

RICARDO LARA

INSURANCE COMMISSIONER

California Department of Insurance

Notes – Senator Hill Small Business Tele-Town Hall
Thursday, May 28, 2020

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

- Rosanne Foust, San Mateo County Economic Development Association
- Larry Klein, Mayor, City of Sunnyvale, President, Cities Association of Santa Clara County
- Julie Clowes, District Director, U.S. Small Business Administration, San Francisco Branch
- Bryant Henley, Deputy Commissioner and Special Counsel
- Tony Cignarale, Deputy Commissioner for Consumer Services and Market Conduct

Senator Hill

Welcome and thank you for joining us and submitting your questions. Thank you Commissioner Lara for taking the lead in organizing this event. He has been up and down the state – holding close to 20 of these in May and June. We will be getting to as many questions in the next hour as we can. If we do not get to all of the questions, my staff will follow up with you. We received a number of inquiries that constituents have had regarding filing or receiving unemployment insurance which we will not be able to answer on this call but please call my district office for help at 650-212-3313 or via my website at www.senate.ca.gov/Hill.

So, all businesses in California have been hit by the COVID-19 pandemic but our small businesses have been particularly hit. Having run my family’s small business for decades, I know how much even small hiccups can cause long term damage to a business. This pandemic is no small hiccup. We have a great panel to tell you about the resources available to you.

Ricardo Lara is California’s 8th elected Insurance Commissioner. As leader of the nation’s largest state consumer protection agency he is charged with protecting California consumers. During the COVID-19 pandemic he has been busier than ever.

The Commissioner has taken action to protect consumers, workers, and businesses. Among other actions:

On Monday, April 13th, the Insurance Commissioner ordered insurance companies to return a percentage of premiums to businesses and drivers affected by the COVID-19 pandemic.

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On Tuesday, April 14th, he 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.

While businesses have encountered problems in the past following wildfires or other disasters, we have seen nothing on this scale – with thousands of businesses closed and drastically reducing payroll. Commissioner Lara is here today to provide resources and answer your questions.

California Insurance Commissioner Ricardo Lara

Thank you, Senator Hill, for your leadership during this difficult time.

As we look ahead to getting our economy back on track we have a lot of work to do to assist small businesses and their workers.

The Department of Insurance has taken a number of steps to help small businesses:

I have ordered insurance companies to return a portion of premiums to businesses and drivers affected by the COVID-19 pandemic for March, April and May.

Because of stay at home orders, people are driving less, accidents have fallen, and business payrolls are down.

My order covers at least six lines of insurance where the risk of loss has 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 in March to request insurance companies give a 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.

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I have 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. You deal with contracts all the time – and as you know, each insurance policy is a legal contract between the business owner and the insurance company.

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 insurance issues.

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.

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 our Silicon Valley office based in Morgan Hill.

Here are some points for small business owners and managers to keep in mind.

- 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

insurance.ca.gov 800.927.4357

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. Please RSVP to crb@insurance.ca.gov.

Today, two of our Department staff are on this call to answer questions:

Deputy Commissioners Tony Cignarale and Bryant Henley.

Senator Hill

Julie Clowes is the director of the San Francisco District Office of the U.S. Small Business Administration. She oversees the delivery of SBA programs and services in 14 Northern California counties. Before joining the San Francisco District Office, she was the Deputy District Director of SBA's Washington Metropolitan Area District Office, where she oversaw the largest portfolio in the country, which included approximately 1,000 firms receiving 4 billion to 6 billion dollars in contracts annually.

Julie Clowes

I appreciate the forum. Here are some highlights of programs that are still available and open:

1. Debt Relief Program – this is for people who have existing SBA debt. SBA will now pay six months of principal and interest (P&I) on these loans. For assistance, reach out to your lender. If you are trying to obtain a traditional loan, and funds are disbursed before September 27, 2020, we will also pay six months of P & I.
2. Paycheck Protection Program – still has \$100B left in this program. Encourage all small business to apply. Available through commercial lenders.
3. Economic Injury Disaster Loan (EIDL) Program – only available for new applicants for agriculture businesses because they previously were not eligible but under last round of legislation, they are now eligible. Window open now.

All SBA and resource partners are all open for businesses and available to help at no charge.

Senator Hill

Rosanne Foust is the President and CEO of the San Mateo County Economic Development Association, better known as SAMCEDA. Rosanne also was a Redwood City Council member for 12 years and served a term as Mayor.

Rosanne Foust

SAMCEDA has been around since 1953 and in early March, we were asked by the County of San Mateo to attach ourselves to the Emergency Operation Center and act as the business lead, particularly for small businesses. Our website (www.SAMCEDA.org) has a wealth of information:

insurance.ca.gov 800.927.4357

financial relief programs, business continuity action plan, job opportunities and NOVA information. The San Mateo County Strong Fund has distributed \$2M to date in small business grants. Our daily newsletter briefing which contains information on public and private grants and loans available is also on our website.

Senator Hill

Larry Klein is the president of the executive board of the Cities Association of Santa Clara County. He also is the Mayor of the City of Sunnyvale and has been a councilmember since 2016.

Larry Klein

Sunnyvale is working to help residents and businesses. To date, we've given away almost \$1M to residents for rental assistance, food, and utilities. For businesses, the application period opened yesterday for the Sunnyvale Cares Program which helps small business with grants up to \$15k.

With sales tax and other revenues down, like other cities, we are dealing with our budget. We do not know where this will be in three to six months from now; however, we did not lay off anyone or furlough anyone, but instead we reduced water usage at parks, prolonged tree trimming for a year and delayed repair for sidewalks.

NOVA secures Santa Clara County and San Mateo County with assistance with loans and assistance with unemployment benefits via online support. www.Novaworks.org

As president of the executive board of the Cities Association of Santa Clara County I worked to get other mayors to sign a letter to partner to be open to testing and tracing. The county just opened a COVID testing center in North County Mountain View and they have free testing available now.

I serve as a Co-Chair for the Silicon Valley Recovery Roundtable Mayor's Circle to figure out best ways to deal with issues ahead.

Hill

Thank you all for submitting your questions via email. We will try to answer as many questions as we can today but if we are not able to answer your question during the town hall, please know that your question will be answered directly from the relevant organization. The town hall is being recorded and we will make the recording available on our website and the Department of Insurance's website. Also available after the event will be summary notes of the town hall with contact and resource information.

Questions

1: What is the number of cases and deaths in the area related to COVID-19 and where do we get updated statistics?

Hill: San Mateo and Santa Clara counties have this information available on their website and it is updated daily. You can call my office for the information or visit my website for a link to theirs: www.Senate.ca.gov/Hill

As of May 26, San Mateo County has seen about 2,000 positive cases and 82 deaths. Santa Clara has seen about 2,688 positive cases and 140 deaths. These are difficult numbers to handle but protocols put in place have helped keep numbers much lower in the last few weeks. We have benefitted from the stay at home orders.

2. Is there any hope for getting losses covered under a business interruption insurance policy that has a pandemics exclusion? Can anything be done about this?

Commissioner: While many commercial policies have terms and exclusions that create a challenge to getting claims paid under your Business Interruption coverage, not all policies are the same. We would need to look at the specific policy to better understand that coverages and exclusions may exist.

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 would like Deputy Commissioner Tony Cignarale to provide more details.

Tony: While it is more complicated than this, 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.

3. What is the economic impact of not having conferences and tradeshow in our region until 2021?

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Klein/Foust: San Mateo County, which includes the City of Palo Alto, has approximately 19,000 hotel rooms whose primary business is conventions, meetings and conference space and taking in corporate travelers. They have been decimated through this crisis. Within the PPP application rounds, 501(c)(6) were excluded from applying. SAMCEDA is surveying its corporate members to find out when they can re-engage even if in a smaller number. Counties are trying to find a way to publicize discounts or trips away from your home at a hotel as well as partnering with hotels to house essential workers that are afraid to go home to families.

4. I am a retail business owner who furloughed employees due to COVID-19. They are now claiming and receiving unemployment benefits. I just shudder to think of what my unemployment insurance rates are going to be in 2021. Is there going to be any state help to keep my rates down?

Commissioner: The Department of Insurance does not regulate unemployment benefits or rates – they are handled by the Employment Development Department. 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 or by calling EDD at 1-800-300-5616.

Except for new employers, unemployment insurance rates are determined by your experience rating and the condition of the state's unemployment insurance fund. With Congress extending benefits due to the crisis, it is unclear what the impact is going to be.

5. I would like to hear from the Insurance Commissioner how he is working with insurance companies to provide reductions/rebates to customers due to reduced claims during this shelter at home time. I am interested to hear about individual health insurance, home insurance and auto insurance.

Commissioner: 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.

Drivers and businesses should not have to do anything to receive the refund, and companies must provide this relief as soon as possible. This could be a premium credit, reduction, return of premium, or other adjustment that gets funds back to policyholders.

My Department will be watching to make sure that the amount companies are returning is adequate, and they are not short-changing you.

Health insurance is a different story.

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COVID-19 is causing a lot of uncertainty in the health market -- we don't yet know what is going to happen for employers. Actuaries for health insurers are currently developing their assumptions regarding impact for their 2021 rates, and will likely price their products to reflect this uncertainty.

One thing is that we do not anticipate unexpected windfalls in terms of reduced claims, over the long term, as a result of COVID-19

Yes -- there has been a substantial decrease in necessary, but elective procedures (such as heart surgery and cancer surgery) during the pandemic, in part in response to the need to focus hospital resources on developing capacity for the treatment of COVID-19 patients. As a consequence, hospitals are experiencing a substantial decrease in revenue.

Many of these procedures may be deferred to a later time – so claims for these procedures may come in a wave later. The relative percentage of delayed vs. cancelled procedures is yet another COVID-19 uncertainty.

Also, because of delay in necessary, but elective, procedures, morbidity is expected to increase. This is something I have seen with our undocumented and vulnerable communities – where putting off care leads to tragic results.

I want our Deputy Commissioner Bryant Henley to give more details about this:

Bryant: 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 orders 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 companies announce rebates 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). Although a change in risk is less clear for homeowners' insurance, we have seen a demonstrable reduction in risk of loss for other lines of insurance. 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 policyholder base and 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 directive within 60 days (or by June 12, 2020).

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.

Commissioner Lara has also requested a grace period to pay your premium. If you are having trouble paying your premium, contact your insurance company and ask your insurer how it is responding to Commissioner Lara's request.

6. There were multiple questions on workers' compensation. The first question is a composite.

- a) Will workers' compensation cover COVID-19 illnesses?**
- b) I have a question about businesses having the liability of COVID infections now going into workers' compensation claims. I provide health insurance for all of my employees and they currently are covered with zero deductible for COVID treatment.**

One claim on my workers' compensation insurance will increase my WC rate to the point where I will have to reduce staff. I can understand this being applied to businesses that do not offer health insurance to their employees, but what is the point of making businesses doubly liable if we already provide health insurance?

Commissioner: 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 – into early July.

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, 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.

7. Many cities are considering closing some sections of their business districts to vehicular traffic to help support businesses that could operate if they had more outside space for tables. Presumably they do not have outdoor furniture and it's an extra expense for them to rent or purchase what's needed. Are there any resources to help them with this?

Klein: In talking to most restaurants and looking ahead of the order, they'll only be able to have 25% of seating that they had initially and so most can use existing resources. From a resources standpoint, restaurants are happy to move tables outside to sidewalks and streets so that people can feel free to eat there. Restaurants are also happy to get service workers back to work. This will also give opportunities for people to feel free to congregate again once the county allows it.

8. The Johnson Pier is closed. When will the commercial fishermen at the fish sales dock at Half Moon Bay Harbor be able to sell fresh fish off the boat to the public and local restaurants? Shouldn't the commercial fishermen be an essential business?

Foust: Commercial fisherman are an essential business just like farmers' markets and were never shut down. The parking lot was closed though in the harbor district because it had to do with beach access and closing down beaches. The Harbor District is hoping the County will lift parking restrictions soon.

9. Are there any liabilities for business owners with respect to claimed injury due to the coronavirus? Can a business owner be liable if anyone claims to have been infected due to visiting the business and if so, would business liability insurance generally cover this?

Commissioner: A business' exposure to liability for injury or illness to its customers is, indeed, a business liability insurance issue - not a workers' compensation issue. I have held more than a dozen town halls, and I am extremely sympathetic to our businesses.

From my point of view, businesses are not the enemy. You are doing the best you can to follow the guidance coming from state and local public health officials.

I understand the burdens being placed on businesses as they attempt to reopen while still keeping their employees and customers safe. It is not an understatement to say that lives are at stake here.

As businesses reopen, they should have a conversation with their agent or insurance company to get guidance regarding how to safely return to business and also to make sure businesses have the right coverage in place.

If the business is not satisfied with these answers, they should contact our Department at 800-927-4357.

Additional Resources

Request Assistance with the Department of Insurance:

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

FAQs and complete Paycheck Protection Program information can be found here:

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

Small Business Administration:

<https://www.sba.gov/local-assistance>

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

San Mateo County Economic Development Association

<https://www.samceda.org/>

Nova Job Center

www.Novaworks.org

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