



Employer Advisory Council of Orange County, Inc.

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New Developments in Employment Law

Update ¹⁹⁻¹⁷

October 28, 2019

Cal/OSHA Revises the Definition of “Serious Injury and Illness” for Reporting Requirements

By Jonathan S. Vick

Cal/OSHA recently adopted a major change in its definition of a “serious injury or illness” as it relates to an employer’s duty in California to report injuries and illnesses to Cal/OSHA. Labor Code Section 6409.1 requires employers to immediately report every case involving a serious injury or illness, or death to Cal/OSHA. “Immediately” means as soon as practically possible but not longer than 8 hours after the employer knows or with diligent inquiry would have known of the death or serious injury or illness. In the case of exigent circumstances the period can be extended to 24 hours but it is very difficult to actually qualify for this extension so you should adhere to the 8 hour time period to be safe.

So what exactly do you report? Or put another way, what is the new definition of “serious injury or illness?” Historically, when only looking at hospitalization, an employer had to notify Cal/OSHA if an employee needed an overnight stay (24 hour minimum hospitalization) as the result of a work-related injury. In an apparent effort to be more consistent (but not exactly the same as) with Federal OSHA, Assembly Bill (“AB”) 1805 recasts the definition of “serious injury or illness” by removing the 24-hour minimum time requirement for a hospitalization stay and making some other changes to be more consistent with Federal law. While the changes provide new requirements, they create a myriad of new questions. The bill does the following:

- Eliminates the 24 hour minimum in-patient hospitalization. Under this new law, **any hospitalization must be reported unless the employee is only admitted for medical observation or diagnostic testing.** The effect of this change will likely increase the number of injuries which must be reported and will require the employer to be very diligent in following up with the treatment to determine if an employee is moved from the emergency room and admitted for in-patient treatment which is not limited to observation or diagnostic testing.
- Deletes the phrase “**loss of any member of the body**” replacing it with “**amputation.**”
- Expressly includes the “**loss of an eye.**”
- Retains the “**serious degree of permanent disfigurement**” requirement.

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- Deletes the exclusion for reporting injuries or deaths occurring as result of a violation of the Penal Code.
- Narrows the inclusion of auto accidents occurring on public highways/streets to such accidents occurring in a construction zone.

The new law which goes into effect on January 1, 2020, also directs Cal/OSHA to establish an on-line mechanism for reporting injuries. In the meantime, injuries can be reported by telephone or email.

What this means for employers...

The new law adds some clarity and raises new questions. While it appears Cal/OSHA is attempting to be more consistent with the Federal OSHA rules, the rules are not exactly the same. Fed/OSHA provides some guidance as to the definition of “inpatient hospitalization” yet Cal/OSHA does not. The employer must report injuries resulting in an amputation, loss of an eye or any serious degree of permanent disfigurement. However, once we move away from these categories, we move into a gray area for the employer when it comes to hospital visits. Does medical treatment in the emergency room constitute “inpatient hospitalization” triggering the reporting requirement? When does observation or diagnostic testing change to medical treatment which must be reported? How does the employer monitor the transition from the emergency room to in-patient admission? Do you need to leave someone at the emergency room to monitor the situation? Even if a representative is at the hospital, how do you get this information with employee privacy laws?

Here are some suggestions for compliance:

- If you need to report an injury use an email so you have a record of the time and date of the report. Also, monitor the Cal/OSHA website for notification of the “online mechanism.”
- Employers must report the injury within 8 hours of when you knew, or with the exercise of diligent inquiry should have known, about the fatality or serious injury. The diligent inquiry requirement means the employer is going to have to actively monitor the employee’s condition and treatment after the accident. Sometimes, this will be obvious. However, situations where the employee is admitted to the emergency room and then later admitted for inpatient hospitalization will require the employer to consistently monitor the situation to determine if the treatment extends beyond observation and diagnostic testing.

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- Train supervisors and safety officers in the new requirements as they will typically be the front line of communication/ information.

On the whole, it appears that this change will broaden the number of situations which trigger the reporting obligation so training on the new reporting requirement is critical. Failure to report an injury can result in a minimum \$5,000 penalty while unnecessary reporting can result in additional investigations so it is important to understand your obligations.

Should you have questions regarding Cal/OSHA compliance, contact Jonathan S. Vick at jvick@aalrr.com or (562) 653-3200.

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