

RICARDO LARA

INSURANCE COMMISSIONER

California Department of Insurance

Notes on Insurance Questions Asked During Senator Scot Wiener's Small Business Insurance Virtual Town Hall Tuesday, May 19th

Participants:

- State Senator Scott Wiener
- Insurance Commissioner Ricardo Lara
- Gwyneth Borden, Moderator, Steering Committee, Bay Area Hospitality Coalition (hospitality industry small business issues)
- Roberta Economidis, Partner, GE Law Group, a hospitality law practice (Small business transactional law issues)
- Tracy Baldwin, CEO, RokketMed (Healthcare)

Moderator Gwyneth Borden:

We have a number of businesses whose insurance companies are denying their claims. We have California Insurance Commissioner Lara here today to help us address some of the issues that the businesses are experiencing. Commissioner Lara, can you explain the role of the insurance commissioner and the powers of your office?

Commissioner Lara:

I lead the California Department of Insurance, which is state's largest consumer protection agency. Our mission at the Department of Insurance is insurance protection for everyone. That protection includes making sure insurance companies deliver on their promises to consumers.

Consumers rely on the Department of Insurance to guarantee a healthy market to pay claims – and that insurance companies play by the rules. That means we investigate complaints, license more than 420,000 agents and brokers, and police against insurance fraud.

In 1988, California voters passed Proposition 103, a citizen-led initiative – giving us the toughest consumer protections in the nation.

Those protections have never been more important as now – and I am using Proposition 103 to make sure rates are not excessive during this time.

Moderator Gwyneth Borden:

The Governor has determined that a working employee who becomes sick is deemed eligible for a Workers Compensation claim unless the employer can prove otherwise, so medical expenses and lost wages would be covered in this way. How can or will your office make sure that these claims do not affect an employer's Experience Modification Rate (EMR)?

Commissioner Lara:

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. 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. The purpose of the experience modification is to predict an employer's experience several years into the future. But under California law insurance companies ultimately may charge whatever they want regardless of an employer's experience modification, so long as the rate is not unfairly discriminatory, does not create a monopoly in the market, or risk insurer solvency so, an insurance company can consider the likelihood that an employer will see a lot of COVID-19 claims and price accordingly.

For example, if an insurance company is writing a policy effective July 1st for a hospital that treats COVID-19 patients, it may opt to increase the rate based on the high-risk nature of the business as to COVID-19.

At the same time, other non-essential workforces have seen a significant reduction in the risk of accident or injury due to stay at home orders. It is important to note that 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. Because of these changes in employer experience, yesterday, my Department held a telephonic hearing to consider proposed emergency regulations, which would make changes in light of the pandemic.

My staff and I are currently reviewing the proposed regulations and the comments received during yesterday's hearing to determine whether they are consistent with my overall mandate to reduce premiums to reflect reduced risks. Over time, all losses from COVID-19 will be reported to the WCIRB by insurers and will show up in the data.

At this time, while it is clear that different industries will be affected in different ways, it is impossible to know whether overall costs will increase or decrease in the workers' compensation system as a result of COVID-19. My Department continues to work with our statistical agent, the Workers Compensation Insurance Rating Bureau to monitor costs associated with workers' compensation and we will continue to update and inform the public about the state of our workers' compensation rating system in California.

Moderator Gwyneth Borden:

For an employee who contracts COVID, does a formal claim have to be made, and are there any OSHA filing requirements we should be aware of?

Commissioner Lara:

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.

The California Department of Industrial Relations can assist you with Cal/OSHA-related requirements. Just last week, the Department of Industrial Relations issued Interim Guidelines for protecting workers from COVID-19. Persons who would like more information about CalOSHA related requirements are encouraged to contact the Department of Industrial Relations at DIRInfo@dir.ca.gov, or by calling their toll-free number at 1-844-522-6734.

Moderator Gwyneth Borden:

What measures are you taking to prevent escalating Workers Compensation rates for COVID 19?

Commissioner Lara:

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, 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.

As I mentioned earlier, I am reviewing whether emergency regulations will have an impact on reducing premiums to reflect reduced risks.

Moderator Gwyneth Borden:

Many businesses have been denied claims from their business insurers. Your office issued a Requirement to Accept, Forward, Acknowledge, and Fairly Investigate All Business Interruption Insurance Claims Caused by the COVID-19 Pandemic. What, if anything, has come of this order? Is your office actively investigating whether insurers' denials are correct?

Commissioner Lara:

My Department has received a number of complaints regarding business interruption insurance. Many businesses have looked to their insurance policies for possible coverage. 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 proper interpretation of these policies and whether such policies cover losses due to COVID-19.

While these cases move through the courts, I have taken several significant steps to address business interruption. 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, 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.

I want to ask Tony Cignarale, Deputy Commissioner, to address this question – he can give an update on complaints we have received.

Tony: CDI has received complaints regarding an insurance company's failure to investigate business interruption claims. We are taking these cases seriously and making contact with the insurance company to make sure they fulfil their obligations by investigating these claims before they make any rash decisions.

Moderator Gwyneth Borden:

What enforcement powers or actions can your office take against insurers, and other than sue, what should businesses do if they feel their claim has been wrongfully denied?

Commissioner Lara:

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.

If we find that an insurer is violating the Unfair Practices Act, that insurer can be subject to penalties for \$5,000 per act or practice and up to \$10,000 if they act willfully. Most of these complaints came in very recently so we don't have any cases where we have found and recorded violations, but as we get further into these will know more.

Moderator Gwyneth Borden:

Given the pervasiveness of COVID-19 and the ease of spread, there's a real concern about the liability burden on businesses should an employee, supplier, or customer contract COVID and assign blame on the business. Is there anything within the powers of the Insurance Commissioner's office to specify indemnity language or require specific coverage that protects businesses that follow all the laws (as mandated by governments) and best practices to have coverage? Please explain.

Commissioner Lara:

I have held more than a dozen town halls, and I am extremely sympathetic to our businesses. Even when you reopen, businesses are going to need time to recover. The Department of Insurance is going to be watching closely to make sure that insurance companies are giving you as much flexibility as possible and that they are

fully abiding by their contracts. 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.

Businesses should follow the Governor's Resiliency Roadmap, as well as local guidelines, for what processes the business must follow, and that will go a long way towards helping California lead the way through this pandemic. 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 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. As I discussed earlier; workers are specifically covered if they contract COVID-19 while on the job.

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

insurance.ca.gov 800.927.4357

Research Report released on 4/21 on California Small Businesses impacted by COVID19

<https://smallbusinessmajority.org/our-research/entrepreneurship/ca-small-business-owners-report-devastating-impacts-covid-19-need-immediate-cash-assistance>.

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 Policy Agenda: <https://smallbusinessmajority.org/policy-agenda/covid-19>

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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