



August 12, 2020

To: **Assembly Appropriations Committee**

Subject: **SB 1159 (Hill & Daly): COVID-19 Workers' Compensation Presumption
OPPOSE – As Amended in Committee**

The undersigned organizations write to respectfully **OPPOSE 1159 (Hill & Daly)**, which would codify Governor Newsom's Executive Order N-62-20 and establish two distinct types of workers' compensation presumptions for COVID-19 infections that would be effective only after the expiration date of Executive Order N-62-20.

While we very much appreciate your efforts to work toward a rational public policy on the question of how workers' compensation will treat COVID-19 infections. Prior to the amendments of 8/3/2020 our coalition had a position of "concerns" and had sent a substantive letter explaining what would likely trigger our opposition. We appreciate the spirit of collaboration to date and hope to reach agreement at some point, but the severity of our concerns with the establishment of a broad presumption require us to oppose the bill.

Structure of the Bill

SB 1159 can be broken down into three separate pieces that combine for a complete policy. Our coalition has concerns with some of these pieces and not others, so we want to describe them briefly so we can be more precise with our concerns.

- SECTION 1 codifies the policy contained in Executive Order N-62-20, which was issued by Governor Newsom on May 6, 2020. This Executive Order and this section of the bill are only effective from March 19, 2020 through July 5, 2020.
- SECTION 2 establishes a rebuttable presumption for COVID-19 for some classifications of police, fire, and health care workers. The presumption maintains many of the provisions that were included in the executive order, including a 30-day decision-making window, a requirement to test positive, and more. Section 2 is effective July 6, 2020 and sunsets on 7/1/2024.
- SECTION 3 was recently amended. It initially established a rebuttable presumption for COVID-19 for all employees and places of employment that are not covered by Section 2 of the bill. The presumption would not always be applicable. Instead, the law would trigger a presumption when there was a cluster of positive tests at any "specific place of employment". The size of the cluster needed to trigger the presumption is different based on the size of the specific place of employment. *This language was removed in the 8/11/2020 Assembly Insurance Committee and replaced with intent language signaling the desire to enact some different kind of cluster or outbreak-based presumption.*

Our coalition does not oppose the codification of the Governor Newsom's Executive Order in Section 1 of the bill. We oppose the 30-day decision making window and the proposed sunset date of July 1, 2024 for Section 2, but we don't oppose any other provisions of that section. We oppose Section 3 entirely and believe it should be removed from the bill.

Conditions Don't Warrant the Broad Presumption Anticipated in Intent Language

When the Executive Order was issued by Governor Newsom the entire state was subject to a shelter-in-place order; except essential workers. Those workers were clearly subject to a higher risk for contracting COVID-19 because they were, for purposes of their employment, the only Californians not actively sheltering in place. California is no longer subject to that order, and business of all varieties are opening and will be open for the life of the presumption established by Section 3 of SB 1159. Californians are getting back to their lives the best they know how, and the law should not make California employers financially responsible for the actions of employees outside of the workplace.

The current CDPH and CalOSHA guidance and requirements on re-opening various workplaces means that employers have been and continue to invest massively in procedures, training, equipment, and facility modifications to protect their employees. A person's place of employment is most likely the place where they are most compliant with masking, social distancing, and other protections.

There is no data suggesting that workers with a workplace exposure or infection are having a difficult time accessing the workers' compensation system. California's workers' compensation system is a no-fault, employer-funded

system that must be liberally construed by the courts with the purpose of extending benefits to workers who claim an injury or illness is work-related (Labor Code Section 3202). This means that California's system has been designed and consistently operates in a manner that broadly extends benefits for injuries and illnesses that occur on the job.

The presumption policy proposed by SB 1159 would cause the workers' compensation system to absorb an unknown number of COVID-19 infections that were not work related. With no demonstrable problem we simply don't believe this is necessary.

Presumptions Should Simplify the Claims Process

The purpose of any workers' compensation presumption is to simplify the process of determining which claims are work-related. Because the California workers' compensation laws already lean heavily in the direction of providing benefits, a presumption should only be implemented where there is a demonstrated problem with the normal process. There is no data to suggest that workers with workplace acquired COVID-19 are even experiencing problems accessing workers' compensation benefits.

Implementing a presumption that triggers on and off based on a cluster or outbreak is unavoidably complex, as we outlined in our initial letter of opposition that was focused on the recently deleted 5 or 5% model. California's workers' compensation system is administratively heavy already, and any presumption should ease that administrative burden instead of add to it.

Cost Estimates & Concerns

The undersigned organizations both appreciate and share your concern for our employees, and we agree that workers' compensation benefits should be extended as appropriate for COVID-19 infections that are work-related.

The Workers' Compensation Insurance Rating Bureau has issued their "Cost Evaluation of Potential Conclusive COVID-19 Presumption in California," which estimated the cost of other proposals to be somewhere between \$2.2 and \$33.6 billion per year depending on details of any eventual proposal. The WCIRB cites an approximate mid-range cost estimate of \$11.2 billion, or a 61% increase in the cost of California's worker's compensation system (already the second most expensive in the country). This doesn't apply to this specific proposal, but we include the information to show the massive range in the cost analysis.

We believe that the WCIRB is working on a new cost estimate for SB 1159, and we think the legislature should consider that estimate before proceeding. Employers in California's workers' compensation system, which had a cost of \$23.5 Billion in 2018, are approximately 67% insured and 30.2% self-insured (the State of California makes up 2.8%). It is important to note that for many large employers and nearly all public entities, the cost of workers' compensation is largely self-funded and come directly out of those organizations' annual budgets.

Sincerely,

Acclamation Insurance Management Services
Advanced Medical Technology Association
African American Farmers of California
Agricultural Council of California
Allied Managed Care Incorporated
American Pistachio Growers
American Property Casualty Insurance Association
American Staffing Association
Association of California Healthcare Districts
Association of California School Administrators
Association of California Water Agencies
Association of Claims Professionals

Auto Care Association
BETA Healthcare Group
Breckpoint
California Alliance of Self-Insured Groups, Inc.
California Association for Health Services at Home
California Association of Health Facilities
California Association of Joint Powers Authorities
California Association of School Business Officials
California Association of Winegrape Growers
California Beer & Beverage Distributors
California Building Industry Association
California Cattlemen's Association

California Chamber of Commerce
California Citrus Mutual
California Coalition on Workers' Compensation
California Construction and Industrial Materials Association
California Cotton Ginners and Growers Association
California Farm Bureau Federation
California Farm Labor Contractors Association
California Forestry Association
California Fresh Fruit Association
California Grocers Association
California Hospital Association
California Land Title Association
California League of Food Producers
California Manufacturers & Technology Association
California Municipal Utilities Association
California Pool and Spa Association
California Restaurant Association
California Retailers Association
California Rice Commission
California Schools JPA
California Self Storage Association
California Special Districts Association
California Staffing Professionals
California State Association of Counties
California Strawberry Commission
California Travel Association
CAWA – Representing the Automotive Parts Industry
CompAlliance
County of Santa Barbara

Exclusive Risk Management Authority of California
Family Business Association of California
Far West Equipment Dealers Association
Grower Shipper Association of Central California
Independent Insurance Agents & Brokers of California
Lake Elsinore Unified School District
League of California Cities
Los Angeles Area Chamber of Commerce
Michael Sullivan & Associates, LLC.
Milk Producers Council
Monterey County
National Association of Mutual Insurance Companies
National Federation of Independent Business
Nisei Farmers League
Personal Insurance Federation of California
Public Risk Innovation, Solutions, and Management
Rural County Representatives of California
Self-Insurance Risk Management Authority I
Special District Risk Management Authority
The Council of Insurance Agents and Brokers
United Ag
United Hospital Association
Urban Counties of California
Western Agricultural Processors Association
Western Insurance Agents Association
Western Growers Association
Western Plant Health
Western United Dairies
West San Gabriel JPA

Cc: Senator Hill
Assemblymember Daly