

# Law: Suits, Premium Hikes From Workers' Comp

Continued from page 1

sumption for employees who must work outside of their homes during the lockdown. That means that workers who contract the virus within 14 days of "performing a labor or service at a place of work" from March 19 to July 6 are eligible for worker's comp benefits, according to a statement from Newsom's office.

What does that mean for Valley employers? Businesses can expect a whole lot of future litigation, along with increased rates upon renewal of workers' compensation policies, according to **Stuart Waldman**, president of the **Valley Industry & Commerce Association**.

"It's a scary time for employers. If you're still in business, you're lucky and your employees are lucky, and now you have to face all this potential liability," said Waldman. "The government is essentially putting the responsibility on business, whether their employees catch it at work or not. It is interesting because no matter what you do at work, if you have (personal protective equipment), block people off, stagger times, have a cleaning crew come in and disinfect every day and the employee goes out to the beach and catches it, the employer is still liable."

"For employers, what this means is two things: if they are a self-insured employer or an employer with a high deductible policy, they're going to be paying more in claims than they would have anticipated and reserved for," said **Nick Roxborough**, partner at **Roxborough Pomerance Nye & Adreani**. The Woodland Hills law firm represents mostly employers in workers' compensation cases, as well as businesses needing expertise in employment law, wage and hour, bad faith, insurance coverage and unfair trade practices.

"The reason is because in workers' comp, if there is only 1 percent of work relatedness – in other words, if COVID-19 was only 1 percent work-related – the employer is responsible for paying 100 percent of that employee's medical expenses," Roxborough explained.

No matter if a business, which was open during this time, was taking every precaution suggested by health care systems and government officials, it could still be responsible for paying medical bills for workers. And, finding proof to present to courts would take considerable time and effort. Many don't even know what to look for, to refute a COVID claim, Roxborough added.



Waldman



Comp Advisor: Nick Roxborough in Woodland Hills office.

PHOTO BY THOMAS WASPER

"There are so many variables here that are going to end up costing billions of dollars," Waldman said.

One employer called VICA, Waldman said, seeking advice from an employment lawyer. The business owner sent home two employees after finding they went to Huntington Beach a couple weeks ago prior to their shifts, and wanted to know if he was within his legal rights to do so. He was, the lawyer said.

Waldman added that it's just one type of call that VICA is getting from members right now.

According to a legislative response sheet published by the **National Academy of Social Insurance** last month, "occupational disease claims" are historically rare compared to workplace injury claims, and when they are filed, more than half are initially denied by insurers for compensation.

"Significant burdens of proof (are) placed on employees who submit disease-based claims," the fact sheet said. "These diseases may, however, be compensable if there is proof of an abnormal level of workplace exposure. For example, cases around the country have been approved for nurses who contracted infectious diseases such as tuberculosis in a tuberculosis sanatorium, smallpox in a smallpox isolation ward, or polio in the polio ward of a hospital."

### Premium spikes

Besides attorney's fees and other resources for defense of workers' comp claims, Roxborough said, paying for the considerable amount of medical care for certain COVID-19 patients would be an "extraordinary cost" to a self-insured employer, or an employer with a deduct-

ible of \$100,000 or more.

"On the other hand, if you are an employer and you have a guaranteed cost program where your premium is fixed, the carriers are now obviously going to have workers' comp claims for which they are going to be responsible, that actuaries and underwriters never anticipated," explained Roxborough. "Upon renewal, to be sure, we'll see workers' comp premiums increase because they're now paying and having to pay for workers' comp claims that they never anticipated."

But, Roxborough doesn't expect claims or policy renewal changes to drastically damage a company's bottom line, unless the claim timeframe is extended or a business is in a particular industry with an increased amount of exposure to COVID-19.

The same logic goes for insurance carriers: "I don't think that any one carrier will be hit with that many claims. It's not like in Paradise, where you had the fires and there were insurance companies writing heavily in high-risk areas," said Roxborough, referring to the 2018 Camp Fire that ravaged the town of Paradise.

Waldman thinks the order may put some companies out of business, or force them to make staff cuts to offset the skyrocketing price for workers' compensation upon renewal.

"If you have a claim, whether it's a valid claim or not, whether it gets paid or not, it impacts what's called your 'mod rate.' So that mod rate goes up; you pay a per employee payroll fee for workers' compensation insurance, so it will increase the cost," explained Waldman. "It won't increase them immediately, but it will increase them next year or when the insurance gets renewed. In many cases, it could require

some businesses to terminate employees just so they can afford the insurance."

### Unknown fallout

Right now, there simply isn't enough data to see how much this order will impact businesses. It all depends on how many claims are filed and if the state will narrow the order to only affect certain industries.

"It is a very broad order," Roxborough added. "I'm sure the governor's office is going to be monitoring and if they see a spike in claims, it might make sense for them to look at this to apply to certain types of industries where people work more closely together."

As an example, Roxborough mentioned an essential business like a meatpacking company, where workers are inside most of the time and are working in close, confined quarters. In this instance the presumption will be they contracted the virus at work, he said.

"If you're working for a law firm or CPA firm, and there is a third to 20 percent of people in the building that used to be there, that's a large difference between working in the meatpacking business or in a warehouse where there are a lot of people," said Roxborough.

If there isn't a spike in claims, the order may stay in place as is.

"As we get more data in the coming weeks, (Newsom) might make changes, the legislature might step in; there are lots of variables that we just don't know," added Waldman. "We, the business community, are asking the governor to grant immunity to businesses from lawsuits because right now the trial lawyers are just waiting to sue."

## BUSINESS MARKETPLACE

The Business Marketplace section reaches businesses across all industries

- Employment Opportunities
- Business Services
- Financial Services
- Real Estate Services
- Landscaping Services
- Leadership Programs
- Mergers & Acquisitions
- Investment Opportunities

Rosz Murray • 323.549.5225 x215  
rmurray@labusinessjournal.com

### REAL ESTATE

**David Hoffberg, SIOR**  
INDUSTRIAL REAL ESTATE BROKER



"Dedicated to Your Success Since 1986"

Representing *You* When  
Buying ~ Selling ~ Leasing  
San Fernando Valley ~ Santa Clarita Valley  
and Ventura County  
Industrial Real Estate

**818-933-7117**

david@go2delphi.com

DRE License #0912890



### BUSINESS LITIGATION

LITIGATION . TRIALS . ARBITRATION

State & Federal Courts  
**SUSAN BARILICH P.C.**

30 yrs. experience • Los Angeles & Southern California  
SuperLawyers 2020

Pasadena's Best Lawyers 2019 & 2020



**818.500.0377**

susan@barilichlaw.com

www.barilichlaw.com