

Sweeney Mason

LLP

Coronavirus (COVID-19) Update:

Insurance Department Excludes COVID-19-Related Workers' Compensation Claims from Employer Experience Rates

On Wednesday, June 17, 2020, the California Department of Insurance approved new regulations pertaining to the California Workers' Compensation Uniform Statistical Reporting Plan - 1995 and the California Workers' Compensation Experience Rating Plan - 1995.

The most significant portion of the decision was the approval of the regulations that would exclude COVID-19 claims from a company's experience modification rate (EMR).

The EMR is the number used by insurance companies to gauge both past cost of injuries and future chances of risk. The lower the EMR of your business, the lower your worker compensation insurance premiums will be.

This decision comes as a relief for employers, who were understandably concerned about how COVID-19 cases would impact their workers' compensation EMRs after Governor Newsom's May executive order that expanded workers' compensation benefits.

That order provides that if an employee contracts COVID-19, exposure is *presumed* to have arisen in the course and scope of the employee's work, therefore triggering workers' compensation benefits. While employers could conceivably overcome that presumption with sufficient evidence of non-work-related exposure, it is a difficult burden to overcome. As a result, many employers were anticipating a significant hit both to their EMRs and their workers' compensation premiums. Thankfully, the new regulations should help relieve that concern.

Companies are strongly still advised to implement a protocol based on OSHA's guidance for preparing a workplace for coronavirus. Failure to do so may be viewed as a failure to take all reasonable precautions to protect employees from coronavirus exposure, potentially triggering

claims of serious and willful misconduct in the event an employee dies from COVID-19 and claims to have contracted the virus at work. The CDC also has issued helpful [guidance](#). You should also check to make sure you are in compliance with your local county's current regulations, as these are frequently changing.

Sweeney Mason LLP continues to monitor the rapidly evolving situation pertaining to the COVID-19 virus and resulting legal issues. We are finding that the laws and orders released by the Federal, State, County and Local governments are, in some cases, ambiguous, vague and/or contradictory, resulting in some confusion among a broad cross-section of our clients. At this juncture, and given the fast-paced changes to the applicable orders and mandates, as well as the ambiguities inherent in the orders there is no “one-size-fits-all” approach to COVID-19-related legal matters. For example, several Bay Area Cities impose their own emergency orders that mirror but in many cases are more stringent than the Statewide or County orders. As a result, contracts, employment issues, ongoing lawsuits and other matters impacted by the COVID-19 outbreak should be analyzed on a case-by-case basis and with the assistance of Sweeney Mason LLP.

Sweeney Mason LLP is in daily contact with governmental offices and various trade organizations to monitor the developments surrounding the COVID-19 outbreak. While much of our personnel continues to work remotely, Sweeney Mason LLP is fully operational and will continue to assist our clients and community with their legally related issues and concerns during this uncertain time.

For more information, please contact our employment team at 408-356-3000 or via email: Roger Mason at rmason@smwb.com or Rachael Brown at reb@smwb.com.

The following links may assist you in evaluating some of the issues you may have. Stay safe!

DOL Publications:

[FFCRA FAQs](#)

[FFCRA Required Notice](#)

IRS Guidelines:

[FFCRA Tax Credits](#)

[Employee Retention Tax Credits Under CARES Act](#)

SBA Guidelines:

[PPP FAQs](#)

CDC Guidelines:

[Interim Guidance on Risk Assessment for Individuals with Possible COVID-19 Exposure](#)

[Interim Guidance for Businesses and Employers](#)

OSHA:

[Preparing Your Workplace for COVID-19](#)

California:

[Stay at Home Order](#)

[EDD COVID-19 Overview](#)

[EDD COVID-19 FAQs](#)

Santa Clara County:

[Updated Shelter-in-Place](#)

[Social Distancing Protocol](#)

[Public Health Department FAQs on the Shelter in Place Order](#)

San Jose:

[Paid Sick Leave Ordinance](#)



The information provided in this publication is general in nature and is not intended to answer every question that may arise under different fact situations and should not be relied on in the place of professional advice in a given case. If you have specific questions, please contact Sweeney Mason LLP.

SWEENEY MASON LLP's philosophy is that by educating our clients, and other businesses, about their legal obligations, including changes in the law, we best serve our legal goal of minimizing or preventing expensive litigation.

Sweeney Mason LLP

983 University Ave, Suite 104C | Los Gatos, CA 95032 US
408.356.3000
www.smwb.com