

RICARDO LARA

INSURANCE COMMISSIONER

California Department of Insurance

Notes from Thursday June 4th, 2020

Senator Jones & Assemblymember Voepel

Small Business Insurance Tele Town Hall

We are living through unprecedented time with civil unrest, COVID-19 pandemic, and our community is suffering. Today's Tele Town Hall will focus on current business concerns in East San Diego. 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 Brian Jones and Assemblymember Voepel, hosted the following small business experts to address issues faced by California's small businesses:

- Senator Jones, 38th Senate District
- Assemblymember Voepel, 71st Assembly District
- Michael Sovacool, Deputy District Director, U.S. Small Business Administration
- Kathy Kassel, President & CEO of Lakeside Chamber of Commerce

Commissioner Ricardo Lara

Thank you, Senator Jones and Assemblymember Voepel, for your leadership during this difficult time. I have personally spoken in more than a dozen town halls for small businesses dealing with losses from COVID-19.

Over the past week, we all have been witnessing our state and nation reckon with another huge challenge – the recurring injustice of police brutality that has caused much pain in the African American community for generations.

To those who are heartbroken about the senseless death of George Floyd and so many others, I am mourning and grieving with you. We cannot turn away from this moment and pretend it is about somebody else.

I ask all of us to support those fearless advocates who are fighting to change unjust laws and unequal police practices so that we all may live our lives openly, proudly, and unafraid.

One way that the Department of Insurance is supporting our fellow Californians during this time is by ensuring accurate and timely information and services when it comes to the insurance needs of our communities.

My immediate focus is making sure the insurance industry is prepared to handle claims and to help our businesses recover as quickly as possible.

I expect insurance adjusters to be on the ground as soon as possible to help looted businesses immediately access their insurance benefits.

insurance.ca.gov 800.927.4357

I have been in contact with our insurance industry and so far, I am not hearing about problems with businesses accessing their benefits -- and I will continue to monitor the situation and we will keep you and your legislators updated on that matter.

Our Community Outreach team and Consumer Services team have already begun reaching out to affected communities lending our support and have prepared a helpful fact sheet about insurance resources following the civil unrest – that is on our website.

As the current situation continues to unfold and as our communities work to forge a new way forward, we will all be called upon to help rebuild – and the Department of Insurance will be ready.

We have a lot of work to do to assist small businesses and their workers.

New data continues to show unprecedented job losses in San Diego and Riverside counties.

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

On April 13, I 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 earlier this month I extended my order to include May as well.

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 present-day risk of loss.

By requiring insurance companies to return premiums, it puts a little money back in your pockets or reduces your future costs when you need it the 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 builds on an action I took last month to request insurance companies give businesses a 60-day grace period to pay premiums through at least July 14.

Many insurance companies have honored that request by offering flexibility to consumers and businesses during the COVID-19 emergency and now the looting.

We encourage you to contact our Department.

BUSINESS INTERRUPTION INSURANCE

My Department has also received a number of complaints regarding business interruption insurance. Many businesses have looked to their insurance policies for possible coverage.

Each 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 cover losses due to COVID-19.

I can tell you we are monitoring these cases as they move through the courts, but I have taken several significant steps to address business interruption.

We have been learning that some insurance companies are denying business interruption claims without a thorough investigation or discouraging business owners 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 such as a fire, earthquake, flood, you name it.

My Department will be watching to make sure they do.

WORKERS' COMPENSATION INSURANCE

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.

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.

But I have to say for our business owners, 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 is important to note that it will take some time to see the impact of COVID-19 on our workers' compensation system, which has been another question we have been hearing from business owners.

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.

So, there is a discrepancy there 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. We need to fix this discrepancy.

So, to address this inequity, two weeks ago, 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 plan to review the proposed regulations and determine whether they are consistent with my overall mandate to reduce premiums to reflect the reduced risk.

FRAUD

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 San Diego and an office in Rancho Cucamonga that serves Riverside County.

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.

We encourage you to report any suspected insurance scams and fraud by calling CDI at 800-927-4357 or through our website at insurance.ca.gov. You can also reach us for any insurance questions or concerns.

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.

Insurance can be complicated. We can help you and guide you through this process.

You can talk to an actual person – not just a recording.

Today two of our Department staff are on this call to help answer questions:
Deputy Commissioner Tony Cignarale and Jon Phenix from our Legal Branch.

Question and Answers

Question 1: With the current unrest throughout neighboring communities, business want to know if damage to their business property and inventory by riots and looting is covered by insurance?

CA Insurance Commissioner Lara: Standard commercial policies typically include coverage for physical loss or damage to the insured premises and other business property resulting from looting, vandalism, and riots. Whether a specific loss will be covered depends on the actual language in the applicable policy and any coverage exclusions that may apply.

It is important to check your specific insurance policy for the following coverages:

- Vandalism and Malicious Mischief: These both involve willful destruction of property, and are closely related.
- Riot and Civil Commotion: These both involve a revolt by a group of people in a public place – a civil commotion is similar to a riot but involves a greater number of people. Insurance policies often list these together.

- **Business Income Coverage:** This covers your loss of income when you have to suspend operations, and typically is triggered by a direct physical loss from a covered peril in your policy, such as a fire.
- **Civil Authority Coverage:** Business income coverage will typically include civil authority coverage, which protects your loss of income if a civil authority prohibits access to your business, such as a local government order. Businesses that have this coverage and are forced to limit their hours or suspend operations during rioting, vandalism or civil commotion may be covered after an initial waiting period.
- **Glass Coverage:** Many commercial policies cover glass breakage. But we have seen some companies requiring separate glass coverage, that is added to the policy by endorsement for an additional premium.

I also want to mention two other coverages.

- **Auto coverage:** Damage to a personal vehicle because of riot or civil commotion is covered under the comprehensive portion of your policy. This is optional, separate from the liability coverage that is required under California law.
- **Homeowners and renters' coverage:** A standard homeowners and renters' policy will cover all the perils I mentioned – riots, civil commotion, vandalism or malicious mischief. If you have a California FAIR Plan policy – the insurer of last resort in California – these coverages are optional, so you need to verify that you purchased them.

If you are wondering whether to file a claim, I urge you to contact the agent or company who sold you the policy. You should face no consequences for inquiring about a claim – such as losing a claims free discount. You need to make the decision that is best for you.

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.

Question 2: In our area of Anza, Sage and Aguanga many of our residents have had their home insurance cancelled due to the alleged threat of forest fires. We have no forests in these areas. Most all properties are 2 1/2 to 20 acres in size and high desert. A moratorium was granted by Commissioner Lara on cancellations in the Idyllwild area which is heavily forested. The last thing the good people of our area need given the current economic conditions is to have our insurance cancelled and then have to pay through the nose (facemask) for California Fair. My question is “what is Commissioner Lara going to do to stop these cancellations until people can get economically stable again?”

CA Insurance Commissioner Lara: I passed a bill before I left the Senate (SB 824) which created protection from non-renewals in areas where a wildfire has occurred so residents don't lose their coverage. This protection was used after more than 16 state fire emergencies were declared in 2019.

More than 900,000 homes are protected from being non-renewed for a year – that includes some areas of Riverside County. You can see the full list of affected zip codes at our website.

Before the COVID-19 issue and now the civil unrest, one of my longstanding priorities has been the availability and affordability of homeowners' insurance. I traveled to more than 22 counties last

year to hold town hall meetings to hear your stories so that I could make decisions on what action can be taken to resolve these issues.

Wildfires are not going to wait for the COVID-19 crisis, and we need to harden communities and homes to withstand wildfires. I believe if you and your community mitigate and create defensible space, your insurance company should write you a policy and not cancel you.

I'm also looking at wildfire risk scores and how inaccurate they may be to determine your fire risk. I also want to see a way for you to appeal your score if you have done home hardening.

I have also ordered FAIR Plan (which is the insurer of last resort) to modernize its plan to make this a more effective alternative when you cannot find insurance on the regular market.

Question 3: I paid my insurance and understood it included business interruption coverage, why isn't loss of business due to the COVID 19 pandemic covered? What's the latest?

CA Senator Jones: This is a tough issue, but looking back it was handled the right way in my view. Kudos to the Insurance Commissioner for taking the position that he did urging Congress not to pursue forcing the insurers to pay out against their contracts, because they may not have had the money to pay out claims caused by riots. It wouldn't have been a good situation for anybody.

CA Insurance Commissioner Lara: 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.

Deputy Insurance Commissioner Tony Cignarale: 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.

Question 4: With the tremendous loss of employment, consumers going on and off of Covered California, is the state looking to waive the mandate this year, prorate it for the uncovered part of the year, or do a better job educating the public for 2021?

CA Insurance Commissioner Lara: The best way to avoid having to pay the mandate penalty is to have health insurance. There are substantial subsidies available to qualified people that makes good coverage affordable, especially for those whose employment situation is precarious.

I supported Covered California's declaration of a special enrollment period to help Californians who have lost their jobs and employer-based coverage to enroll in individual coverage through Covered California.

More than 84,000 Californians have enrolled through Covered California since the exchange announced its COVID-19 special enrollment period.

Depending on their income, they may receive substantial subsidies to make health insurance affordable during this difficult time.

It's also important for Californians to remember that, if their income is substantially reduced, they may qualify for low-cost or no-cost Medi-Cal coverage. Their eligibility for such coverage will be determined during the Covered California online enrollment process.

My Department has also taken actions to address health costs for consumers:

- One of my first actions in response to the crisis was to eliminate cost-sharing for COVID-19 testing on March 5 -- Governor Gavin Newsom and I directed insurance companies to eliminate co-pays, deductibles and other costs related to screening and testing for COVID-19. As we expand testing and get people back to work that will be increasingly important.
- On March 30, I directed health insurance companies to increase telehealth access for consumers. Health insurance companies must continue to provide access to medically necessary care and California policyholders should be able to access medically necessary health care without physically visiting their provider in person, when clinically appropriate.
- I think telehealth is here to stay – and this is going to be a good thing for employers and workers alike. And telehealth can keep our medical offices working while reducing risks to front-line workers and to patients.

Question 5: Workers Comp concerns regarding COVID19, can employees file for workers comp, even if they can't prove they became infected in their work place?

CA Insurance Commission Lara: 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 6 to remind insurance companies about these existing legal protections for undocumented workers.

Jon can address 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.

Question 6: If I already applied for a PPP or EIDL loan how can I check the status? Where can I keep updated or informed if SBA makes additional funds or programs available?

Michael Sovacool, Deputy District Director, U.S. SMALL BUSINESS ADMINISTRATION, San Diego Office:

There are many partners in San Diego to give small businesses resources, over 200 business counselors <https://www.sba.gov/local-assistance>

- Small Business Development Center
- SCORE Mentor
- Veterans Business Outreach Center (VBOC)
- Women's Business Center

SBA Debt Relief is available for SBA 504 loans which are is designed to foster economic development and job creation and/or retention. These loan will be given a 6 month grace period without increasing principle or interest.

Economic Injury Disaster Loan is up to 2 million dollars and 7.5% interest rate on the loan. Nonprofits can apply for the loan also at 2.75% interest rate.

Businesses can apply for a PPP loan up to \$10 million at 1% interest for 2 years. 75% of the loan amount must be used for payroll and the small business needs to keep all employees in order for the loan to be forgiven.

- Apply for PPP via lenders in California. California businesses are leading the nations in loan dollar amounts and applications.

Question 9: The San Diego Association of Governments, also known as SANDAG, serves as the forum for regional decision-making for the San Diego region. SANDAG has predicted our economy will not recover for 18 months, communities are going to need true economic development strategies. The state created an economic committee, but there is not enough being done on the local level, each community is unique, and their needs will reflect this. How can we create real local economic strategies for our communities?

CA Insurance Commissioner Lara: This is really a question for local leaders, but San Diego is a unique place -- your binational culture and economy are closely linked. So, any local development strategy needs to recognize the role that international trade and the border plays.

That is on a public health level too, where people are crossing the border daily to work and we need to coordinate our efforts to protect front-line and binational workers.

Kathy Kassel, President and CEO of the Lakeside Chamber of Commerce:

This is a challenging question and I wish I had a magical answer. It's going to take more than just our businesses reopening their doors to recover.

We are going to have to think outside the box, do things differently and create unique solutions. It's going to take a partnership, between our community, our elected leaders, businesses and chambers. We need to make doing business in California and East County easier, we need to reduce regulations and lessen tax burdens.

Each community is unique, the needs of Lakeside businesses are going to be different than Spring Valley or Alpine. I'd like to see each community have an economic focused group, with representation from the state, county and community leaders. A one size fits all will not work.

We need to give this group tools that can be used to help businesses recover and to be able to entice new businesses to relocate to our areas. We need to invest into our community's economic recovery, resources such as funding and personnel.

East County has not had an economic development department at the county offices in many years. This needs to change. It's often been frustrating, Lakeside is blessed to have undeveloped industrial land, yet the chamber has very few opportunities to entice new businesses.

The state and the county depend on the success of our businesses and the tax base they produce, if we do not find a solution to assist them, we all lose. True economic development, real tangible support for our businesses cannot take place until all influencing partner are at the same table.

If we can accomplish this, our community, our county and our state will recover!

Thank you. Contact me at the Lakeside Chamber at 619-561-1031 or email us at info@lakesidechamber.org. Be safe everyone!

Additional Resources

Senator Brian Jones, 38th Senate District

Capitol Office

State Capitol, Room 4088
Sacramento, CA 95814
Phone: (916) 651-4038

El Cajon Office

500 Fesler Street #201
El Cajon, CA 92020
Phone: (619) 596-3136

Escondido Office

720 North Broadway #110
Escondido, CA 92025
Phone: (760) 796-4655

Assemblymember Randy Voepel, 71st Assembly District

Capitol Office

State Capitol Suite #4009
Sacramento, CA 94249
Phone: (916) 319-2071

District Office

8760 Cuyamaca St. Suite 201
Santee CA 92071
Phone: (619) 258-7737

Lakeside Chamber of Commerce

Kathy Kassel, President & CEO
9924 Vine St.
Lakeside, CA 92040
(619) 561-1031
info@lakesidechamber.org

Michael Sovacool, , U.S. Small Business Administration

Deputy District Director
www.sba.gov/local
Check Status of my Economic Injury Disaster Loans: (800) 659-2955

CA Department of Insurance - Request Assistance

(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>

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.

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