

# RICARDO LARA

## INSURANCE COMMISSIONER

California Department of Insurance

### Notes - Small Business Tele Townhall

Friday, April 17<sup>th</sup>

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 hosted the following small business experts to address issues faced by California’s small businesses:

- Mark Herbert, Vice President of California for Small Business Majority
- Isabel Guzman, Director of the Office of the Small Business Advocate at GO-Biz
- Kevin Wynne, Public Information Officer for the U.S. Small Business Administration
- Ben Raju, Deputy District Director for the U.S. Small Business Administration

#### Department of Insurance Actions to address business interruption claims

On Monday, April 13<sup>th</sup> the Insurance Commissioner ordered insurance companies to return premiums to businesses and drivers affected by the COVID-19 pandemic. 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
2. [Commercial automobile insurance](#)
3. Workers’ compensation insurance
4. [Commercial multiple peril insurance](#)
5. Commercial liability insurance
6. [Medical malpractice insurance](#)
7. And any other line of coverage where the measures of risk have fallen as a result of the pandemic.

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.

In response to numerous complaints from businesses, public officials, and other stakeholders, on Tuesday, April 14<sup>th</sup> the Commissioner required 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.

Last month, the Commissioner sent a letter to the California Congressional delegation alerting them to the scope of this problem, and urging that subsequent federal stimulus packages assist businesses who may not have this business interruption coverage.

Last week Governor Newsom sent a letter urging a second, one-trillion-dollar stimulus and consider assistance for businesses who had business interruption insurance but who nonetheless cannot recover from insurers.

The Commissioner directed insurance companies to provide data about the number and type of small businesses with business interruption coverage and the scale of both covered and uninsured business losses.

We are still reviewing that data, and it will be critical to helping policymakers in California and at the federal level to deal with the problem. Although we have transitioned the majority of staff to telework we continue to provide essential services to consumers and businesses, we are available via phone at **(800) 927-4357** or website at: [www.insurance.ca.gov](http://www.insurance.ca.gov)

### **Mark Herbert, Small Business Majority**

Critical and challenging time for business owners, we just released a poll this week roughly 90% of small businesses are impacted and about 40% of California small businesses have seen revenues decline by half, roughly 1/3<sup>rd</sup> have already closed and more expected this coming week. This is extremely important to speak, we hear two questions:

1. How do I get cash?
2. How do I take care of my employees, what do I need to know?

It feels overwhelming trying to navigate. There are three major programs available:

1. Paycheck Protection Program (PPP) – A bank loan that if you spend on payroll and keeping your doors open it can be forgiven and becomes a grant.
2. Economic Injury Disaster Loan – A loan that will give you working capital.
3. Historic expansion of unemployment insurance – Not just for employees but also for self- employed – eligible for filing for unemployment expected to go live on April 28<sup>th</sup>

### **Isabel Guzman, Small Business Advocate**

California Office of Small Business Advocate – We are focusing on up to date information. We have a business response team available for individual assistance. Weekly rapid response virtual webinar series on the response to covid-19 can be accessed at: [www.business.ca.gov/ETF](http://www.business.ca.gov/ETF).

We have a network of small business development centers, veterans, women's are available with expert advisers that can help you find resources. Those can be accessed by [www.business.ca.gov/centers](http://www.business.ca.gov/centers). Governor's measures for financial and tax relief:

- Franchise tax board payroll extension set up for July 15<sup>th</sup> you may also apply for an extension.
- 90 day mortgage payment forbearance
- Moratorium on residential evictions
- Call for local governments to provide these protections for commercial businesses. Check with local cities or counties to check if these have been implemented.
- More information can be found at: [www.Covid19.ca.gov](http://www.Covid19.ca.gov) for the state's response

Governor also launched programs to fill gaps of existing federal programs:

- California Department of Tax and Fee Administration (CDTFA) automatically extend sale tax payments through July 15<sup>th</sup> for small businesses that are filing returns under \$1 million. Also created a program for those with less than \$5 million in taxable annual sales – 12 month interest free payment plan for up to \$50,000 of sales and use tax liability.
- New capital assistance program for businesses that do not qualify for federal programs. Low wealth businesses also those who may not have proper documentation but have business entities \$50 million small business finance center at ibank to fund small business disaster relief loan guarantees for microloans of up to \$50,000.
- California Treasurers Office has CalCap – Small business loan program for special disaster assistance as well.
- Employee assistance is also found at: [www.Labor.ca.gov](http://www.Labor.ca.gov).

**Kevin Wynne, Public Information Officer for the U.S. Small Business Administration & Ben Raju, Deputy District Director for the U.S. Small Business Administration**

Economic Injury Disaster Loan (EIDL): Additional assistance for small business owners and non-profits, includes the opportunity to get up to a \$10,000 Advance. This Advance may be available even if your EIDL application was declined or is still pending and will be forgiven.

Small businesses and non-profits can use the Economic Injury Disaster Loan Advance for payroll or other business operating expenses. The amount of the advance will be based on number of employees, @ \$1,000 per employee, and will be capped at \$10,000.

Additionally, SBA Disaster Loans for previous disasters that are still in repayment are deferred through end of 2020. They will automatically be deferred.

- a. Covers up to \$2 Million dollars in assistance
- b. Offers a long-term repayment process for up to 30 years
- c. Interest rates for small businesses is 3.75%, and for non-profits it is 2.75%.

For personal assistance, please go to small business development centers, women’s business centers, veterans business outreach centers and SCORE – Service Corps of Retired Executive Business Centers. You have until December 31, 2020 to apply for these loans.

**Payment Protection Program (PPP):**

- Eligible to all businesses including non-profits, veteran organizations, tribal concerns, sole proprietorships and self-employed individuals
- Up to \$10 Million dollars
- There is a loan forgiveness component to this if the proceed are used for payroll costs and other designated business operating expenses in eight weeks following the date of the loan origination.

- All of these loans under the program have an interest rate of 0.5%
- Maturity date in two years
- First payment is deferred for six months
- This is done 100% guarantee by the SBA
- No collateral, no personal guarantees, and no borrower or lender fees payable to SBA

These loans will be done through lending partners. In addition, SBA is currently in the process of recruiting additional lenders who may have not traditionally been participating in SBA loan programs, but for this response effort SBA is recruiting additional lenders that will be able to help put money back into the hands of small business owners.

## **Questions**

### **How do I find out if my business insurance has an interruption clause?**

If you want to know if you have business interruption coverage and if it covers this situation, you should review the declarations page of your policy and the policy itself. But, we understand these policies can be long and complicated. You should contact your agent, broker, or insurance company and ask them to verify what coverage you have. If you are not satisfied with the answers you get or have other questions, you may contact us at 1 (800) 927-4357 or through our website at: [www.insurance.ca.gov](http://www.insurance.ca.gov).

### **Please explain why Business Interruption Insurance does not cover COVID-19 claims.**

Not all policies are the same, so we would need to look at the specific policy to better understand what coverages and exclusions may exist. While it is more complicated than this, many commercial policies have exclusions for loss due to contamination by virus and similar perils.

We at the Department of Insurance have seen these exclusion provisions ourselves. 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 could mean that the insurance may not cover losses related to COVID-19. However, 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 it is not included in coverage, what is your best advice for submitting any claim(s) relating to COVID-19 business closures?**

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. We issued a Notice on April 14, 2020 to all agents, brokers, and insurance companies reminding them of their obligations under the law to accept, forward, acknowledge, and fairly investigate all business interruption insurance claims submitted by businesses.

If you don't have any Business Interruption coverage, you should look at the various federal loan programs available through the SBA at: <https://covid19relief.sba.gov/>

### **What do I do if my claim was denied?**

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](http://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.

### **Like many, my business interruption claim has been denied, are there realistic efforts being made to implement an insurance disaster fund for insurers to cover such BI claims?**

There are discussions going on at the federal level regarding the creation of a Federal Pandemic Risk Reinsurance Program, designed to cover insured losses arising from public health emergencies. The proposal is being led by California Congresswoman Maxine Waters. While currently only in draft form, the goal would be to develop a federal backstop similar to the Terrorism Risk Insurance Act (TRIA) that was established in the aftermath of the 9/11 terrorist attacks. If passed, it would create a reinsurance program that would be triggered when industry losses exceed \$250 million and aggregate losses are capped at \$500 billion annually, for insurers and the government. However, unless and until this type of program is established, we won't know how it will impact losses being suffered by businesses now or in the future.

Additionally, on April 8, 2020, Governor Gavin Newsom sent a letter to Speaker of the U.S. House of Representatives Nancy Pelosi asking Congress to appropriate \$1 trillion in direct and flexible relief to states and local governments in five specific areas, including assistance for businesses who had business-interruption insurance but who nonetheless cannot recover from insurers.

**My insurer is telling me that COVID-19 and viruses are not covered in my business interruption policy because they do not meet the "physical damage" trigger in my policy. Why haven't you as Commissioner declared that this virus causes physical damage?**

The losses that businesses are experiencing are very real and alarming. Insurers who answer policyholders by saying: “this is not a business interruption issue,” in spite of the clear business interruption going on is no answer at all. However, these are questions of contract that ultimately will be decided by our courts and our judicial branch of government. Whether a particular business is entitled to business interruption coverage necessarily requires an investigation of the facts for each business loss, and a review of the specific insurance contract the business has purchased.

With that said, I am working hard and have asked industry to work hard and to think creatively and collaboratively to develop broader solutions.

### **Is California planning to prohibit insurers from excluding the pandemic from business interruption coverage?**

CDI has been monitoring what other states have been doing on both the legislative and administrative fronts. If we identify any ideas that will help businesses, and those proposals are within our authority, we will act on them. If we identify any legislation that would be helpful, we will work with our state legislature and Governor Newsom to follow through on those ideas. There are a number of states including Louisiana, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, and South Carolina that have introduced legislation to retroactively require coverage for these business interruption claims. A group of Congress members have proposed H.R. 6494 which proposes a similar requirement.

On the administrative front, we have issued several Notices or Bulletins to assist both consumers and businesses get through this period – including a premium refund, 60-day grace period, and requiring insurance companies to investigate all business interruption claims fairly.

### **How do the recent notices unfold for insureds who are still driving and possibly driving even more? Will the refund apply to operators of commercial vehicles as well as personal vehicles?**

There are strong indicators demonstrating that the risk of accidents has fallen sharply due to Governor Newsom’s shelter in place orders. 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. Early evidence, including a U.C. Davis Special Report on the Impact of COVID-19 Mitigation on Numbers and Costs of California Traffic Crashes, suggests that the number of accidents in the state have declined substantially.

On April 13, 2020, we issued a bulletin directing all insurers covering risks in many lines, including personal and commercial automobile insurance lines, to return premiums to policyholders who now pose a lower risk of loss than originally anticipated. Commercial trucking businesses, like all commercial businesses are strongly encouraged to contact their insurance provider to ask how your company is fulfilling the Order.

**How do we know how much of a rebate / abatement we should get from our insurers?  
When should we expect to see those credits?**

On April 13, 2020, we issued a bulletin directing 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 multiple 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 policyholder base and insurance coverage offered, we directed each insurer 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 directive within 60 days. Persons 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, you may contact us at 1 (800) 927-4357 or through our website at: [www.insurance.ca.gov](http://www.insurance.ca.gov).

**Will there be enough funds in the state's unemployment insurance fund to pay everyone who applies for it?**

The Employment Development Department (EDD) regulates the Unemployment Insurance program in California. The Unemployment Insurance (UI) program pays benefits to workers who have lost their job and meet the program's eligibility requirements. If you have become unemployed or partially unemployed, you may file a UI claim. After you have filed a claim, you must continue to certify for benefits and meet eligibility requirements each week in order to receive benefit payments. If you have specific questions about Unemployment Insurance for furloughed employees, you are encouraged to contact the EDD through either its online tool at [www.edd.ca.gov/unemployment](http://www.edd.ca.gov/unemployment) or by calling EDD at 1-800-300-5616

**Travel insurance is not covering trips due to the virus/pandemic/or bacteria (sometimes premiums over \$200 per trip) even when their flights are canceled into the country.  
What can be done about that?**

We encourage anyone who has travel insurance and had to cancel travel due to the pandemic to file formal claims with their insurance company. If the insurance company denies the claim, please contact the Department of Insurance and file a Request for Assistance. We would need to review the facts and circumstances relating to the cancellation and the policy provisions, but we will make sure the company has fulfilled all of its legal obligations.

## **What Economic Relief Programs are Available for Small Businesses?**

Economic Injury Disaster Loans provide the necessary working capital to help small businesses until normal operations resume. They do not replace lost revenue.

These loans may be used to pay fixed debts, payroll, accounts payable and other bills that can't be paid because of the disaster's impact. The first payment on the economic injury loans issued due to the coronavirus will be automatically deferred for one year.

Small businesses can also receive counseling assistance throughout the country – SBA's 68 District Offices, as well as our Resource Centers, including Small Business Development Centers, Women's Business Centers, SCORE volunteers and Veterans Business Outreach Centers. [WWW.sba.gov/local](http://WWW.sba.gov/local)

Applicants have 9 months in which to apply for these loans.

### **Do I have to fire my employees so they can get unemployment insurance? I can't pay the next payroll, how does this work?**

According to the Employment Development Department, if you reduce the hours of your employees below \$500 per week, it allows them to be eligible for unemployment insurance and allows you to continue paying their health insurance so it allows you to continue to take care of your employees and have them be eligible for unemployment insurance. Starting April 28<sup>th</sup> if you are self-employed you will be able to apply for unemployment insurance and it is retroactive back to the date you lost your business, whether you lost your contracts or you saw your business cease.

### **Can churches apply for programs?**

Economic Injury Development Assistance loans and the Payroll Protection Program is available to faith-based institutions to cover their payroll costs. They are encouraged to apply.

## **Additional Resources**

### ***Listen to the entire Tele-Town Hall:***

Access Number: (866) 207-1041

Access Code: 4385156

### ***Request Assistance with the Department of Insurance:***

(800) 927-4357 [www.insurance.ca.gov](http://www.insurance.ca.gov)

### ***FAQs and complete PPP information can be found here:***

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

**The Governor's Office of Business and Economic Development (GO-Biz):**

<https://business.ca.gov/coronavirus-2019/>

**Capital Assistance Program- \$50 million in funding**

<https://cacapital.org/business-assistance/business-information-center/>

**California Small Business Centers**

**(833) 275-7232**

[www.business.ca.gov/centers](http://www.business.ca.gov/centers)

[www.business.ca.gov/ETF](http://www.business.ca.gov/ETF)

**Small Business Administration**

[www.sba.gov/local](http://www.sba.gov/local)

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

**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

**Find a Lender:**

<https://www.sba.gov/paycheckprotection/find>