Things are Getting 'Serious' for California Employers

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At the end of August 2019, California Governor Gavin Newsom signed two bills, effective January 1, 2020, that revise California Division of Occupational Safety and Health's (Cal/OSHA) reporting requirements for serious incidents and, in turn, change the method by which employers must report such incidents. Assembly Bill 1805 amends the definition of "serious injury or illness" and "serious exposure" under California Labor Code Section 6302 for reporting a serious occupational injury and illness to Cal/OSHA. The bill amends the definition of "serious injury or illness" by removing the 24-hour minimum time requirement for qualifying hospitalizations, excluding stays for medical observation or diagnostic testing. According to the bill analysis, by deleting the time frame and simply mandating reporting when a worker's injury requires hospitalization, it allows employers more clarity in determining their reporting responsibilities. The bill also replaces "loss of any member of the body" with "amputation," and explicitly includes the "loss of an eye" as a qualifying injury. The bill eliminates the exclusion of an injury or illness caused by certain violations of the Penal Code and narrows the inclusion of accidents on a public street or highway occurring only in a construction zone. Further, Assembly Bill 1805 revises the definition of "serious exposure." Under the amended law, a "serious exposure" includes exposure of an employee to a hazardous substance in a degree or amount sufficient to create a "realistic possibility," instead of a *substantial probability*, that death or serious harm could result from the "actual hazard created by" the exposure. This change is consistent with establishing when a "serious violation" exists, requiring a faster response from Cal/OSHA, under California Labor Code 6309.

California employers will also soon have a new method by which to report serious occupational injuries, illnesses and deaths to Cal/OSHA. Previously, under 6409.1(b) of the California Labor Code, employers had the option of reporting such serious incidents by telephone or email. Assembly Bill 1804 amends this law by requiring employers to report serious incidents by telephone or a "specified online mechanism established by the division." According to the bill analysis, the change in law was prompted by complaints that emailed reports were incomplete and did not provide enough information about the incident. When Cal/OSHA receives incomplete information, it claims that its ability to investigate is delayed. In hopes of fixing this problem, the new online portal will prompt employers to provide information specifically needed by the agency. While this online reporting mechanism is not yet available, employers can continue to report serious accidents by telephone or email. The amendment does not change the minimum $5,000penalty for failure to timely report.

Employers should re-evaluate their reporting procedures in light of these new obligations and monitor the Cal/OSHA website for announcements on when the new online reporting will be available.

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