

RICARDO LARA

INSURANCE COMMISSIONER

California Department of Insurance

Notes Assembly Member Cristina Garcia Small Business Insurance Tele Town Hall Friday, May 22nd

California businesses of all sizes are suffering great losses because of the COVID-19 Pandemic. While we have encountered business interruption questions in the past following wildfires or other disasters, we have seen nothing on this scale – with thousands of businesses closed and drastically reducing payroll. Insurance Commissioner Ricardo Lara, along with Assembly Member Cristina Garcia, hosted the following small business experts to address issues faced by California’s small businesses:

- Xiomara Peña, California Program Director & National Latino Entrepreneurship Director Small Business Majority
- Julia Giarmoleo, Public Affairs Specialist, U.S. Small Business Administration

Assembly Member Cristina Garcia

- Assemblymember Cristina Garcia’s office may be reached at 562-861-5803.

Commissioner Ricardo Lara

- On April 13, Commissioner Lara ordered insurance companies to return a portion of premiums to businesses and drivers affected by the COVID-19 pandemic for March and April. “Stay at home” orders and reduced losses have now continued – and last Friday I extended my order to include May as well.
- This order covers at least six lines of insurance where the risk of loss has fallen as a result of the pandemic:
 1. **Private Passenger Automobile Insurance** – protects individuals from the financial risks you could incur by hurting someone or damaging their property with your car. It can also cover damage to your own vehicle, either from an at-fault accident or from other perils, like fire, falling objects, animals or theft. Your own individual auto policy.
 2. **Commercial Automobile Insurance** - covers the cost of accidents involving business-owned vehicles. It also covers vehicle theft, vandalism, and certain types of vehicle damage. Any business that has a commercial fleet of vehicles, such as companies that deliver goods and products to other businesses or directly to customers.
 3. **Workers’ Compensation Insurance** – This covers medical expenses and a portion of lost wages for employees who become injured or ill on the job. Coverage also includes employee rehabilitation and death benefits. Any business with employees, such as supermarkets, warehouses, restaurants, etc. All businesses must have this coverage.
 4. **Commercial Multi-Peril Insurance** - A commercial insurance policy that offers at least two forms of coverage. Commercial multiple peril policies offer coverage for a variety of losses, such as business crime, business auto, boiler and machinery, marine and farm, as well as general liability. Most every business needs this coverage, especially if they have their own building, or premises, and conduct their business on the premises.

5. **Commercial Liability Insurance** - A Commercial General Liability (CGL) policy protects your business from financial loss should you be liable for property damage or personal and advertising injury caused by your services, business operations or your employees. It covers non- professional negligent acts. For example, companies that sell products need coverage against product defect claims.
6. **Medical Malpractice Insurance** - Medical malpractice coverage is for legal claims arising from allegations of medical negligence and malpractice. This insurance helps to cover defense fees, expert witness costs, legal fees and settlement costs. If such a decision results in a lawsuit, malpractice coverage will protect you up to the policy limit. Examples of medical professionals whose services could result in a liability claim against them are dentists, orthodontists, chiropractors, optometrists, psychiatrists, psychologists, podiatrists, and elective surgery situations such as plastic or cosmetic surgeons.
7. And any other line of coverage where the measures of risk have fallen as a result of the pandemic.

- With many businesses closed due to the COVID-19 emergency, you need relief from premiums that no longer reflect your current risk of loss. By requiring insurance companies to return premiums, it puts money back in your pockets or reduces your future costs when you need it most.
- As a business owner, you should not have to do anything to receive the refund, and insurance companies must provide this relief as soon as possible.
- This could be in the form of a premium credit, reduction, return of premium, or other adjustment that gets funds back to you or reduces what you owe in the future.
- The amount you get back will vary by company and policy. In many cases, it will be a percentage of your premiums for March, April and May.
- You can also contact your insurance company to provide your actual or estimated change in payroll or business receipts, and possibly qualify for a larger discount.
- This builds on an action I took last month to request insurance companies give, at minimum, a 60-day grace period for businesses to pay premiums. Many insurance companies have honored my request by offering flexibility to consumers and businesses during this national emergency. Last week, I extended my grace period request until July because Californians continue to face unprecedented challenges due to the pandemic.
- My Department has also received a number of complaints regarding business interruption insurance.
- Many businesses have looked to their insurance policies for possible coverage. As you know, each insurance policy is a legal contract between the business owner and the insurance company -- and since early March we have seen dozens of lawsuits around the country, including California, which concern the interpretation of these policies and whether such policies should cover losses due to COVID-19.
- While these cases move through the courts, and we are monitoring them, I have taken several significant steps to address business interruption.

- For example, I have learned that some insurance companies are denying business interruption claims without a thorough investigation or discouraging you from even filing a claim. That is simply unacceptable.
- On April 14, in response to numerous complaints from businesses, public officials, and other stakeholders, I required insurance companies to comply with their contracts and California law by fairly investigating all business interruption claims caused by COVID-19 – just as they would for any disaster.
- My Department will be watching to make sure they do.
- On May 6, Governor Newsom signed an executive order extending workers' compensation eligibility for workers who were exposed to or contracted COVID-19.
- This order applies to any workers who tested positive or were diagnosed with COVID-19 after the stay at home order was issued on March 19, and within 14 days of performing a labor or service at a place of work.
- The Governor's action will help people recover and get back to work, and give peace of mind to those who are keeping our economy going as we take steps to reopen the state.
- I should note that this is a rebuttable presumption, meaning that employers will have a chance to prove that the illness is not work-related. The presumption will stay in place for 60 days from the date of the executive order.
- It will take some time to see the impact of COVID-19 on our workers' compensation system.
- Businesses that are closed or have drastically reduced payrolls may see their workers' compensation insurance costs reduced in the short term -- and my orders for premium rebates include worker's compensation insurance for that reason.
- Under the current workers' compensation regulations, payrolls include payments to employees who are furloughed even though they are not working, which means that employers' rates would remain the same as if those employees were still in the workplace performing their regular duties.
- And employers that provide workers with the opportunity to transition from regular work duties to lighter, home-based clerical work are still paying rates based upon the higher job classification.
- To address this inequity, earlier this week, my Department held a hearing to consider proposed emergency regulations, which would make changes intended to reflect the lower risk of worker injury in light of the pandemic. I will be reviewing the proposed regulations and determine whether they are consistent with my overall mandate to reduce premiums to reflect reduced risks.
- I also want to urge all businesses to be on the lookout for fraud and insurance scams – and report any suspicious activity to the Department of Insurance.

- We have 300 sworn investigators and enforcement personnel, with 9 regional offices – including an office in Commerce, which serves Los Angeles County.
- Here are some points for small business owners and managers to keep in mind to help protect your interests as you do business during the uncertainty surrounding COVID-19.
- Be on the alert for those offering bogus workers' compensation policies. Verify the legitimacy of the selling agent and the policy offered. You can verify the agent's license on our website and contact the insurance company directly to verify the policy.
- Be on the alert for fraudulent workers' compensation claims by employees that may occur as the result of layoffs or COVID-19 related illness.
- Report suspected insurance scams and fraud by calling CDI at 800-927-4357 or through our website at insurance.ca.gov.
- While we have transitioned a majority of staff to telework in support of the Governor's "stay at home" directives, we continue to provide essential services for California consumers and we are available via phone at 1-800-927-4357 (HELP) and through our website – insurance.ca.gov -- to assist you with your claims.
- You can talk to an actual person – not just a recording.
- Before I take questions, I'd like to invite you to a tele town hall, entirely in Spanish, with the Hispanic Chamber of Commerce on Wednesday, June 3rd. Para participar en esta teleconferencia para ayudar a dueños de pequeñas empresas, envía un correo electrónico a crb@insurance.ca.gov, con el título "Teleconferencia". Los esperamos.

Xiomara Peña, California Program Director & National Latino Entrepreneurship Director Small Business Majority

- Small Business Majority supports small and micro businesses with less than 100 employees
- This national organizations key initiatives include; research, advocacy and venture.
- Last Friday Congress passed legislation that provides \$310 billion in additional funding for the Paycheck Protection Program (PPP), \$60 billion more for the Small Business Administration's (SBA) Disaster Loan Program, \$75 billion in funding for hospitals and healthcare providers, and \$25 billion to support our Nation's testing efforts.
- This built on what Congress did on March 27th when they passed a \$2 trillion stimulus package, the Coronavirus Aid, Relief and Economic Security (CARES) Act.
- Governor Gavin Newsom announced a \$50 million cash infusion into iBank for the Small Business Finance Center Program. Eligibility includes: Small Businesses located in California with 1-750 employees that have been negatively impacted or experienced disruption by COVID-19, including businesses using ITIN and nonprofits.
- Since Tuesday April 28th EDD announced the pandemic unemployment assistance program, which can be accessed by independent contractors as well.

Julia Giarmoleo, U.S. Small Business Administration

- Cover LA, Santa Barbara and Ventura County
- **Economic Injury Disaster Loan (EIDL):** provides vital economic support to small businesses to help overcome loss of revenue due to COVID19
- EIDL advance: up to \$10,000 (not a grant) an advance on EIDL. Must complete the EIDL application to receive the advance.
- As of Tuesday, May 19, 2020, in California alone the office of disaster assistance has provided nearly 43,000 small business with \$5 billion of working capital.
- Applications are only open for U.S. agricultural businesses to provide farmers the access to emergency working capital to facilitate stability in our food supply chain.
- Check on your EIDL application status: 1-800-659-2955
- **Payment Protection Program (PPP)** provides direct incentive for small businesses to keep workers on payroll. This loan is eligible for forgiveness if all employees are kept on payroll for 8 weeks and the loan is used for payroll, rent, mortgage interest and utilities. (At least 75% has to be used for payroll)
- PPP forgiveness calculation example:
 - Each employee working more than 40 hours a week = 1 fulltime employee (overtime not included)
 - 3 part-time employees averaging 20 hours a week = 1.5 fulltime employees
- **SBA debt relief program:** Small businesses with a current 7A, 504 micro loan with an approved lending institution. SBA will automatically pay the principal, interest and the fees for the next six months. This includes 7A, 504 micro loans issued p until September 27th, 2020.
- Over 50 languages available for assistance through SBA's resource partner network. Find a resource partner closest to you: <https://www.sba.gov/local-assistance>

Constituent/ Business Owners Questions

- **I paid my insurance and understood it included business interruption coverage, why isn't loss of business due to the COVID19 pandemic covered?**

This is an important issue. The first thing to know is that not all policies are the same.

We would need to look at the specific policy to better understand what coverages and exclusions you have.

If you have Business Interruption coverage, but your insurance company is telling you that these losses are not covered due to exclusions in your policy, we recommend that you file a formal claim with your insurance company.

Insurance companies are legally required to fairly investigate your claim and formally respond back to you with their coverage decision and the reason for any denials they may make.

I issued a Notice on April 14th to all agents, brokers, and insurance companies reminding them of their obligations under the law to fairly investigate all business interruption insurance claims submitted by businesses.

I would like Tony Cignarale, our deputy commissioner for consumer services to provide more details on this issue.

While it is more complicated than this, there are few challenges that businesses will face as they look to their insurance policy to cover business interruption. Many commercial policies have

exclusions for loss due to contamination by virus and similar perils. Many policies also require that your loss be caused by direct physical damage or loss to the insured property that results from a cause covered by the policy. These conditions and exclusions do create hurdles to obtaining coverage. However, as Commissioner Lara mentioned we would need to see the entire policy as well as the circumstances applicable to your loss event to know what conditions or exclusion may or may not exist for a particular business.

If a business has not filed a formal claim, it should do so immediately. If the business has filed a formal claim and that claim has been denied, we recommend you to file a "Request for Assistance" with CDI at 1 (800) 927-4357 or through our website at: www.insurance.ca.gov.

We will look at the facts of the claim, the policy provisions, and contact the insurance company if we determine there is an issue with their determination.

While it is true that many commercial policies have provisions that may exclude coverage for business interruption under the circumstances, the CDI will review the claim to ensure that your insurer is properly investigating your claim and following all laws and the provisions in your contract.

□ What are my options if I do not have coverage for business losses due to the COVID-19 virus?

If you truly don't have any Business Interruption coverage, you should look at the various federal, state, and local programs available through the SBA and other sources.

As mentioned earlier, however, don't take your insurance company's, or agents, word that you don't have Business Interruption coverage, unless they have properly investigated your claim. Insurance companies are legally required to fairly investigate your claim and formally respond back to you with their coverage decision and the reason for any denials they may make. Even then, if your claim is denied, let us take a look. We can walk you through your policy to make sure what the insurance company is telling you is accurate.

□ You issued a bulletin requiring insurance companies to refund premiums -- will that be for my total monthly payment and when will I get that?

I ordered premium refunds because for many people the risk of accident or loss is much lower due to the statewide stay-at-home order. We are seeing:

- Fewer accidents or injuries on the road
- Falling business payroll and receipts
- Reductions in liability exposure due to the temporary closure of many businesses

Premium reductions and refunds should reflect that lower risk.

But, the risk has not gone away completely – My Department will be watching to make sure that the amount insurance companies are returning is adequate, and they are not short-changing you.

I want our General Counsel Ken Schnoll to give more details about this:

The amount you get back will vary by company and policy.

In many cases the reduction or refund will be a percentage of your premiums for March, April and May as these stay at home rules continue.

This will not be a 100% refund of your premium; the reductions will be tied to the change in risk during the months Californians are subject to “stay at home” orders. We have already seen a number of insurance companies announce premium reductions and credits.

Commissioner Lara’s bulletin directed all insurers to make an initial premium refund to all adversely impacted California policyholders as soon as possible, but no later than 120 days from the date of the bulletin (which will be August 11, 2020). This directive applies to the following lines of insurance:

- Private passenger automobile insurance
- Commercial automobile insurance
- Workers’ compensation insurance
- Commercial multi-peril insurance
- Commercial liability insurance
- Medical malpractice insurance
- Any other line of coverage where the measures of risk have become substantially overstated as a result of the pandemic.

Recognizing the unique nature of each insurer’s book of business and type of insurance coverage offered, we directed each insurance company to propose the best way to immediately return premium to policyholders. We also directed each insurer to report back to the Department how each insurer will fulfill this order within 60 days (or by June 12, 2020).

Insureds who have not received premium relief in spite of a reduction in the covered risks under a policy are strongly encouraged to contact their insurance company. If you are not satisfied with the answers you get or have other questions, please contact us at 1 (800) 927-4357 or through our website at: www.insurance.ca.gov.

Commissioner Lara has also requested an extended grace period to pay your premium. If you are having trouble paying your premium, contact your insurance company and inquire about the Commissioner’s grace period notice.

- My business has increased delivery – and may even be driving more miles because of the stay at home orders. Will the premium refunds apply to operators of commercial vehicles as well as personal vehicles?**

Yes -- there are strong indicators demonstrating that the risk of accidents has fallen sharply due to Governor Newsom’s stay at home orders. Just this week I saw a report that fatal crashes are down 84 percent since March.

Obviously, those who are not driving pose very little risk of loss, but for those essential businesses that must use our roads, these drivers are traveling on roads with substantially less traffic.

My April 13 and May 15, bulletins cover risks in many lines, including personal and commercial automobile insurance lines. I encourage commercial trucking and delivery businesses, like all commercial businesses, to contact their insurance provider to ask how your company is fulfilling the Order.

On April 10, I also asked insurance companies extend auto insurance coverage for drivers who are using their personal vehicles to fulfill deliveries for California’s essential businesses during the COVID-19 pandemic. This action ensures that businesses can continue to provide essential goods to residents and families at their homes and that delivery workers are protected at all times so that they may continue their work.

- **My business is not considered essential, but I am continuing to employ workers and pay my workers' compensation insurance. Can worker's comp insurance companies exclude COVID-19 from their coverage, whether or not they are considered essential businesses?**

Workers compensation insurers cannot exclude COVID-19 from their coverage. All workers affected by COVID-19 on the job are eligible for workers' compensation benefits – whether or not they are considered essential services. This includes workers engaged in front-line occupations such as health care, emergency services, food production, sales, and delivery, among others.

Workers' compensation also applies to undocumented workers. In 2015, when I was in the California State Senate, I authored SB 623, which was signed by the Governor, that expanded protections for undocumented workers in the event they are injured on the job, even if their employer does not carry workers' compensation insurance as required by law.

I issued a notice to insurance companies on April 6th to remind insurance companies about these existing legal protections for undocumented workers.

As I mentioned earlier -- Governor Gavin Newsom signed an executive order creating a presumption that a worker contracted COVID-19 while on the job if the worker is diagnosed with COVID-19 or tests positive within 14 days of performing a labor or service at a place of work. That order applies to all workers, whether or not they are deemed "essential."

Ken can address workers' comp claims -- If you are injured or become sick on the job, immediately report the injury to your employer. Your employer will notify the insurance carrier to ensure you are properly covered for your illness or injury.

If you have questions regarding the identity of your employer's insurance carrier, call the Workers' Compensation Insurance Rating Bureau at 1-888-229-2472 or visit their website at www.caworkcompcoverage.com.

- **Commissioner Lara, what is your office doing to manage the potential increased costs in workers compensation coverage due to the COVID-19 crisis and can you speak on the impact that the crisis has had on workers compensation?**

It is important to note that it will take some time to see the impact of COVID-19 on our workers' compensation system overall – or on the premiums you pay.

In the short term, we are looking for ways to reduce business costs for workers' compensation. Businesses that are closed or have drastically reduced payrolls may see their workers' compensation insurance costs reduced in the short term -- and my April 13 order for premium rebates includes worker's compensation insurance for that reason.

Under the current workers' compensation regulations which did not contemplate a pandemic, payrolls include payments to employees who are furloughed even though they are not working, which means that employers' rates would remain the same as if those employees were still in the workplace performing their regular duties.

And employers that provide workers with the opportunity to transition from regular work duties to lighter, home-based clerical work are still paying rates based upon the higher job classification.

On Monday we held a hearing to consider proposed emergency regulations to address workers compensation premiums in light of the pandemic. The proposed changes are intended to lower premium costs for businesses that are experiencing a lower risk of injury to their employees due to stay at home orders. I will review the proposed regulations and determine whether they are consistent with my overall mandate to reduce premiums to reflect reduced risks.

Additional Resources

Request Assistance with the Department of Insurance:

(800) 927-4357 www.insurance.ca.gov

FAQs and complete PPP information can be found here:

<https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>

Small Business Administration

www.sba.gov/local

Check Status of my Economic Injury Disaster Loans: (800) 659-2955

Government-backed loan programs are available, including special disaster assistance at the state and federal levels:

Federal resources through U.S. Small Business Administration (SBA)

- **SBA Paycheck Protection Program (PPP)** – The SBA is currently unable to accept new applications for the Paycheck Protection Program based on available appropriations funding. During this time, in preparation of the event that additional appropriations are made to the PPP, contact a lender to discuss your options, and/or work with a small business center to get ready.
- **SBA Economic Injury Disaster Loans (EIDL) and EIDL Advance** – the SBA is unable to accept new applications at this time for the Economic Injury Disaster Loan (EIDL)- COVID-19 related assistance program (including EIDL Advances) based on available appropriations funding. Applicants who have already submitted their applications will continue to be processed on a first-come, first-served basis.
- **SBA Small Business Debt Relief** - if you are a current borrower under SBA 7(a) not through PPP, 504 loan program or a microloan, you are eligible for **debt relief** and SBA will cover all loan payments for 6 months. Contact your lender directly to confirm if funds are still available.

Small Business Majority Resources

<https://venturize.org/> - Enter your zip code and find a local resource counselor to help you with your Paycheck Protection Plan (PPP) and Economic Injury Disaster Loans (EIDL) questions.

<https://venturize.org/resources/payroll-protection-program-lenders> - PPP lenders still taking applications
Research Report released on 4/21 on California Small Businesses impacted by COVID19

Small Business Majority's Daily Updates for Small Business COVID-19 Resource
page: <https://smallbusinessmajority.org/covid-19-daily-updates-for-small-businesses>

Small Business Majority's Daily Updates in Spanish: <https://smallbusinessmajority.org/es/espanol>

Sign-on Campaign for business owners to advocate for more aid: <https://go.smallbusinessmajority.org/l/229072/2020-03-19/6z7mt>

One-Stop Hub on Venturize.org RE: federal, state, and local lending sources: <https://venturize.org/resources/covid-19-resources>

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insurance.ca.gov 800.927.4357