

MC *Masterclass Elite Group*

LEAD. INNOVATE. BUILD COMMUNITY.



Community Learning Series :

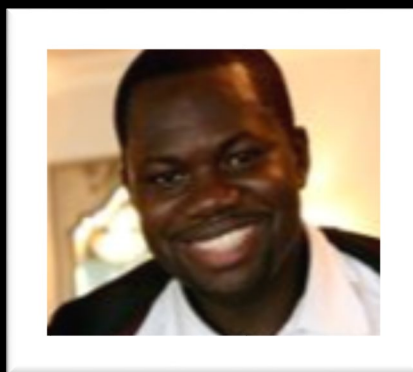
“COVID-19, NEW EMERGING RISKS AND PROACTIVE STEPS ON MITIGATION”



KEVIN MCEWAN
CA Workers Compensation Attorney



DR. AMOS LADOUCEUR
Neurosurgeon



WALLY SALEM
Chief Technology Officer



Kevin has invested 10 years of his legal career, representing several notable self insured and high deductible clients. His latest endeavor was assisting in the national expansion of a California office. His expertise will be of tremendous value as he will be speaking about the legal issues that have developed in the workplace as a result of Covid-19 exposure.

Dr. Amos Ladouceur is a neurosurgery specialist in Venice, CA. He Has dedicated his medical career to care for our injured employees and he carries a wealth of knowledge as it relates to progressive treatment needed to withstand the pandemic. He will speak to the medical events that have occurred post Covid-19.

Wally has Over 25 years of experience in Assistive Technology, DME, and Software. He has built his career on entrepreneurship, building intuitive technology and he will speak to the affects Covid-19 has had in the homcare and ancillary service industry.



*Does exposure vs. contraction of COVID-19 play a relevant position with the reporting of a claim?

Not necessarily. Exposure itself does not require the reporting of a claim, as it is not the injury itself. The injury in the case of COVID-19 is the actual contraction of the disease. However, if you have knowledge of exposure at work, that will play a role in assessing whether to accept or deny a claim and the likelihood of being able to rebut the presumption under Governor Newsom's Executive Order N-62-20, should the applicant qualify for the presumption. If you become aware of an employee's exposure or likely exposure at work and later learn that that employee contracted the virus, and that they will likely meet the criteria for the presumption, this could potentially trigger your duty to provide a DWC-1 claim form in California. Under California Labor Code " 5400 and 5402, knowledge of an injury from any source, or any assertion of an employees claim of injury sufficient to afford the employer opportunity to investigate the facts, would qualify to trigger the requirement to provide a DWC-1 Claim Form and potentially, ultimately report the injury. The California Supreme Court further clarified the knowledge requirement and the employer's duty to provide a claim form, in *Honeywell v. Workers' Comp. Appeal Bd.* (2005) 35Cal.4th 24, when the employer has been notified of the injury in writing by the employee or has knowledge of the injury or claim from another source. (ie, Comp PTP med rept) The duty arises when the employer knows of an injury or claim, not when it should have known. Under *Honeywell*, an employer must know that an applicant is claiming the accident and injuries are work-related. It is not enough that the employer be "reasonably certain". Exposure could become more relevant in relation to a potential psych/stress claim. Even in that instance though, mere exposure itself on its own would not necessarily trigger the need to report a claim. The employee would have to inform the employer that they had psychological issues related to the exposure at work. The above *Honeywell* case and California Labor Code sections apply in this situation as well.

DISCLAIMER: THE ANSWERS TO THESE QUESTIONS ARE RELATED TO CALIFORNIA LAW, THOUGH SOME PRINCIPALS MAY BE APPLICABLE TO OTHER JURISDICTIONS. IT IS IMPORTANT TO SEEK LEGAL ADVICE FROM AN ATTORNEY LICENSED IN YOUR JURISDICTION. MANY ISSUES ALSO DEAL WITH EMPLOYMENT SPECIFIC ISSUES NOT RELATED TO WORKERS' COMPENSATION. YOU SHOULD SEEK ADVICE FROM COUNSEL COMPETENT IN EMPLOYMENT LAW OR OTHER RELATED AREAS OF PRACTICE FOR YOUR JURISDICTION. EACH CASE HAS ITS OWN SPECIFIC FACTS AND ISSUES. THE INFORMATION PROVIDED HERE CANNOT ADDRESS THOSE SPECIFIC ISSUES, AND THUS IS NOT INTENDED TO BE LEGAL ADVICE. THIS IS FOR INFORMATIONAL PURPOSES ONLY.

*Does an employee have to test positive before official reporting?

No. The employee may simply be diagnosed with COVID-19 which would qualify for the reporting of the claim, if the employee is asserting that they contracted it from work (please see the answer above and discussion of the *Honeywell* case regarding this). The employer must be provided with knowledge that the injury, in this case COVID-19 is work related. You should consider such factors as outlined in the Governor's EO N-62-20, such as whether the employee last worked within a 14-day period, as well as your company's specific policies related COVID and reporting of claims. Some companies are taking the position that they are reporting every instance where an employee contracts the virus. This does not necessarily mean that every case is being accepted. Under the case law, as discussed above, this is not required though. The employer must have knowledge that it is work related. Eventually however, in order to get the presumption under the Executive Order, the employee would need to test positive within 30 days of being diagnosed. There is the outstanding question however, that if the employer has knowledge the employee has been diagnosed and would otherwise qualify for the presumption, whether that would be sufficient to trigger providing the DWC-1 form and reporting the claim. Again, the *Honeywell* case states that there has to be actual knowledge by the employer. The court clarified that it is not based on when the employer "should have known." It is not enough that the employer be "reasonably certain". As mentioned above, the employee would need to test positive within 30 days of being diagnosed. Failure to test positive within the time frame does not necessarily preclude the employee from pursuing a claim, it only prevents them from receiving the benefit of the presumption. Without the presumption the burden of proof of causation stays with the employee. In this instance the employee does not have to pinpoint a specific date on which they contracted it. However, they will have to prove that their circumstances of employment were beyond the exposure of the general public, or in other words, did their job put them at greater risk for the exposure. There is one other scenario to consider here, and that is where the employee has reported a COVID-19 claim based on symptoms, asserted that it is work related, but has not been diagnosed with it by a physician or received a positive test. In this scenario, the employee has asserted a work-related injury, providing the employer with knowledge/notice in writing. Under the *Honeywell* case and the Labor Code, this would likely be reportable given the assertion by the employee that it is work related. This does not mean that it is going to be an accepted claim, nor does it mean that the employee will get the benefit of the presumption under Governor Newsom's Executive Order.

Kevin McEwan | Expert in Law

*What liabilities do we inherit after a COVID-19 casualty?

The employer would be liable for all benefits owed under a regular death claim. This includes any accrued benefits such as temporary total disability, reasonable burial expenses up to \$10,000.00, death benefits to dependents up to \$320,000.00 (depending on the number of dependents), or death benefits payable to the state where the employee dies without dependents.



MC *Masterclass Elite Group*
LEAD. INNOVATE. BUILD COMMUNITY.

*With most of the workforce working from home, what should be included in a remote work policy?

Limit employee exposure to the outside world. Set policies on who and when it is acceptable to go to the workplace, as well as other aspects of the job that expose them to the outside world, such as going to the post office or bank. This can significantly limit your risks of potential exposure. Additionally, in California this will help protect the employer from the Presumption provided by the Governor's Executive Order N-62-20. For an employee to get the benefit of the presumption, they must have been working outside of their home at the direction of the employer. By making unambiguous policies about who is to perform those functions that expose them to the outside world, and the workplace, and who is not, it will make clear what was done "at the employers' direction". Ergonomics, ensure that employees have the appropriate equipment at home to work with and are aware of how to use it. Set up a hotline for reporting injuries. Ensure that employees adhere to the reporting procedures and are aware of them. Encourage employees to get up and move. Providing for social interaction virtually as well as providing resources for employee's mental well being. There is the potential to see psych claims related to isolation and working from home. Encourage employees to take and have personal time. Potentially consider defining work hours and limiting as best as possible work to be done during those hours only.

DISCLAIMER: THE ANSWERS TO THESE QUESTIONS ARE RELATED TO CALIFORNIA LAW, THOUGH SOME PRINCIPALS MAY BE APPLICABLE TO OTHER JURISDICTIONS. IT IS IMPORTANT TO SEEK LEGAL ADVICE FROM AN ATTORNEY LICENSED IN YOUR JURISDICTION. MANY ISSUES ALSO DEAL WITH EMPLOYMENT SPECIFIC ISSUES NOT RELATED TO WORKERS' COMPENSATION. YOU SHOULD SEEK ADVICE FROM COUNSEL COMPETENT IN EMPLOYMENT LAW OR OTHER RELATED AREAS OF PRACTICE FOR YOUR JURISDICTION. EACH CASE HAS ITS OWN SPECIFIC FACTS AND ISSUES. THE INFORMATION PROVIDED HERE CANNOT ADDRESS THOSE SPECIFIC ISSUES, AND THIS IS NOT INTENDED TO BE LEGAL ADVICE. THIS IS FOR INFORMATIONAL PURPOSES ONLY.



*How can we track the spread of the virus within our organizations and what legal measures do we need to cover to effectively mitigate this issue?

In theory, contact tracing is going to be the best way to track the spread of the virus within an organization. Use of Nurse Case Managers with services set up specifically for this would be most helpful. A caveat with regard to COVID related litigation and specifically California's EO N-62-20, effective contact tracing can be a double-edged sword. On the one hand, it could be effective in rebutting the presumption. On the other hand, it could make the applicant's case and negate your ability to rebut the presumption. Other measures, such as taking employees' temperatures before they enter the workplace could be utilized. Some businesses are using thermal imaging cameras to track employees' temperatures. With regard to the legal issues to mitigate, it is going to be about rebutting the presumption provided by EO N-62-20. The more that can be done to show the precautions taken to prevent the spread of the virus in a work atmosphere, the stronger any other evidence presented to rebut the causation presumption will be. That is to say, if you have evidence that you can point to that suggests that the employee contracted it elsewhere, and you can show significant efforts undertaken to prevent the spread in the workplace, the less likely it is that the employee contracted it through work. It is important to remember that the standard of proof for rebutting the presumption is a preponderance of the evidence standard.



Dr. Amos Ladouceur | Expert in Medicine

*How do we support employee vaccine trials during the development phases of an effective vaccine or cure?

The best way to support employee vaccine trials is to allow flexibility to an employee's works schedule in order for them to participate and address complications that may arise. The scientists conducting the studies will provide adequate safety measures and appropriate medical care during and after the trials.

*Does the novel coronavirus emergency trump HIPAA privacy rules?

Following President Donald Trump's declaration of a National State of Emergency on March 15, the Department of Health and Human Services issued a limited waiver of certain HIPAA sanctions to improve data sharing and patient care during the pandemic. This waiver allows certain information (i.e., COVID positive status) to be shared with family members, public health officials, and emergency personnel.



*What new processes or technologies are being used to prevent the spread of the virus?

New Technologies includes infrared temperature checks that are conducted at the start of every workday, thus helping to decrease the exposure of sick employees to the workplace. In addition teleworking has provided an effective way to slow the spread of the virus, helping to "flatten the curve." It is recommended that employees who can work from home to continue to telework.



*What are the recommendations on testing, tracing, and targeted quarantine for essential Workers?

The CDC currently recommends that all employers of essential workers implement 5 safety practices.

- 1) Prescreen employees with temperature checks and assess symptoms prior to them starting work.
- 2) Regular Monitoring of patient's temperature and symptoms.
- 3) Employees should wear a mask at all times while at work if he/she has been exposed to anyone with Covid-19 over the past 14 days.
- 4) The employee should maintain 6 feet and practice social distancing as work duties permit in the workplace.
- 5) Clean and disinfect all areas such as offices, bathrooms, common areas, shared electronic equipment routinely.



MC *Masterclass Elite Group*
LEAD. INNOVATE. BUILD COMMUNITY.

*What initiatives are being deployed to support production flow with factory and assembly workers?

1) This past April, President Trump invoked the Defense Production Act to clear up supply-chain issues encountered in the manufacturing of ventilators and to ensure the production of additional N95 face masks. This order allowed domestic manufactures to secure the supplies to manufacture ventilators and PPE's.

Wally Salem | Expert in Technology



* How has healthcare practices been affected, specifically use of durable medical equipment?

- Certain items such as gloves, masks, anti-germ/microbial solutions, respiratory equipment are in short supply. Luckily, we proactively stocked up on some of these items starting in late February 2020.
- In States where the case of COVID-19 are very high, local DME suppliers are very hesitant to deliver equipment to injured workers diagnosed with COVID-19.
- Costs have gone up for certain items. About 80% of the DME is manufactured in China. With plants shutting down temporarily, the supply has decreased and caused costs to go up.
- We are leveraging technology more and more.



* With surge capacity and pharmacy stockouts occurring, how will pharmaceutical resources be affected?

- We are not a PBM, but we will facilitate IV Therapy to injured workers through our network of IV suppliers.
- We are in close communication with our IV suppliers and they have not reported any issues with supply or shortages.
- The only potential issue may be with a manufacturer of Insulin pods located in China. The U.S. distributor is currently showing a low supply.

* How can we better leverage existing managed care features to assist with COVID-19 outbreaks in the Workplace?

- Managed care focuses on preventative strategy to lower costs. I am not an expert on managed care or workplace safety/health, but this is what we did with our employees because our #1 priority was to keep them safe.
- Posted CDC and WHO guidelines/recommendations.
- We provided PPE equipment-gloves, masks, hand sanitizer.
- Sent ½ of the staff to work from home.
- Temperature check every morning.
- If they are not feeling well, we send them to the Urgent Care (at our expense) to get examined.



* What cost effective PPE programs can we rely on to better protect our employees?

- Along with providing the PPE above to all employees, we needed to make sure that our remote employees and data were secure. Unfortunately, whenever there is a tragedy, there are always hackers looking for ways of benefiting from it. Working from home poses another set of IT challenges. We hardened our environment by ever aging VPN, MFA, Email Filtering, RD Security, Encryption, etc.

* How will the ancillary world survive under this new norm of contactless virtual medical treatment?

- By using technologies such as “Facetime”, “Skype”, and “YouTube” more and more to instruct and assist injured workers with their DME equipment.
- By getting creative and find suitable substitutions so equipment can be drop shipped versus delivered inside the home.
- In some situations we may recommend purchasing vs. renting of the equipment.



THANK YOU.

MC *Masterclass Elite Group*
LEAD. INNOVATE. BUILD COMMUNITY.