

THE REPORT

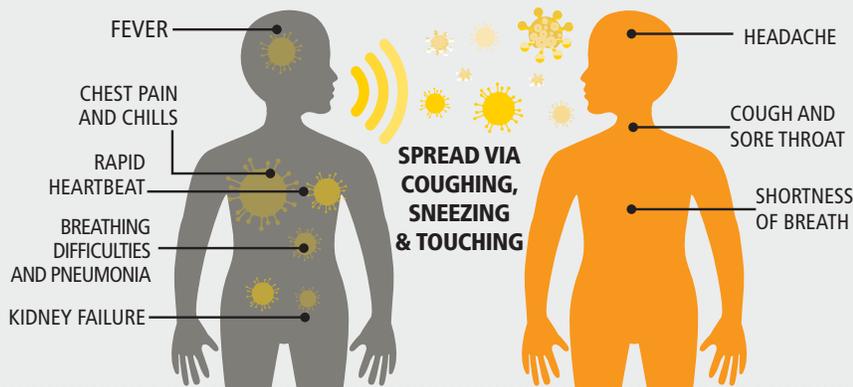
MARCH 2020, VOLUME 6, ISSUE 1



SAFETY AND COMPLIANCE

Employer Guide for Dealing with the Coronavirus

SYMPTOMS OF COVID-19 AND HOW IT SPREADS



AS THE outbreak of the coronavirus (COVID-19) grows and now begins to spread in North America, employers will need to start considering what steps they can take to protect their workers while fulfilling their legal obligations.

Employers are in a difficult position because it is likely that the workplace will be a significant source of transmission among people. And if you have employees in occupations that may be of higher risk of contracting the virus, you could be required to take certain measures to comply with OSHA's General Duty Clause.

Also, if you have workers who come down with the virus, you will need to consider how you're going to deal with sick leave issues. And workers who are sick, or have family members who have been stricken, may ask to take time off under the Family Medical Leave Act.

CODIV-19 explained

According to the Centers for Disease Control, the virus is transmitted from coughing,

sneezing and touching, and it enters through the eyes, nose and mouth.

Symptoms include a runny nose, a cough, a sore throat, and high temperature. After two to 14 days, patients will develop a dry cough and mild breathing difficulty. Victims also can experience body aching, gastrointestinal distress and diarrhea.

Severe symptoms include a temperature of at least 100.4°F, pneumonia, and kidney failure.

Employer concerns

OSHA – OSHA's General Duty Clause requires employers to protect workers against "recognized hazards" to safety or health which may cause serious injury or death.

According to an analysis by the law firm Seyfarth Shaw: If OSHA can establish that employees at a worksite are reasonably likely to be exposed to the virus (likely workers such as health care providers, emergency responders, transportation workers), OSHA could require the employer to develop a plan with procedures to protect its employees.

Protected activity – If you have an employee who refuses to work if they believe they are at risk of contracting COVID-19 at work due to the presence or probability that it is present there, what do you do?

Under OSHA's whistleblower statutes, the employee's refusal to work could be construed as "protected activity," which prohibits employers from taking adverse action against them for their refusal to work.

Family and Medical Leave Act – Under the FMLA, an employee working for an employer with 50 or more workers is eligible for up to 12 weeks of unpaid leave if they have a serious health condition. The same applies if an employee must care for a family member who has been stricken.

The virus would likely qualify as a serious health condition under the FMLA, which would warrant unpaid leave.

What to do

Here's what health and safety experts are recommending employers should do:

See 'Communicate' on page 2



CONTACT US

ASURA Risk Management
12657 Alcosta Boulevard, Suite 175
San Ramon, CA 94583

Phone: 925.701.3080
Fax: 925.701.3081
CA License: 0H92038

H.R. STUDY

Paid Sick Leave Can Reduce Workplace Injuries

A NEW STUDY has found that workers who are provided with paid sick leave are less likely to suffer workplace injuries than those without access to such leave.

Researchers at the National Institute for Occupational Safety and Health found that private sector workers who have access to paid sick leave were 28% less likely to suffer non-fatal industrial injuries.

Interestingly, workers in some fields of employment deemed among the riskiest were the most likely to benefit from paid sick leave.

They include construction, manufacturing, agriculture and health care, according to the study, published in the *American Journal of Public Health*.

Workers in these sectors commonly experience muscle soreness, pain, sprains, strains and tears; fractures; cuts and lacerations; or more chronic injuries including herniated discs, cartilage damage and spinal cord injuries, the study said.

The study found health care practitioners and technicians without access to paid sick leave were 18% more likely to suffer a non-fatal work-related injury than workers in the same jobs who had access to paid sick leave.

A construction worker without access to paid sick leave was 21% more likely to suffer a non-fatal work-related injury than a fellow worker with access to paid sick leave.

Researchers' conclusions

Access to paid sick leave might reduce the pressure to work while sick out of fear of losing income, according to the research. Fewer people working while sick, and therefore performing at reduced functional capacity, might lead to safer operations and fewer injuries.

"The potential safety benefit observed in our study extends previous research demonstrating that paid sick leave is associated with shorter worker recovery times and reduced complications from minor health problems," the researchers wrote. "Paid sick leave also enables workers to care for loved ones and can help prevent the spread of contagious diseases."

The researchers also noted that companies may enjoy better productivity if absenteeism is reduced thanks to offering paid sick leave, or via a reduction in what they termed "presenteeism" – the problem of sick workers continuing to work despite being ill, which can affect their job performance, not to mention sicken more staff.

The research also suggests that a family member's hospitalization increased the probability that a worker would suffer a severe occupational injury by 9%.

Paid sick leave is considered a non-wage benefit that employers are not required to offer their workers.

Although the 1993 Family and Medical Leave Act requires public agencies and private sector establishments to provide up to 12 weeks of leave to eligible workers, this leave can be paid or unpaid. ❖



Continued from page 1

Communicate with Suppliers about Possible Disruptions

- Consider restricting foreign business trips to affected areas for employees.
- Perform medical inquiries to the extent legally permitted.
- Impose potential quarantines for employees who have traveled to affected areas. Ask them to get a fitness-for-duty note from their doctor before returning to work.
- Train your staff about how to reduce the chances of contracting the virus, and what to do if they think they have caught it.
- Contact the Centers for Disease Control and local health department immediately.
- Contact a hazmat firm to clean and disinfect the workplace.
- Grant leaves of absence and work-from-home options for anyone who has come down with the coronavirus.

If there is an epidemic, consider whether or not to continue operating. If you plan to continue, put a plan in place. You may want to:

- If an employee may have the virus, experts recommend that you:
- Advise them to stay home until symptoms have dissipated.
 - Advise them to seek out medical care.
 - Make sure they avoid contact with others.

- Set a plan ahead of time for how to continue operations.
- Assess your staffing needs in case of a pandemic.
- Consider alternative work sites or let staff work from home.
- Communicate with suppliers about possible disruptions.
- Consider alternative vendors should yours be unable to work. ❖

INDEPENDENT CONTRACTORS

AB 5 Suffers Early Legal Setbacks

CALIFORNIA'S INDEPENDENT contractor law suffered its first two legal setbacks in January after trucking firms and independent truckers scored wins in court.

On Jan. 8, a Los Angeles County Superior Court judge ruled that AB 5 does not apply to independent truckers because they are covered by federal law.

And on Jan. 13, a federal judge extended a restraining order for the law to cover truckers as of Jan. 1 this year in a case brought by the California Trucking Association, seeking a preliminary or permanent injunction on the new law.

AB 5, which took effect Jan. 1, has been highly controversial. It was mainly written in response to the gig-worker economy and targets companies like Uber and Lyft, whose drivers are classified as independent contractors.

The law codified a 2018 California Supreme Court decision, in the *Dynamex Operations West, Inc. vs. Superior Court of Los Angeles* case, that set new independent contractor rules.

The new law has put into place a stringent "ABC test" for determining the validity of independent contractor relationships. This is because one of the requirements, the "B prong," defines an independent contractor as someone who is providing a service that falls "outside the usual course of the hiring entity's business."

The law has had a spillover effect on musicians, freelance writers and a host of other professions. Many of the people in these professions want to keep their freelance status for fear of losing their work, which has happened.

AB 5 essentially states that workers who perform the work the company is in business to do are in fact employees and cannot be treated as independent contractors.

The distinction is important because employees are eligible for additional benefits and protections. Employees have rights to minimum wage, overtime and sick leave, among other benefits.

The law has not only raised the hackles of businesses, but also of independent contractors.

There are more legal challenges to the law. Freelance writers and photographers filed suit in December 2019, alleging that AB 5 unconstitutionally restricts free speech and the media.

Uber and Postmates filed suit alleging that the law's targeting of app-based workers and platforms violates the equal protection clauses of the United States and California Constitutions.

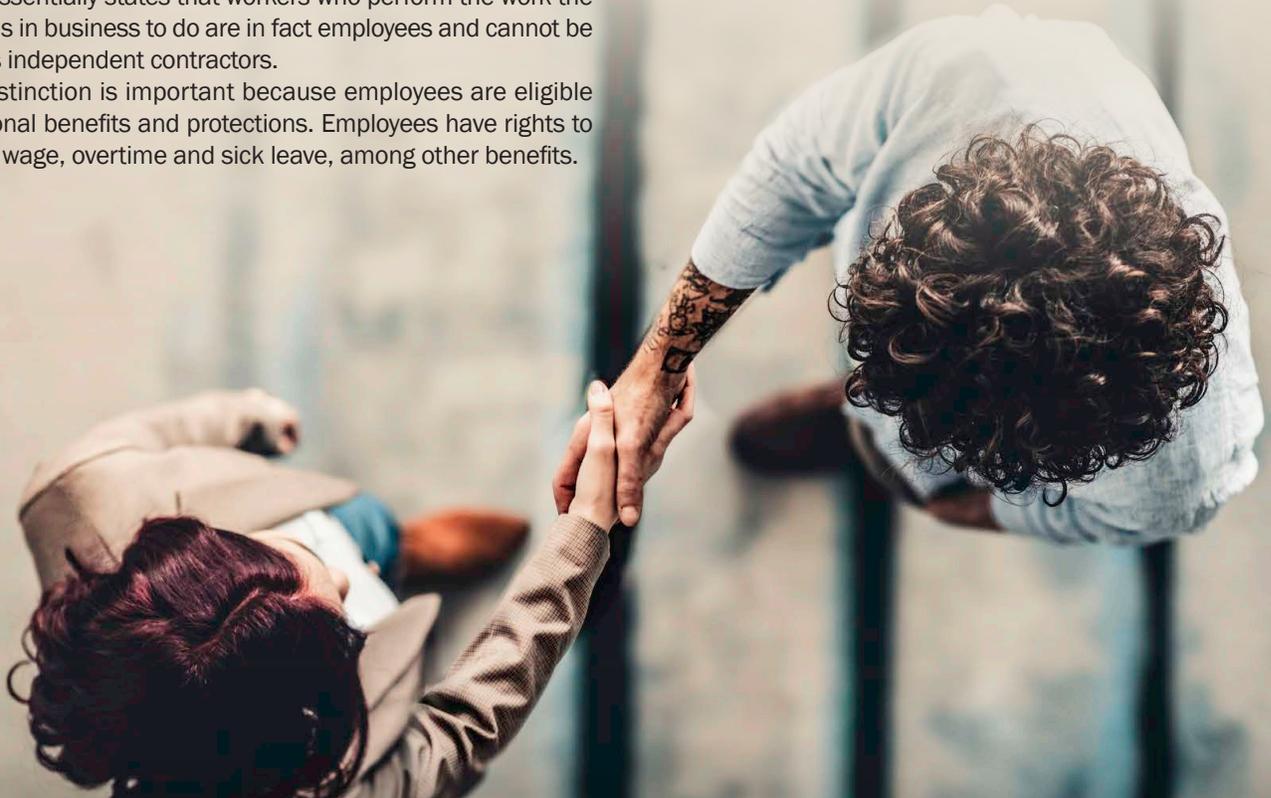
On top of that, Uber and Lyft are backing a ballot initiative to overturn the law.

The state of play

By now, if you use outside contractors you should have reviewed their statuses and that in order not to be considered employees, they:

- A. Must be free from the company's control when they're on the job;
- B. Must be doing work that falls outside the company's normal business; and
- C. Must be operating an independent business or trade beyond the job for which they were hired.

In late January, two Republican assembly members introduced AB 1928, which would put a freeze on enforcement of AB 5 while replacement legislation can be written. But, the chances of the bill passing in the Democrat-controlled legislature are slim. ❖



Produced by Risk Media Solutions on behalf of ASURA Risk and Insurance Services. This newsletter is not intended to provide legal advice, but rather perspective on recent regulatory issues, trends and standards affecting insurance, workplace safety, risk management and employee benefits. Please consult your broker or legal counsel for further information on the topics covered herein. Copyright 2020 all rights reserved.

PRICE HARDENING

Most Commercial Insurance Lines Seeing Increases

A RECENT REPORT by Willis Towers Watson predicts that most commercial insurance lines will see increases in 2020 as the market continues to harden almost across the board.

Overall, 19 commercial lines are expected to see price increases, according to the report.

MOST AFFECTED LINES

- Property
- Commercial auto
- Umbrella
- Directors and officers

LINES WITH LOWER HIKES

- Fiduciary
- Environmental
- Marine
- Kidnap & ransom
- Terrorism insurance

“We’re seeing the biggest upward price shift in years. We expect rate hikes and capacity constrictions will continue throughout 2020 and likely into 2021,” Joe Peiser, global head of broking at Willis Towers Watson, said in a prepared statement.

Here’s what’s happening with the two lines that are seeing the highest rises:

Property

Insurers are tightening underwriting in any parts of the country that have been experiencing increased levels of natural disasters. Additionally, some insurers have decided to curtail the amount of

policies they are willing to write, while others have pulled out of the market altogether.

Hurricanes are increasing in both number and intensity and the destruction is severe as real estate developments have continued in high-risk areas and coastlines.

In addition, rising tides are contributing to increasing floods during storms and hurricanes.

Meanwhile, the West has had its worst fire seasons ever in the last five years.

Many insurers are raising rates on properties in high-risk areas and are requiring property owners to reduce the chances of their properties catching fire by building buffer zones around their structures. Those that don’t may not have their policies renewed.

While overall rate increases vary from region to region, properties with greater exposure to catastrophes and claims histories have been seeing the largest increases.

Liability and umbrella

This includes the liability portion of auto policies, which has been the driving force in increasing auto insurance rates.

Commercial auto has been pressured for many years as distracted driving (attributed to smartphone use while driving) has driven up accidents that result in injuries, as well as increasing repair costs for modern vehicles and rapidly increasing medical costs for injured parties.

These costs can often trigger a company’s umbrella liability policy as well.

As a result, “loss severity in auto and general liability, and therefore umbrella, is spiking,” the report states.

On top of that, jury awards keep growing. Businesses are easy targets for litigation, and juries consider that they have deep pockets and can afford to pay out substantial awards. ❖

CLOUDY FUTURE – *As natural disasters grow in intensity and how much damage they inflict, property insurance costs are rising in some areas.*