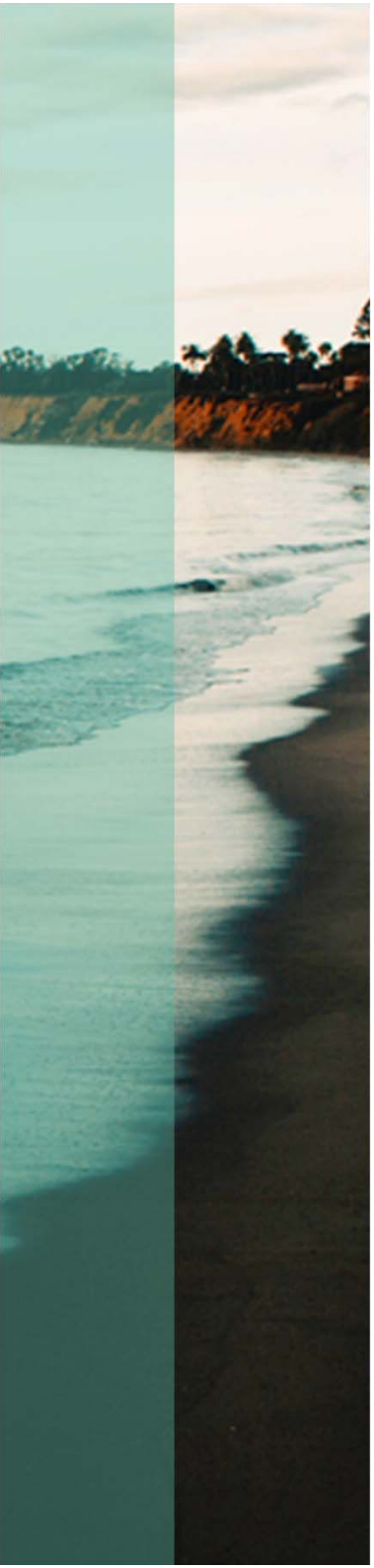

The Impact of SB 1159: Initial Thoughts (revisited)

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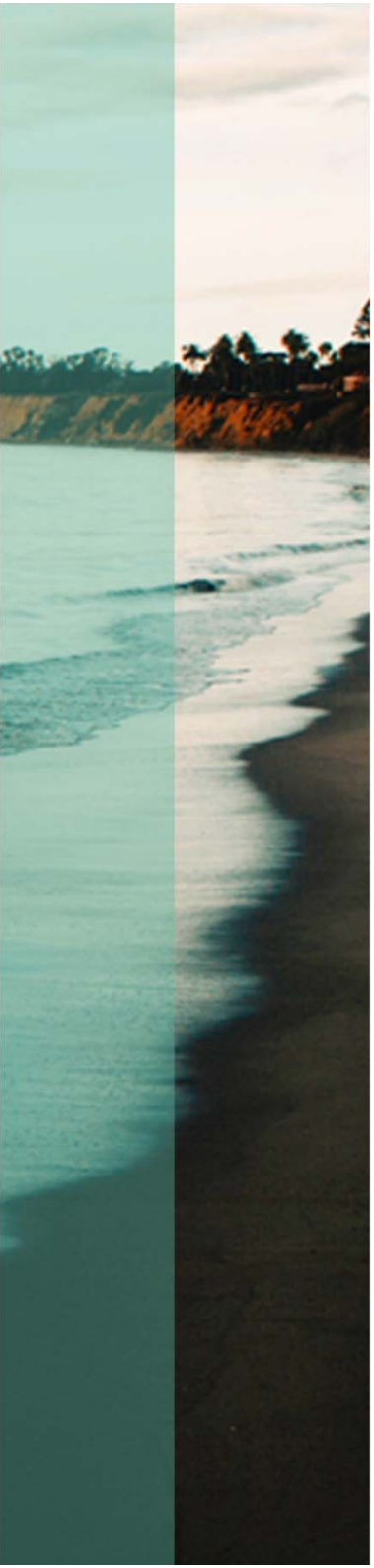

Assessing the Impact of SB 1159: Initial Thoughts

In many ways, the most significant change mandated by SB 1159 is the need for both employers and claims administrators to implement an operational infrastructure to gather and synthesize data to assess "outbreak periods."

As always, the new law is also difficult to apply for certain industries and employers.

Let's scratch our heads together, shall we?

- Construction contractors: Do general contractors need to keep track of and report COVID information for all *workers* on their job sites, which will often include a large variety of subcontractors? Do those subcontractors count towards the employee numbers at each specific place of work for calculating outbreaks?

- What about gig economy workers later reclassified (remember AB5)?

- Large Complex Locations: Are airplane maintenance mechanics working in distant publically inaccessible hangars working at the same "specific place of employment" as ticket agents in the public terminal?

- What about vendors performing work onsite? Might want to review those contracts to ensure liability flows in the right direction. Would it make sense to have vendors and subcontractors contract to provide you with information to allow full compliance with these requirements, even for their workers who might be working on your property?

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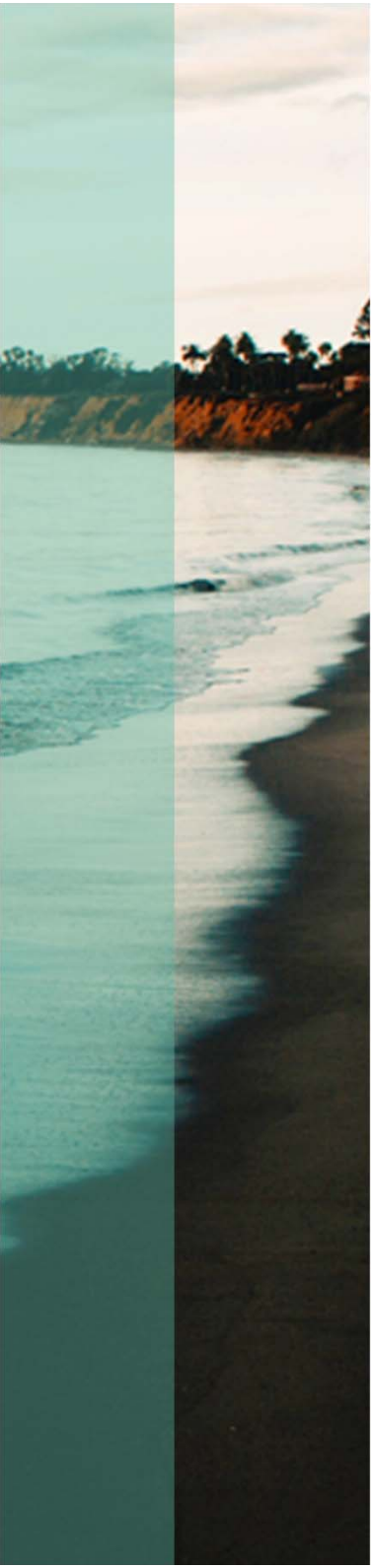

The Impact of SB 1159: Employer Responsibilities

Establish a reporting structure with the capability to provide claims administrators with all necessary information:

- Positive employee COVID tests; dates of the test; locations worked by the employee and personnel numbers at each location

Recognize that Employer "knowledge" for purposes of the LC 5401 rule to provide a claim form is different than "knowledge" required of a COVID-19 positive test that triggers the Employer's duty to report to the TPA.

- Even if you have an employee that admits to having caught COVID non-industrially, there is still an obligation to transmit that information to the claims administrator (regardless of whether that employee is claiming an industrial injury) if they worked at their place of employment with the 14 days preceding the positive test

- The "outbreak" determination is the number of employee cases, not the number of employee workers' compensation claims.

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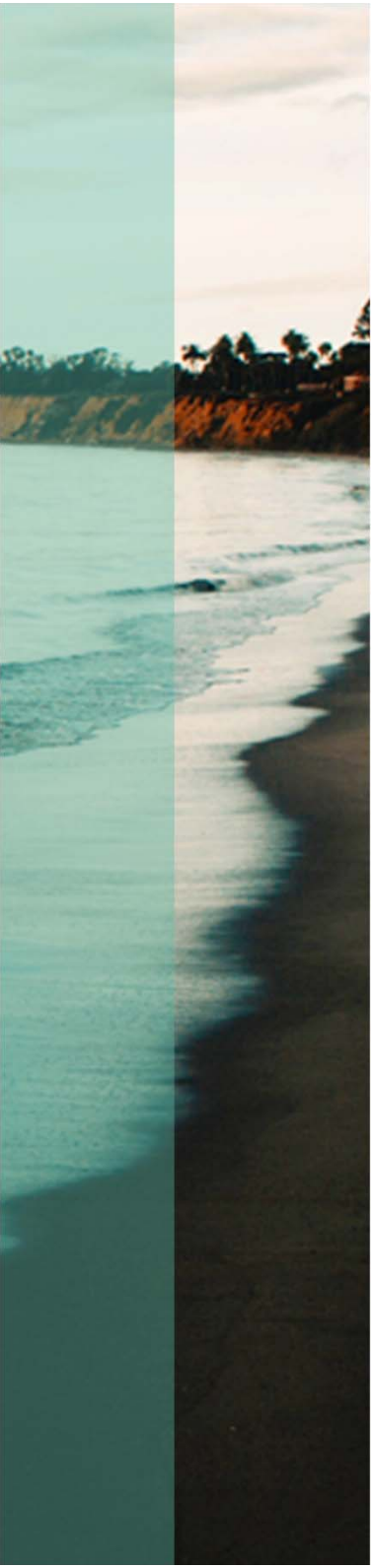

The Impact of SB 1159: Claims Admin. Responsibilities

Operational tools ought to be established now for effectively using the employer-provided data to track and report outbreaks.

Coordinate internally and develop solutions that work best for your organization.

Consider things like consolidated account management and enhanced contact tracing.

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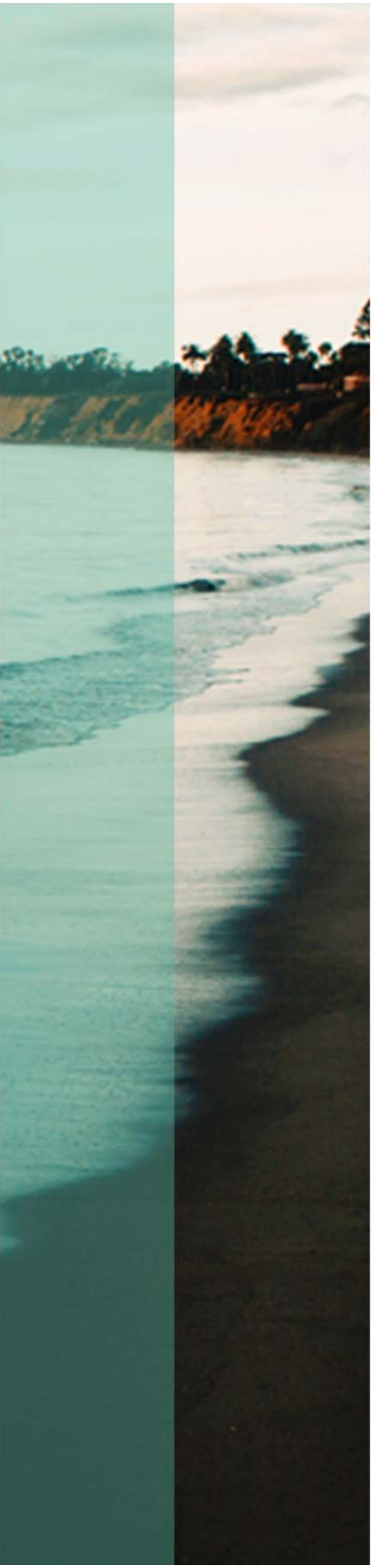

The Impact of SB 1159: Claims Admin. Responsibilities

PRO TIPS:

Remember that the “outbreak” determination is specific to *each specific place of employment*. It needs to be assessed not by each overall employer, but at each place of employment operated by that employer.

- Contact tracing options

The “outbreak” assessment needs to be continually updated and applied prospectively and retrospectively; positive COVID tests can trigger the presumption for claims preceding and following 14 days.

- Consider designating a single person or a unified team.

Not all employer reported data will involve workers’ compensation claimants seeking benefits. Administrators need to ensure that data for non-claimant COVID positive employees can be integrated with potential and actualized claims, while preserving employee privacy.

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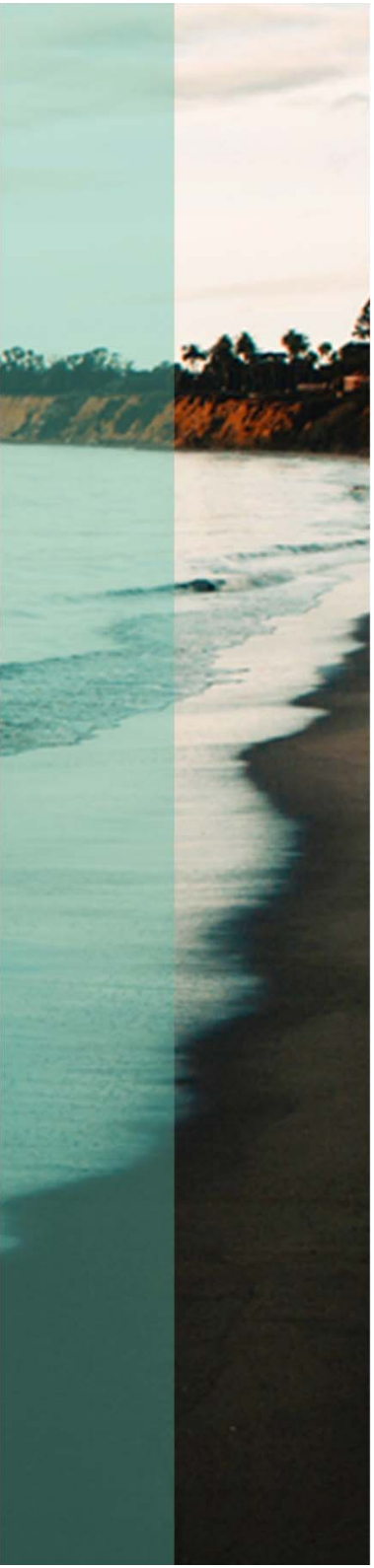

The Impact of SB 1159: Attorney Responsibilities

Develop the Record with Facts Relevant to Effectively Defend Cases

- These are all *rebuttable* presumptions

- SB 1159 expressly references that "evidence relevant to controverting the presumption may include, but is not limited to, evidence of measures in place to reduce potential transmission of COVID-19 … and evidence of an employee's nonoccupational risks of COVID-19 infection

- No provision in SB 1159 impacts the right to apportionment.

- With COVID cases in particular, the key is knowing the right type of evidence to be elicited from employers and claimants

  Familiarity with your client's workplace operations is more important and useful than ever.

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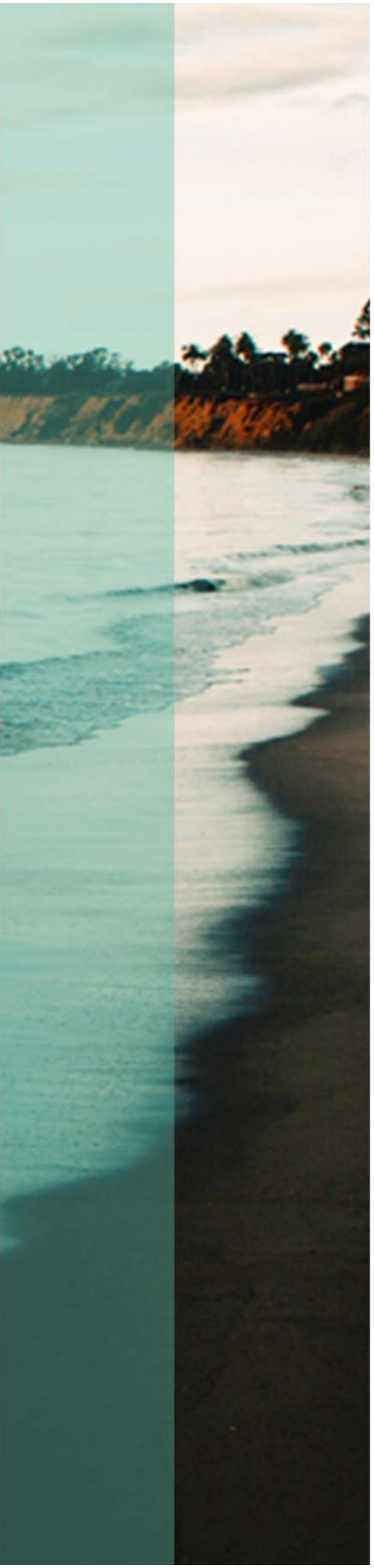

Date of Injury

How do we determine date of injury?

“Injury” is a legal fact to be determined by the judge, including review of medical opinions related to injurious exposure.

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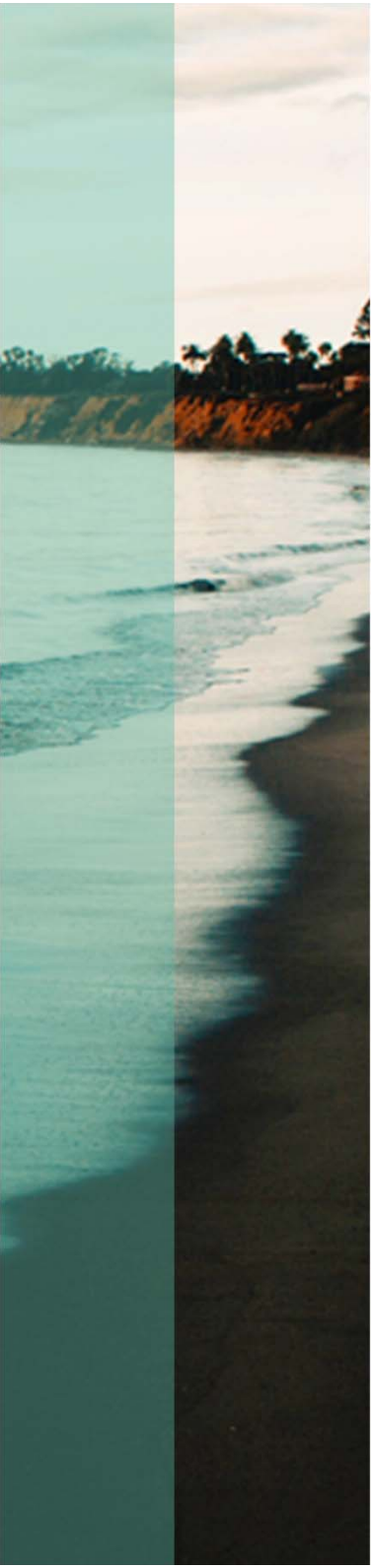

Date of Injury

Medical evidence

AME's opinion alone that "There has been only one CT" may not be legally sufficient or accurate:

Is the doctor really saying that <u>each and every day</u> of work was "injurious"?

If so, there may be several CT's.
The number of CT's is a question of fact for the WCAB to determine, the doctor can address periods of injurious exposure.

Don't take it at face value – question everything.
Eg: What if the IW is a seasonal employee with breaks in employment between seasons? Where is the injurious exposure?

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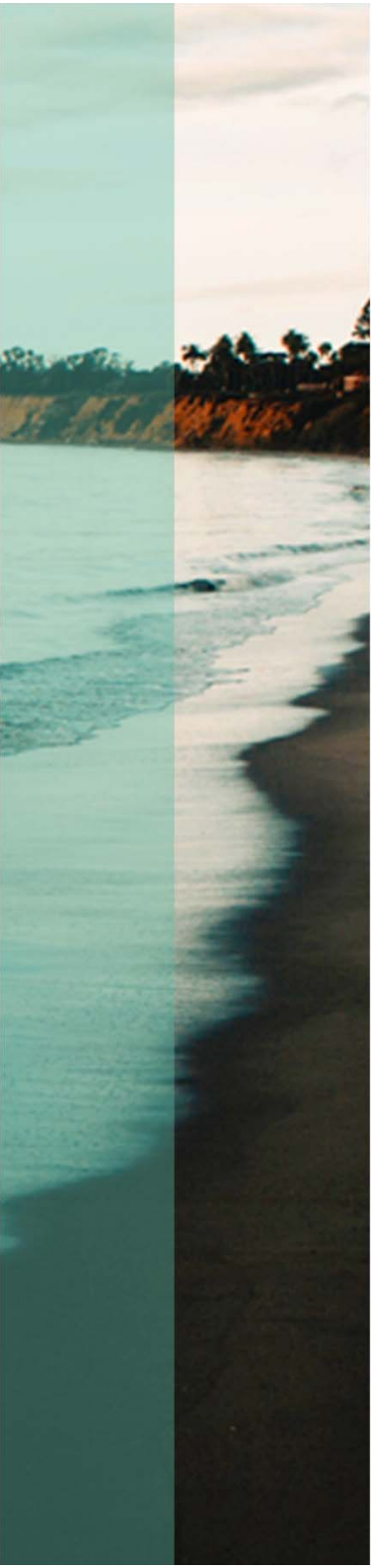

Date of Injury

- SB 1159 defined date of injury as last date worked prior to a positive test.

- Most COVID claims will be CT claims, unless a known, direct exposure occurred.

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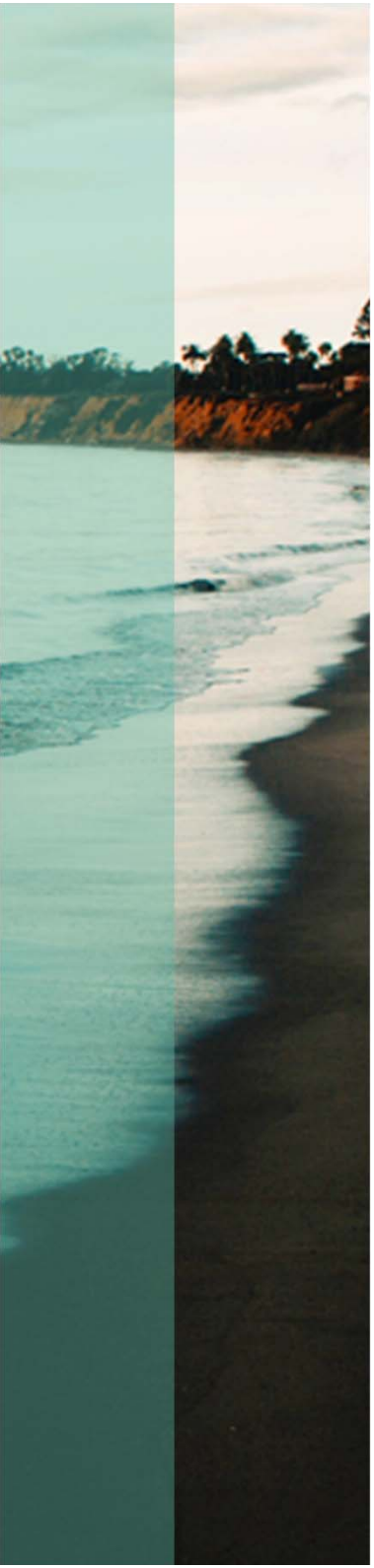

Date of Injury – Medical or Legal?

Unless presumptive, both a medical *and* a legal opinion are needed unless the dispute is resolved by agreement.

Physicians are competent to render opinion on **whether certain work activities constitute "injurious exposure."**

They are **not** competent to determine what date constitutes a "date of injury" under L.C. §5412 because **this is a legal opinion.**

If you see a doctor opine as to the "cumulative trauma date" in a report, make sure they have adequately addressed the period of injurious exposure and, if they have not, their report is not substantial evidence.

If this is your doctor, consider whether you should depose the doctor to clarify the opinion.

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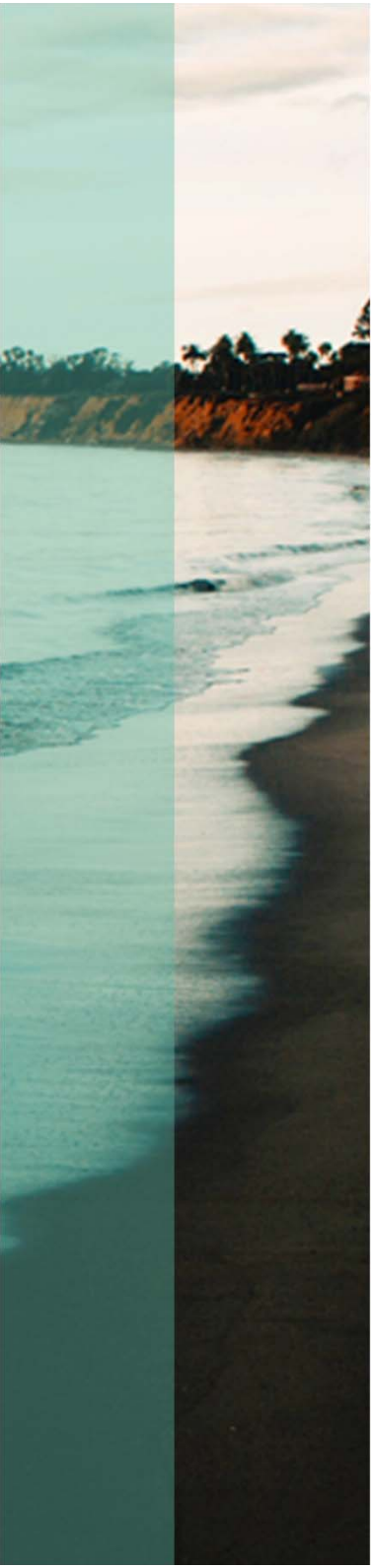

We think we know the date of injury, but who has to pay the claim?

The **Period of Liability** is determined According to LC 5500.5

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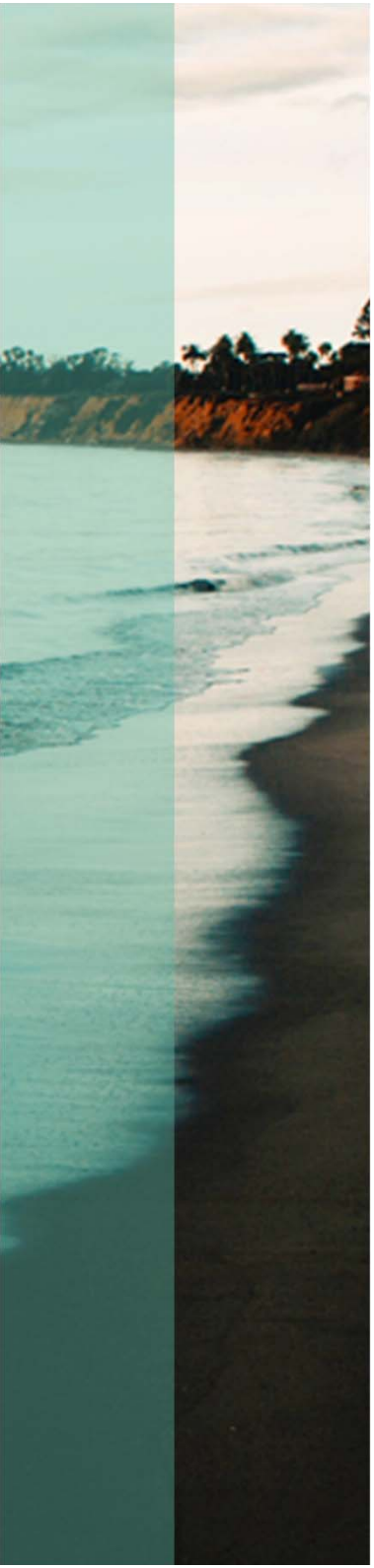

Period of Liabilty – LC 5500.5

- LC 5500.5 defines the **period of liability** for a CT when there are multiple potential carriers.

- LC 5500.5 does **not** define date of injury.

- LC 5412 should almost always be included in a denial with LC 5500.5.

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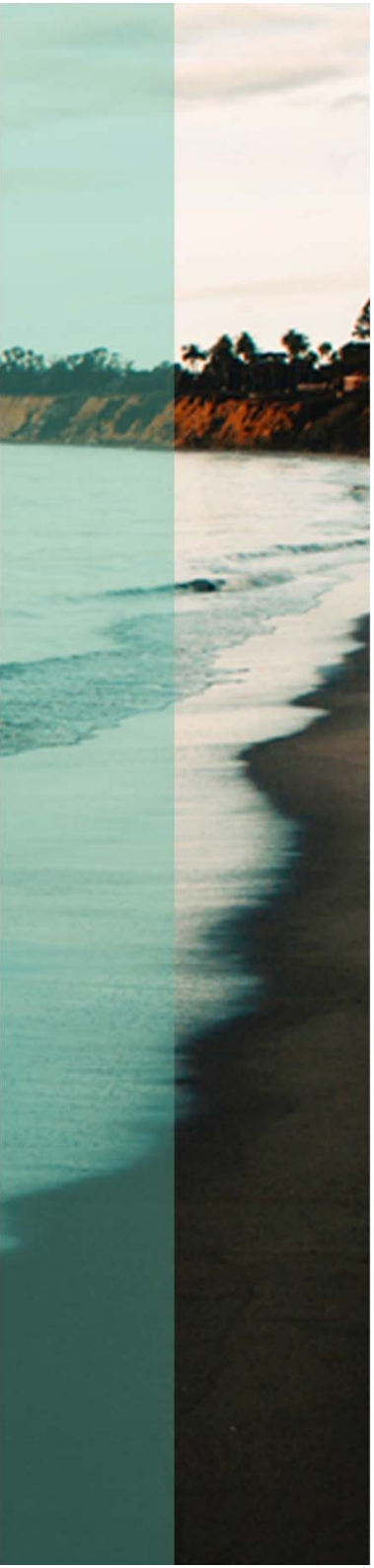

Period of Liability – LC 5500.5

•**LIMITED** to one year (for claims filed on or after 1981). The period may be LESS than one year!!!!

• The one year is the 364 days immediately preceding EITHER:

•DOI determined under 5412 (disability plus knowledge)

OR

•The last date on which the employee was employed (working?) in an occupation exposing him to the hazards of the disease or injury (injurious exposure)

•**WHICHEVER OCCURS FIRST.**

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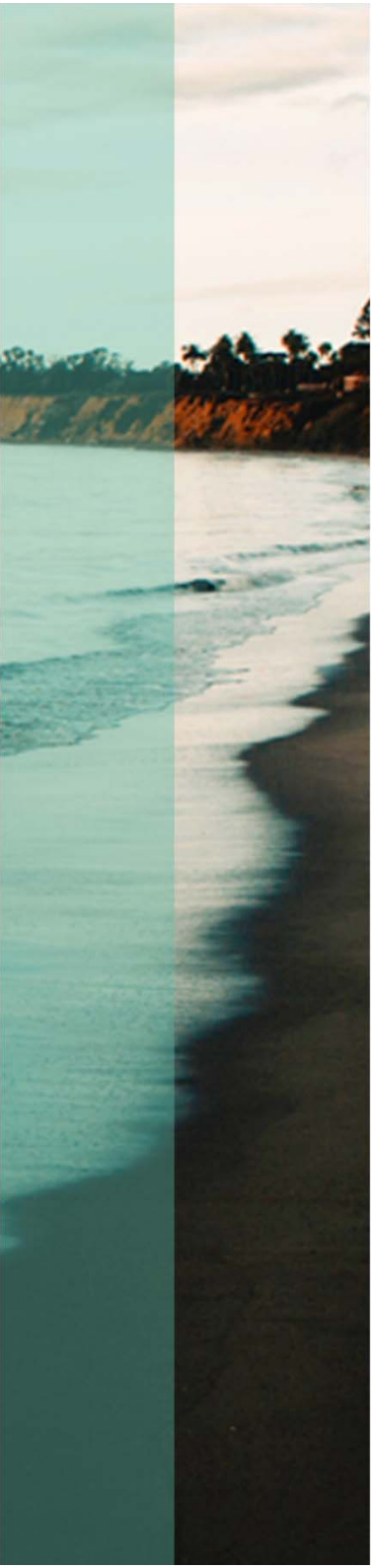

Contribution – LC 5500.5(e)

At any time within one year after the appeals board has made an award for compensation benefits in connection with an occupational disease or cumulative injury, any employer held liable under the award may institute proceedings before the appeals board for the purpose of determining apportionment of liability or right of contribution.

This applies to any award of compensation of benefits, not just the final award that disposes of all questions concerning the applicant's entitlement to benefits.

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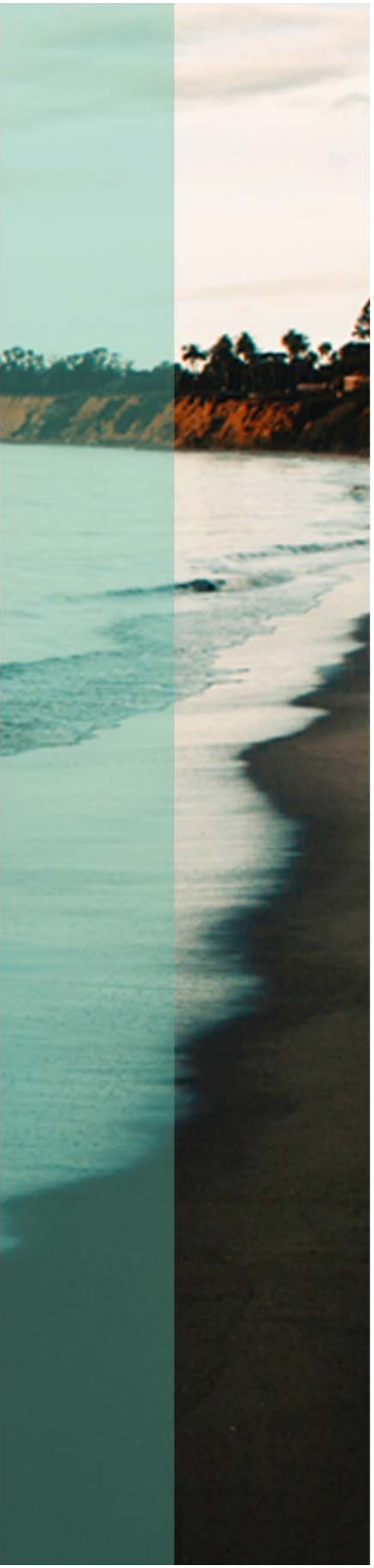

Contribution – LC 5500.5(e)

- Contribution is a mandatory matter of arbitration per LC 5275:

"Disputes involving the following issues shall be submitted for arbitration… (2) Right of contribution in accordance with Section 5500.5."

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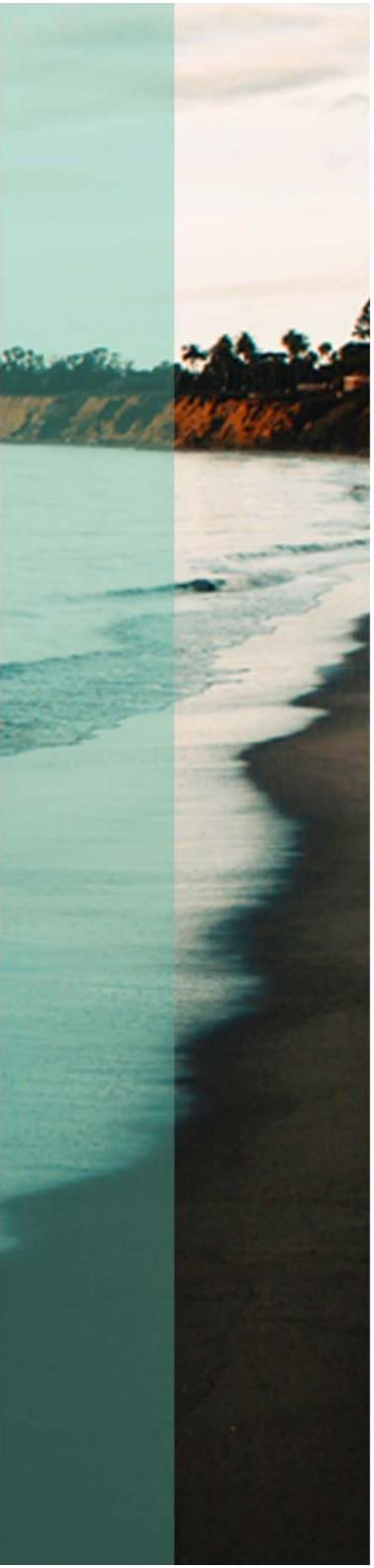

Contribution – LC 5500.5(e)

•Discovery does not close after settlement when contribution is at issue.

•“subsequent, separate, contribution proceedings are largely open and defendants may raise appropriate issues pertaining to their respective liabilities, whether previously litigated or not, and a defendant who settles a claim involving a hazardous employment period beyond its own covered period of employment, may likewise seek contribution and attempt to establish liability against any other defendant (s) within that period. The applicant can be required to cooperate in the contribution proceedings, certainly as a material witness, and can be required to submit to reasonable medical examination.”

•Greenwald (1981) 46 CCC 703

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Latency

How do we determine date of injury?

The general idea:

COVID-19 exposure occurred (to a degree of medical probability) and that COVID-19 could not have occurred while at work because exposure (based on when the symptoms manifested) was either too soon or too late compared to when the claimant worked.

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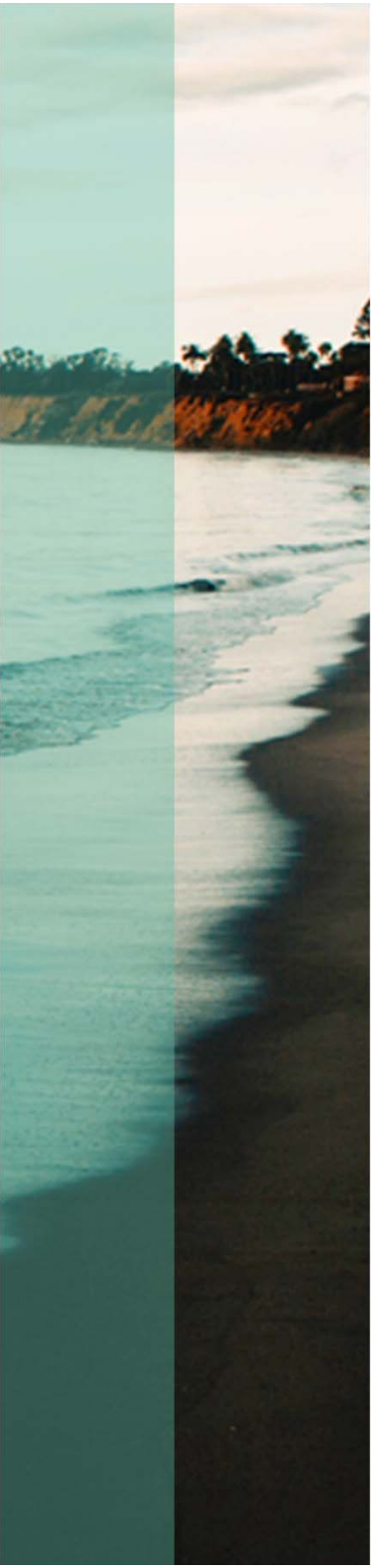

Latency

Medical evidence is required.

1. Date that symptoms manifested based on medical and factual record

2. Date of likely exposure based on facts and incubation period

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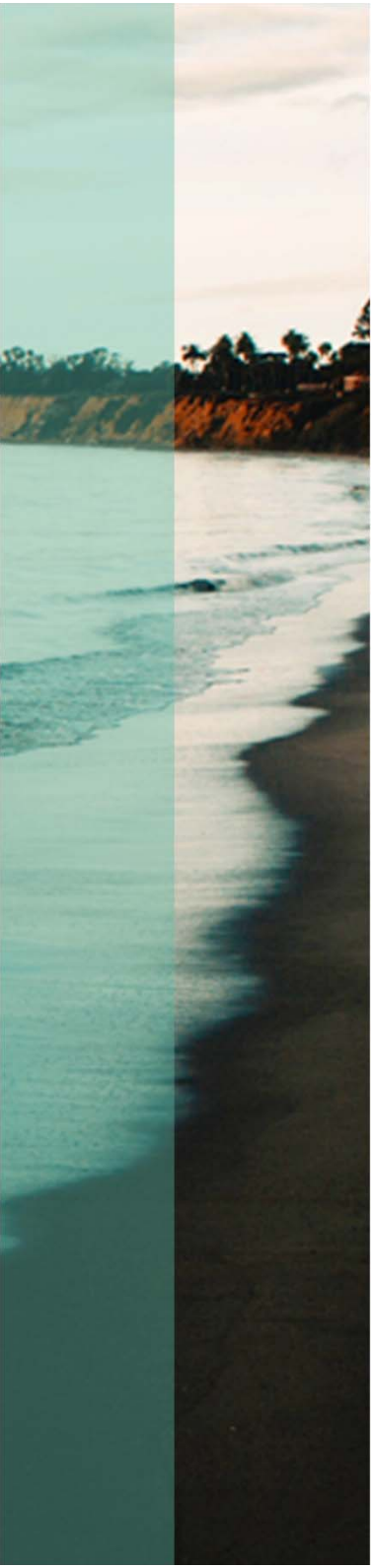

Latency

Incubation Period for COVID-19

1. The E.O. presumption provides for 14 days to test/get diagnosed.

1. Pending legislation also looks at 14 days.

3. Medical opinion / science is still developing. WHO and American College of Cardiology indicate 5-14 days.

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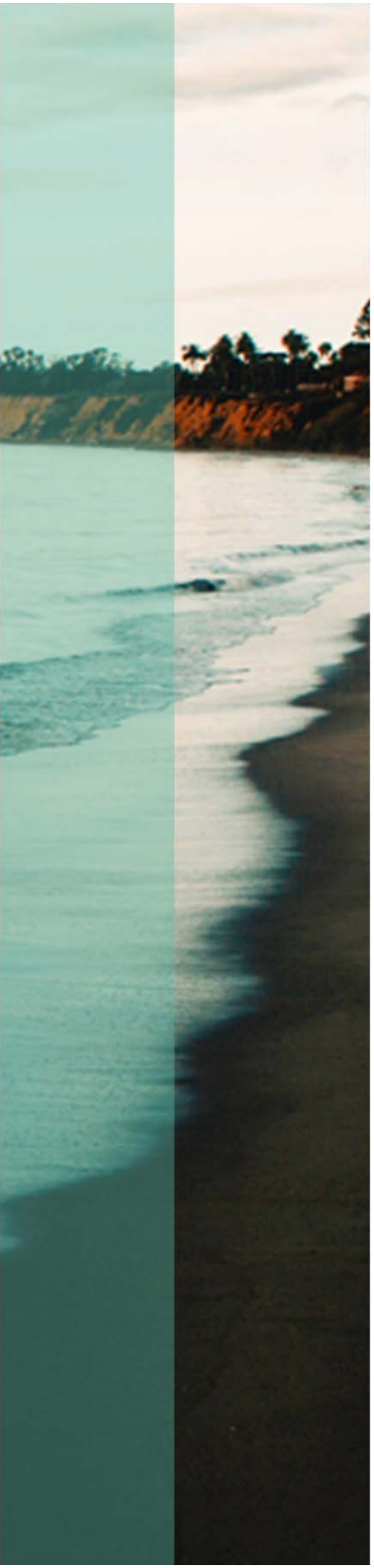

Latency

- Generally, mere exposure to a hazard alone is NOT enough.

- **Absent a presumption, there must be a causal connection between exposure and injury**.

- BUT in presumptive cases, injury is presumed.

- Still, we can defend on the idea that 1) there was no exposure, and 2) even if there was exposure (because it is presumed), the exposure did not cause the injury in this case.

- Stanley 48 CCC 65 (1983); Blais, ADJ10840422, 2020 Cal. Wrk. Comp. P.D. LEXIS ____.

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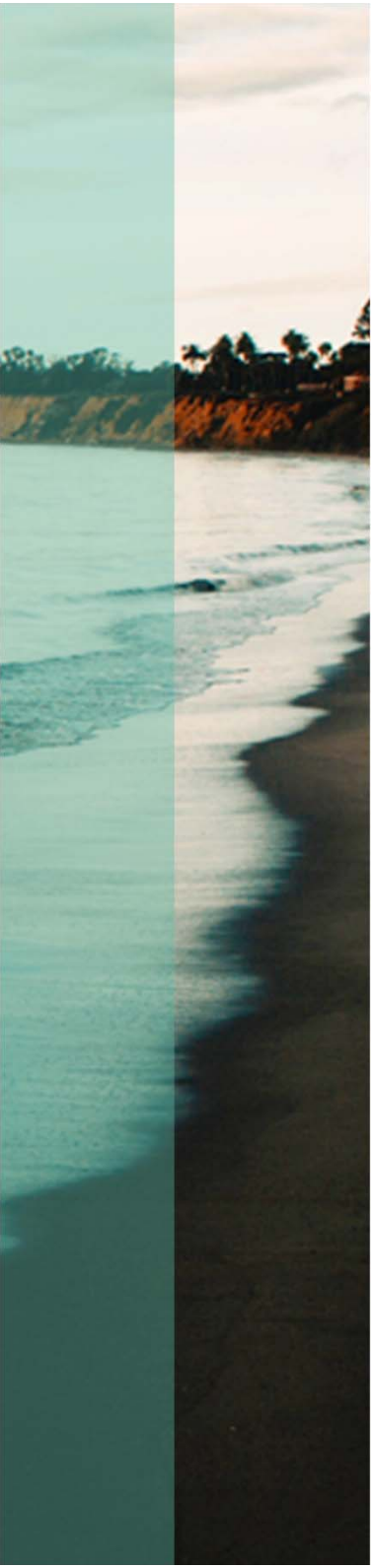

Latency

Where there is conflicting medical evidence on the periods of harmful exposure, the **trier of fact** must determine from the evidence the correct period of cumulative trauma.

McDaniel (2000) 28 CWCR 20

To defend these cases, you must properly investigate and obtain facts to support exposure and injury elsewhere, or that it was highly unlikely to have occurred at the worksite.

Garcia (2005) 126 Cal.App.4th 298.

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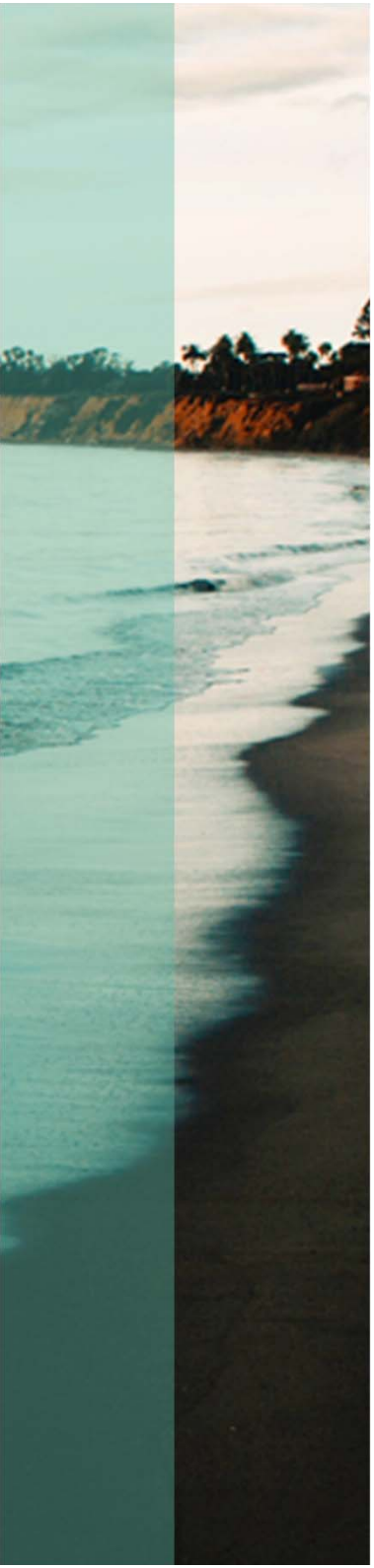


Latency

Blais

Panel decision, May 13, 2020

Robert Blais, Jr. v. State of California (PSI) ("Blais")

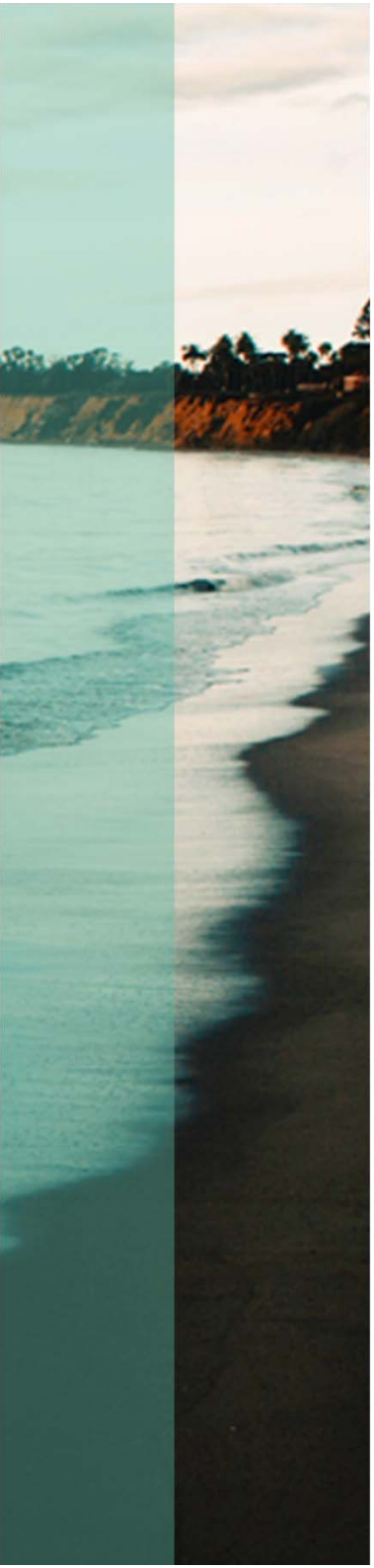
ADJ10840422, 2020 Cal. Wrk. Comp. P.D. LEXIS ____.

- Safety officer cancer presumption case.

- The officer had a pre-existing cancer award with a prior employer, but the cancer manifested during the defendant's employment.

- Cancer claims for certain safety officers are subject to anti-attribution clause of Labor Code section 4663(e) if held to be presumptive.

- The case hinged on medical evidence from the PQME, who found on a medical basis that the cancer should not be attributed to the current employer.



Latency

In *Blais*, the presumption was held to be rebutted on medical grounds, which may have interesting implications in our post-COVID-19 environment, particularly if the Legislature were to adopt (as it appears) a permanent rebuttable presumption.

Note: the current Executive Order (Now Section 2 of SB 1159 / LC3212.86) extends to dates of injury on/before 7/05/2020.

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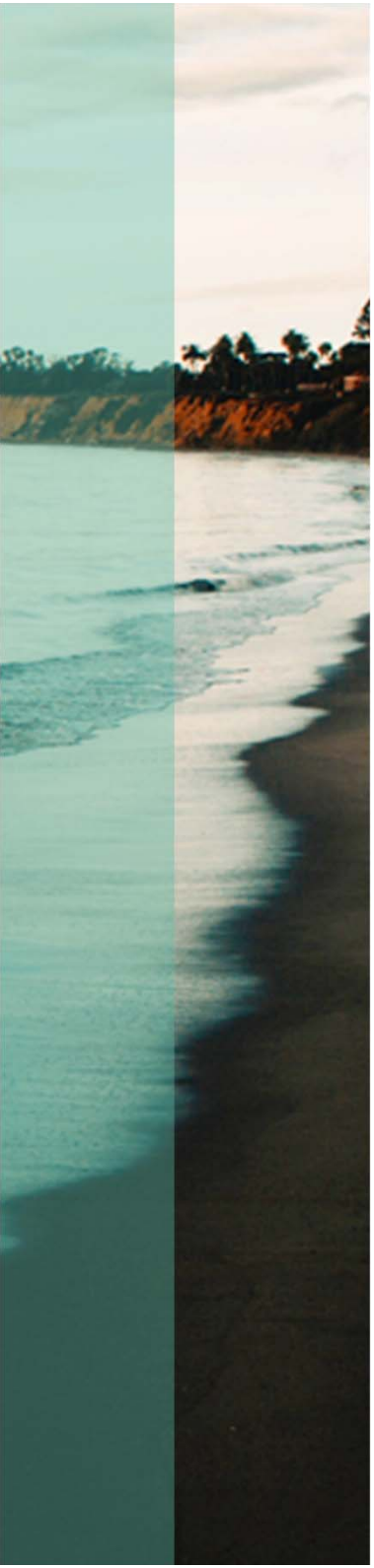

Latency

Medical evidence is key!

In Blais, the defendant successfully rebutted the cancer presumption through PQME reports and testimony.

The evidence demonstrated there was **no reasonable link between the exposure to the claimed carcinogen and the cancer.**

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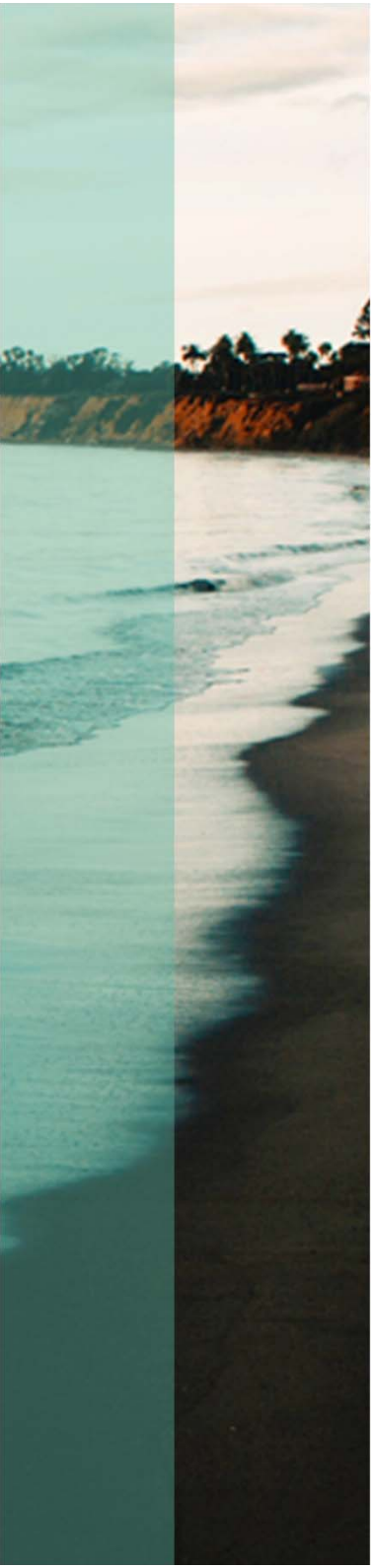

Latency

The *Blais* decision also held that rebuttal of the presumption does not require showing the absence of a possible link between the cancer and the industrial exposure, but that **defendant should show that such a link was not reasonable.**

There is a crucial distinction between proving there is no reasonable link versus showing clearly that there is no link to exposure in the workplace at all.

But what does it mean for there to be "no reasonable link" in these cases? As the *Blais* court explained in quoting *Garcia:* "A link that is merely remote, hypothetical, statistically improbable, or the like, is not a reasonable link." (*Id.*, at p. 316, citing *City of Long Beach v. Workers' Comp. Appeals Bd. (Garcia)* (2005) 126 Cal.App.4th 298.)

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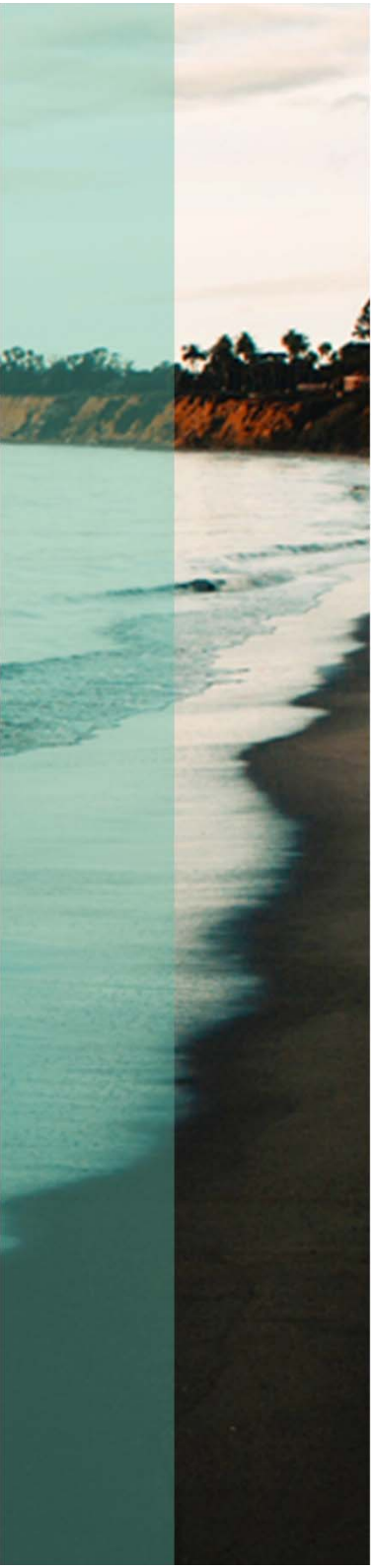

Latency

No reasonable link?

If the medical evidence shows that the latency period was long enough to preclude exposure at the employer's workplace, then there is no reasonable link between the cancer and the industrial exposure.

"A link that is merely remote, hypothetical, statistically improbable, or the like, is not a reasonable link."

(*Blais.*, at p. 316, citing *City of Long Beach v. Workers' Comp. Appeals Bd. (Garcia)* (2005) 126 Cal.App.4th 298.)

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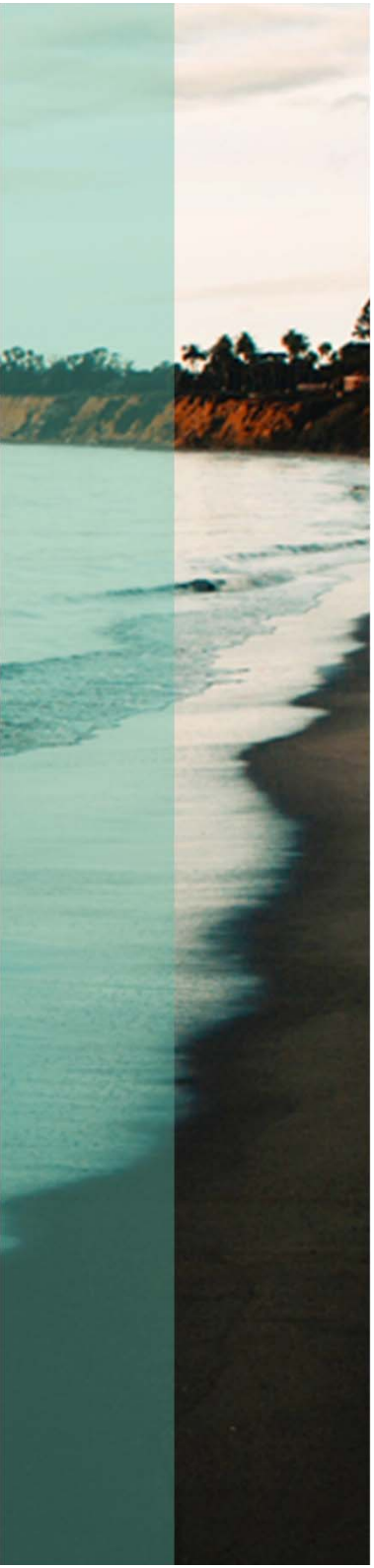

Latency

In finding for Defendant in the *Blais* case, the Board looked to prior cases including *City of Long Beach v. Workers' Comp. Appeals Bd. (Garcia)* (2005) 126 Cal.App.4th 298. In the *Garcia* case, the Court of Appeal set up two alternative standards under which a cancer presumption can be rebutted:

1. It could be demonstrated that it is highly unlikely that the cancer was industrially caused because *the period between the exposure and the manifestation of the cancer is not within the cancer's latency period*; or

2. The nature of the manifestation, or other medical evidence, may be sufficient to show the *lack of connection*. (*Id.*, p. 317)

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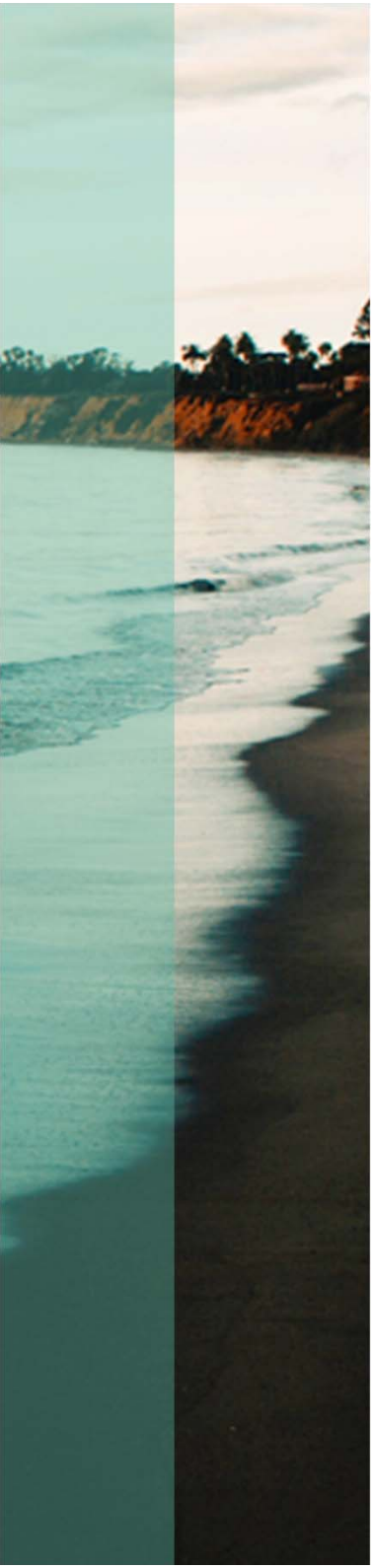

Latency

The employee's symptoms manifested too soon <u>before</u> any work exposure: "Too early."

An employer could seek to show that the employee was displaying COVID-19 symptoms or was exposed to / lived with a COVID-19 positive individual 5 – 11.5 days (even up to 14 days) *before* their alleged workplace exposure.

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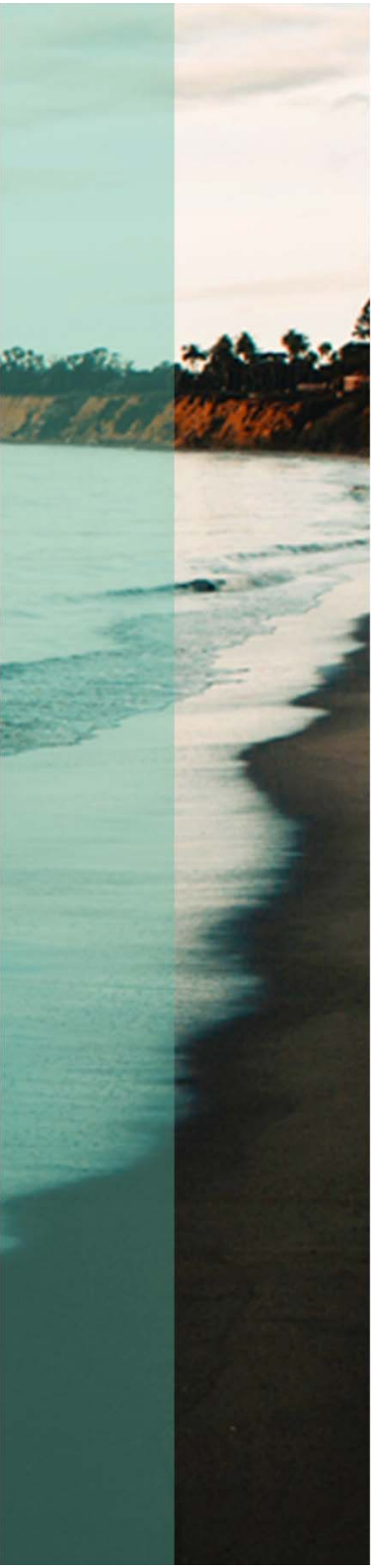

Latency

Example

Employee Isabel had her first symptoms of COVID-19 on May 10, 2020.

The employer records show she worked from May 8, 2020 through May 10, 2020. She was sent home immediately when the symptoms started, having worked a total of three days on May 8th, May 9th, and May 10th.

If the defendant proves her symptoms manifested on May 10th, and obtains medical evidence that the reasonable latency / incubation is at least 5 days, the defendant may be able to rebut the presumption because Isabel's work from May 8-10 was **too close in time to her symptoms starting.**

She must have been exposed *before* working for this employer.

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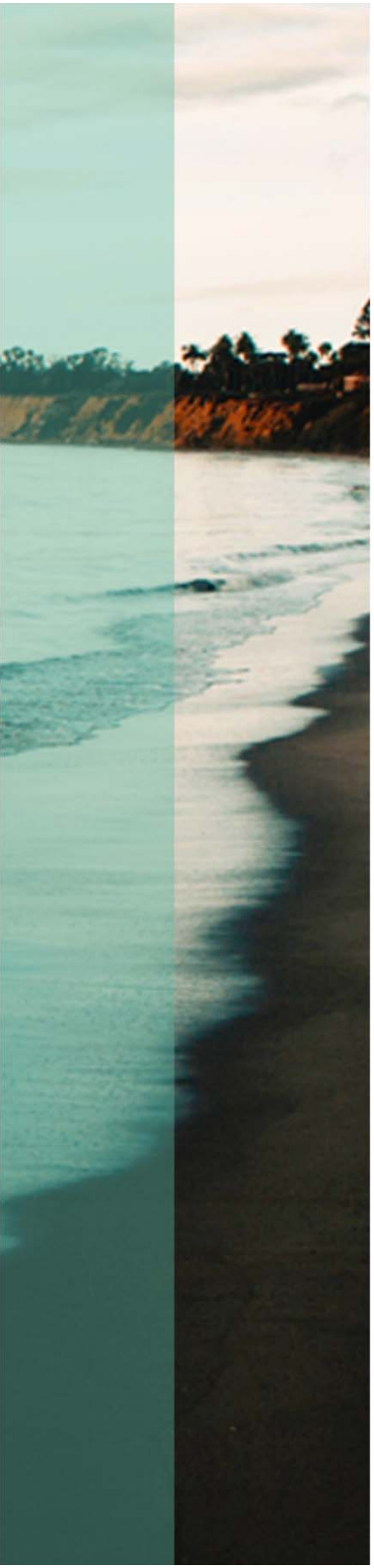

Latency

The employee's symptoms manifested too long after any work exposure, i.e.: "Too late."

An employer could seek to rebut the COVID-19 Presumption by developing factual evidence that the employee did not become symptomatic or receive a positive test / diagnosis within 14 days after last performing labor or services for the employer and thus the exposure is outside the normal incubation or asymptomatic period.

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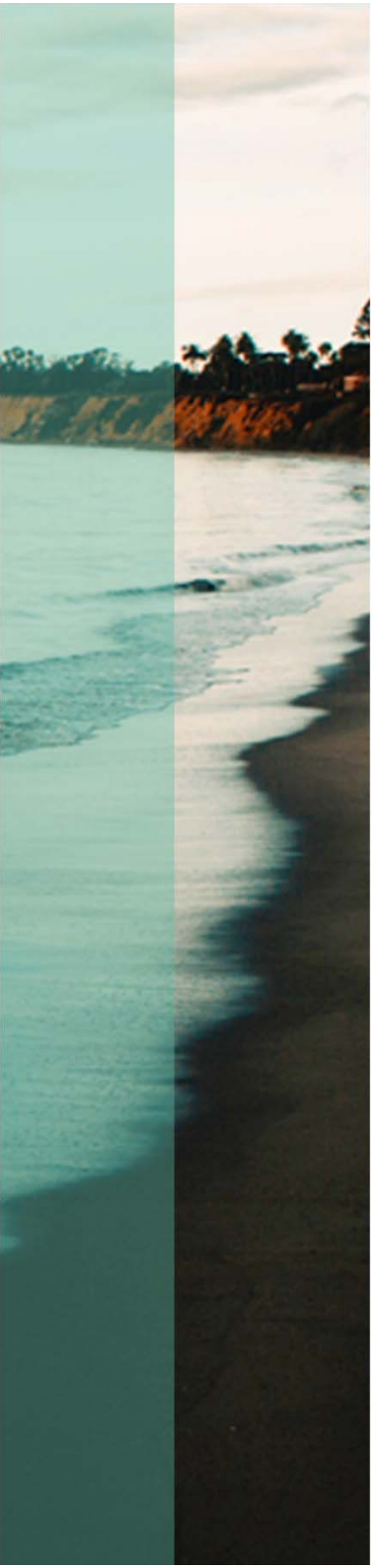

Latency – Final Thoughts

The argument in any of the latency scenarios above is that the workplace was not the source of the exposure, but the affirmative defenses asserted in Labor Code sections 3600(a)(2) [injury did not arise out of nor in the course of work] and 3600(a)(3) [injury not proximately caused by work] are implicated, should be plead in an Answer, and remain the defendant's burden to prove.

If the presumption is applicable, it is not sufficient to merely assert that the employer does not believe it to be work-related. The substantial evidence standard applies to all evidence submitted.

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QUESTIONS??

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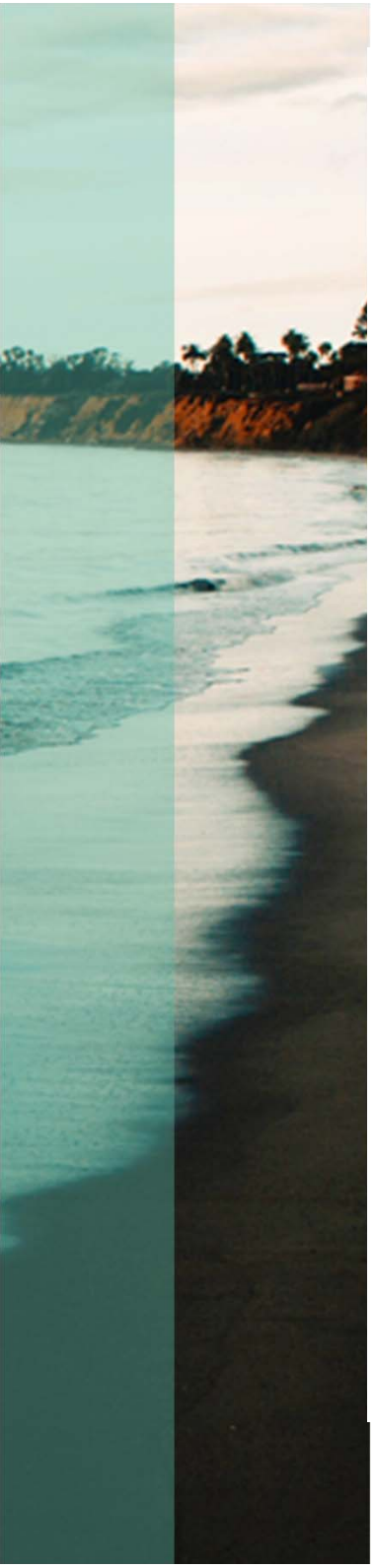

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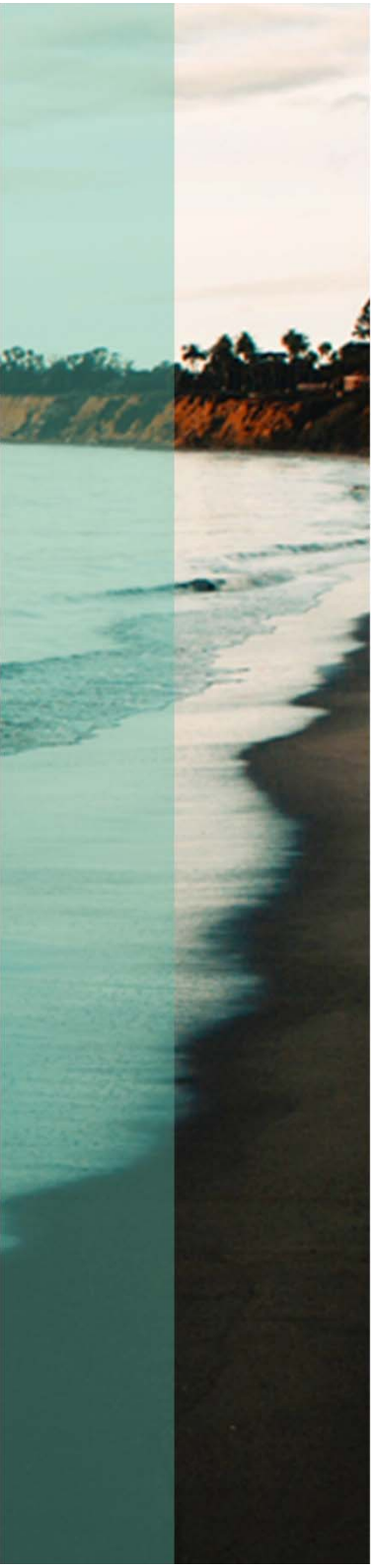


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