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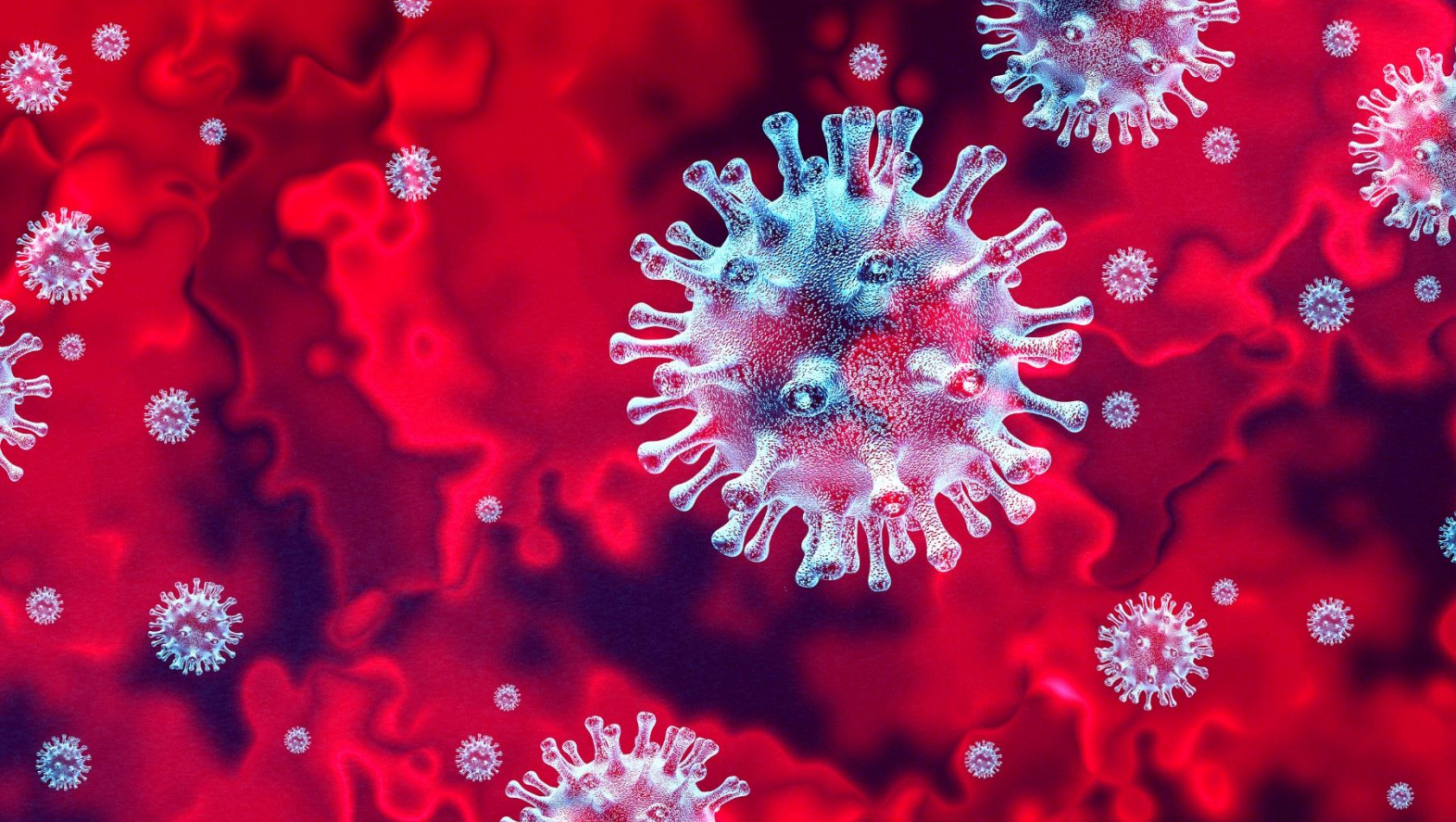
Workers' Compensation
Claims Insight

COVID-19

WOOD GUTMANN & BOGART

Insurance Brokers

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Presenter

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About Wood Gutmann & Bogart

For more than three decades, Wood Gutmann & Bogart Insurance Brokers (WGB) has been a growing force in the California insurance marketplace. Our firm is headquartered in Orange County with affiliate offices throughout California.

We are an innovative insurance brokerage and consulting firm, providing Risk Management, Property & Casualty Insurance, Employee Benefits Consulting, Specialty Programs and Private Client solutions. The WGB team members are passionate advocates – sworn to deliver the peace of mind that our clients seek. We vigorously defend our clients from the risks that would put their lifestyles, livelihoods and legacies in jeopardy.

We are consistently recognized among the **Top 100 Insurance Brokers** and **Best Independent Agency to Work For** by *Insurance Journal*. Our award-winning culture, emphasis on teamwork, unwavering commitment to excellence, and our employees' sense of ownership over what we deliver is the result of raising the bar on expectations. It is what makes us *Passionate Advocates for Peace of Mind*.





Topics of Discussion

- How will COVID-19 be treated within the CA Workers' Compensation system?
- Can an employee file a Workers' Compensation claim if they believe they contracted COVID-19 while at work?
- Do I have a duty to provide a DWC-1 Claim Form?
- How can an employee prove their transmission was work related?
- How will this pandemic impact the current Workers' Compensation claims?
- Can my employees still receive medical care for their work-related injury?
- What happens to litigated claims with pending hearings or depositions?
- What questions may I ask my employees who are working onsite?
- Claims and Experience Rating
- Q&A

How will COVID-19 be treated within the CA Workers' Compensation system?

COVID-19 is a novel (new) strain of coronavirus disease first identified in 2019.

Because it is new, there is not yet a definitive statutory presumption or workers' compensation case law specifically governing its infections.

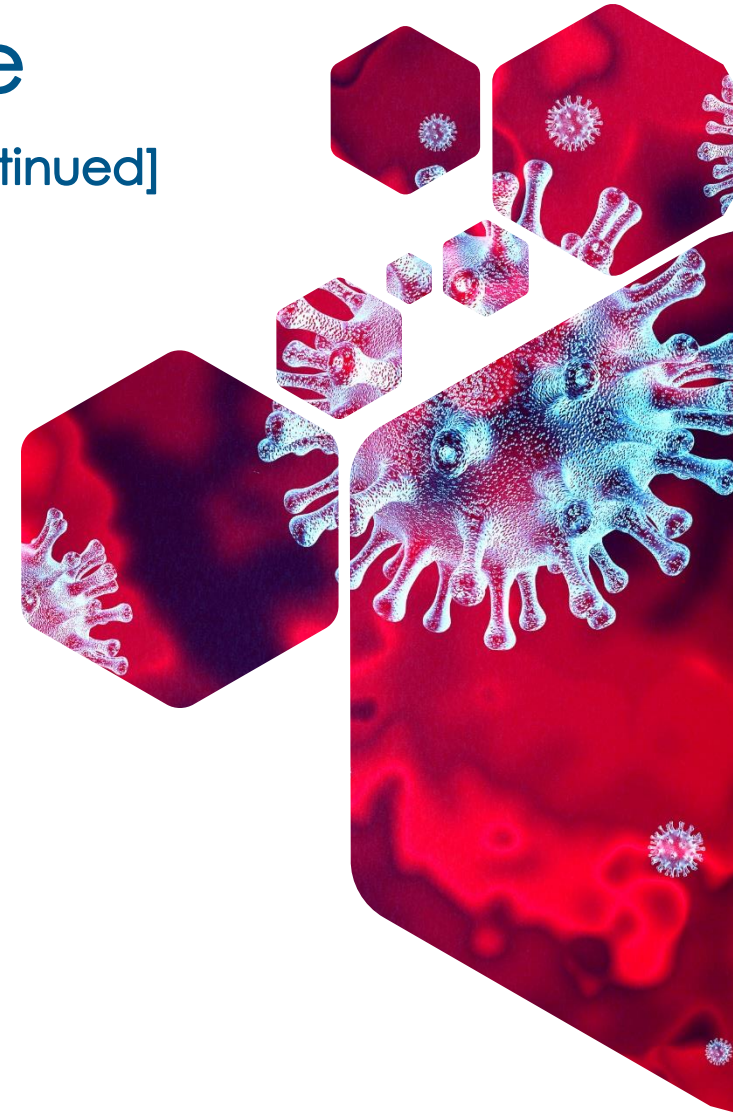
It is expected that Workers' Compensation laws surrounding COVID-19 will be developing rapidly as workers contract the virus.

The symptoms of COVID-19 are similar to pneumonia with fever, sore throat, coughing, and other respiratory complications. Because of this, it is possible to expect that COVID-19 may be treated similarly to pneumonia within the WC system.

How will COVID-19 be treated within the CA Workers' Compensation system? [continued]

We are mindful that an illness like COVID-19 may impact, aggravate, and have compensable consequences that result in the development of other medical conditions.

- Other conditions can include psychological trauma, weakened immune systems, and more. In addition to WC benefits for COVID-19, you may be entitled to WC benefits for medical conditions caused by COVID-19.



Can my employees file a Workers' Compensation claim if they believe they contracted COVID-19 while at work?

- The short answer: Yes
- As with any work injury, an investigation would be required to gather evidence that the virus was contracted while in the course of their employment.
- This will be a difficult investigation to prove the moment and method of transmission for COVID-19 as this is a Global pandemic and can be transmitted by anyone and anywhere.
- We predict the highest frequency of work-related transmission will occur amongst those “essential workers”.
- There are some presumptions in Workers' Compensation for first responders and health care workers and there is a high likelihood that “essential workers” may be included in that presumption.

Duty to Provide a Claim Form

When should an employer provide a claim form for employees related to COVID-19?

- Essential worker **after** testing positive for COVID-19 (a positive finding can occur presumptively as not all treating physicians are performing or recommending testing)

Essential worker for purposes of Workers' Compensation is any worker that is not working from home and must report to a job site or place of employment.

This is an evolving issue as to who is eligible, who is presumptive and when to provide the claim form.

Duty to provide a Claim Form for Injuries other than COVID19

Honeywell vs WCAB(2005) 35 Cal. 4th 24, the CA Supreme Court held that **an employer's duty to provide a claim form arises when the employer has been notified by the injury in writing by the employee OR has knowledge of the injury or claim from another source.**

The duty arises when the employer knows of an injury or claim, not when it should have known.

Contact WGB Claims department or your Broker for further guidance.



**COVID-19
Task Force**

How can an employee prove their exposure to COVID-19 is work related?

It is important to communicate with your employees and direct them to notify their supervisor immediately if they have been exposed to or test positive for COVID-19.

For those employees who generally wouldn't be considered "high-risk" (grocery and foodservice providers for example), the person filing the claim would have to provide a statement and any available evidence regarding exposure.

- What is the nature of your employment (front-line medical/public health personnel or how your employment brings you into contact with the virus)?
- How you were exposed to the virus?
- When did the exposure most likely occur?
- How long and how frequent you were exposed?

If the exposure is deemed work related, what benefits would employees be eligible to receive?

In terms of benefits, they should expect to be reimbursed for medical care, lost wages, and any potential long-term care as a result of the injury.

How does this impact employees/employers with current WC cases?

The stay at home order and social distancing requirements have also created practice issues.

- Appearances at WC Appeals Board are being rescheduled with exception of Expedited Hearings.
 - All MSC's are off calendar through May
- Depositions are being rescheduled
- If Medical Exams are occurring, they are likely occurring via telemedicine
- Medical Legal appointments are rescheduled
- Trials and Lien Conferences are continued until further notice. No in person hearings will take place.
- WCAB processes and procedures are being updated week to week

Medical solutions for current cases

- Telemedicine will take the place of in person medical evaluations.
 - Video conferencing/calling
 - Industrial clinics
- Not all medical services are essential
- Medical Legal (AME/QME) evaluations require face to face evaluations per the Rules and Regulations.
 - Medical Legal evaluations are required to take place within a certain time period. These statutes will be laxer during the COVID Pandemic. Expect parties to allow extensions for eval to take place and report to issue versus the alternative of requesting replacement Panel which could take even longer.

You may ask your employees who physically enter the workplace.

IF THEY:

1. Have COVID-19
2. Have been tested for COVID-19; or
3. Are experiencing symptoms associated with COVID-19

Employers may also check the temperatures of employees entering the workplace.

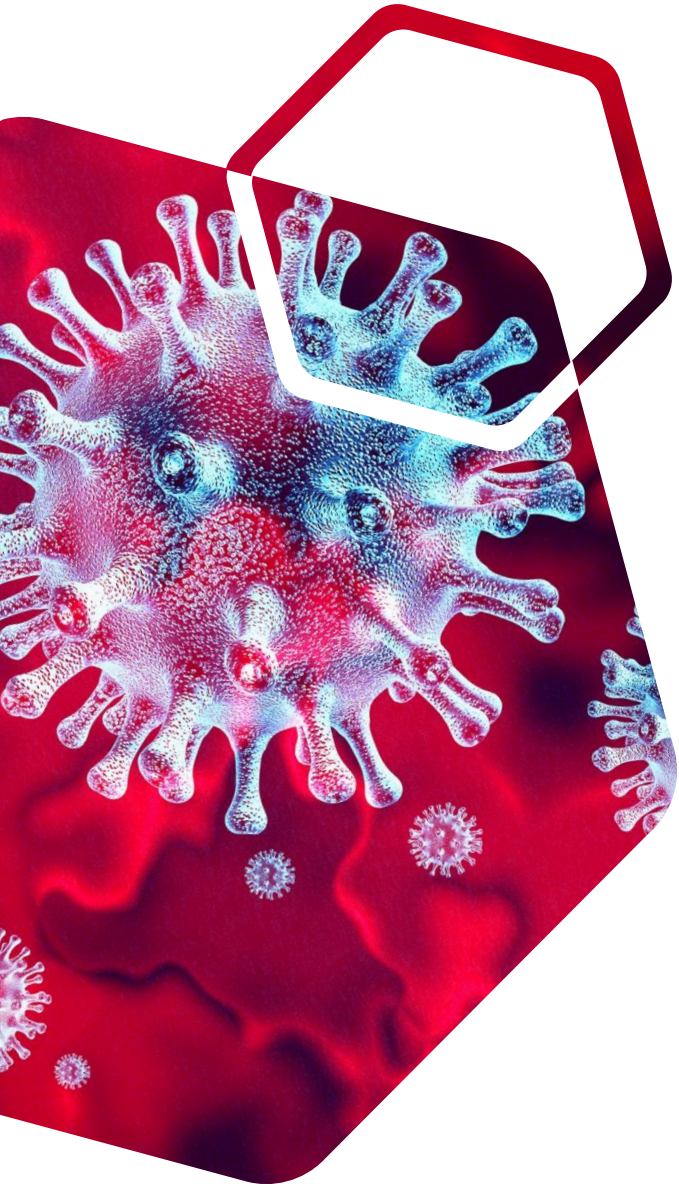
If an employee refuses to answer or refused to submit to a temperature check, the employer may refuse to permit him/her to enter the workplace.

Source: https://www.eeoc.gov/facts/pandemic_flu.html

Can you ask teleworkers if they have COVID-19 PER EEOC GUIDELINES?

- Unlike employees who are required to come to the workplace, employers may **not** ask teleworking employees if they have COVID-19, have symptoms associated with COVID-19, or have been tested for COVID-19.

SOURCE: https://www.eeoc.gov/facts/pandemic_flu.html



COVID-19 Claims and Experience Rating

- The WCIRB Classification and Rating Committee will review a proposal to exclude claims with a diagnosis of COVID-19 and an accident date on or after December 1, 2019, from the experience rating calculations of individual employers. Since the occurrence of COVID-19 workers' compensation claims are unlikely to be a strong predictor of future claim costs incurred by an employer, their inclusion in an experience modification calculation would not meet the intended goal of experience rating.

Q&A



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