

Risk Management Strategies for The Increasingly Common "Hybrid Employee"

The workplace landscape has changed for many employers due to the COVID-19 pandemic, and as a result, many have adopted a hybrid or full-time work from home model.

In a *Daily Journal* article, Senior Employment Counsel [Corinne Spencer](#) and Attorney [Antwoin Wall](#) explain that while there are numerous advantages to having hybrid workers, these benefits are offset by increased exposure to liability for employers. Read the full article [here](#).



Loss of Consortium Claims Hampering WC Subrogation Efforts

Workers' compensation carriers are struggling to maximize subrogation recoveries due to a rising loss of consortium claims. In a Q&A interview with *PropertyCasualty360*, Senior Associate [Saerim Luciano](#) explains the background of the problematic trend and provides insight on how this is impacting both the carriers and the cost of workers' compensation, as well as how carriers can adapt to obtain a favorable outcome. Link to read the full article [here](#).

California Cos. Face Tricky Hurdle in Workers' Comp. Recovery



California is already a tricky state when it comes to workers' compensation claims, but recently there has been an uptick in third-party injured worker lawsuits tacking on loss of consortium claims – making things more complicated. Senior Associate [Saerim Luciano](#) authored an article for *Law360* outlining how subrogation can be used to recover benefits. Find out how [here](#).

Mitigating Risks in Hybrid Workplaces Podcast



The pandemic caused many employers to rethink which of their employees needed to be at the worksite and who can work from remote locations. Now, many of those who worked remotely during the height of the pandemic want to continue doing so, causing complications for risk prevention. As a guest on The JoyPowered® Workspace Podcast, Senior Employment Counsel & Chair [Corinne Spencer](#) shared ways to minimize legal risks when creating a hybrid workplace. Listen to the full podcast [here](#).

Six Ways Leadership Can Keep Employees Engaged in Today's Work Environment

Employee engagement and satisfaction are at the cornerstone of every successful organization, and in today's hybrid work environment, it can be even harder to accomplish this. In an article for *HR News*, Senior Employment Counsel [Corinne Spencer](#) and Attorney [Antwoin Wall](#) outlined tips that can help employers have a more positive employee engagement. Read more [here](#).

The Webinar Corner

Register Now: 2021 Year-End Case Law Update

December 10, 2021 | 10AM - 12PM PT Register Here

Partners [Yvonne Lang](#), [Anahid Silah](#) and [Meline Sironian](#) will cover updates on all topics pertinent to workers' compensation claims and litigation, as well as employment crossover issues that employers need to know heading into the new year. Areas covered will include:

- Injury AOE/COE
- Temporary Total Disability
- Medical Treatment
- QME Panels and Medical-Legal Issues
- Permanent Disability and Apportionment
- Settlements
- Penalties

In Case You Missed It

The 2021 Employment Law Symposium presented by PB&W attorneys was a huge success. Thank you to everyone who attended in person or tuned-in via the live streaming feature.

The attorneys led panel discussions on the most pressing issues affecting California employers, best practices for employers to implement in order to comply with recent events that are redefining the workplace, and an overview of new California laws as we head into 2022, and more. Contact your relationship partner at (818) 501-4343 or email Yvonne Lang directly at yl@4pbw.com, if interested in Continuing Education.



Minimizing Workplace Injury in the Hybrid Model, presented by Partner Yvonne Lang, Senior Employment Counsel Corinne Spencer and Attorney Antwoin Wall. This presentation covered best practices for those in a hybrid workplace including minimizing workplace injury, how to respond if injuries occur, tools to deal with hybrid models, and more. In case you missed this presentation, contact your relationship partner at (818) 501-4343 or email Yvonne Lang directly at yl@4pbw.com, if interested in Continuing Education.

Stay Up-to-Date: Employment Law / Workers' Compensation Legal Roundup

TTD Weekly Rates to Increase as of 1/1/2022

The Division of Workers' Compensation (DWC) announced that the 2022 minimum and maximum temporary total disability (TTD) rates will increase on January 1, 2022, from \$203.44 to \$230.95 and the maximum TTD rate will increase from \$1,356.31 to \$1,539.71 per week. The State Average Weekly Wage (SAWW) increased from \$1,383.00 to \$1,570.00 (a 13.5% increase). Pursuant to Labor Code section 4659(c), for all dates of injury 1/1/2003 and after, claimants receiving life pension or permanent total disability benefits are entitled to have their weekly rate adjusted based on the SAWW. For questions on this increase, contact your relationship partner at (818) 501-4343 or reach out directly [here](#).



Familiar With Long-Haul COVID? If Not, You Should Be

For some people, the symptoms from contracting COVID-19 do not go away after they test negative and are outside of the contagious window for spreading the virus. These individuals are considered "long-haulers" and the condition is known as "Long COVID." This is important to employers because Long COVID can be classified as a disability under federal law, triggering employee protections.

Learn more [here](#).

Prop 22 Is Under Attack

A California Superior Court judge ruled Proposition 22 unconstitutional and unenforceable ensuring many gig workers, such as ride-share drivers, are considered independent contractors. While the full impact of this is still being discovered, for now businesses directly impacted by Proposition 22 can continue to rely on its classifications, protections, and benefits provided to independent contractors. If you have questions about how your business might be impacted by these developments, read more [here](#).

Mandatory Arbitration Agreements In California In Flux

On September 15, 2021, in *Chamber of Commerce of the United States of America, et al. v. Rob Bonta*, the Ninth Circuit Court of Appeals partially vacated the lower court's injunction against enforcement of California Assembly Bill 51 ("AB 51"), holding, in pertinent part, that AB 51 is not preempted by the Federal Arbitration Act ("FAA"). Thus, at least for now, employers should be wary of requiring employees to enter into arbitration agreements as a condition of employment.

It should be noted that the Ninth Circuit's decision will not immediately take effect. The injunction will remain in place until the Ninth Circuit issues its mandate and the case is remanded back to the district court to make factual findings and decide the case on the merits. Read more about what employers need to know [here](#).

Employers' Potential Workers' Compensation Liability Related to COVID-19

Even if an employer implements stringent, precautionary measures to protect employees from exposure to COVID-19, the employer may not completely insulate itself from potential workers' compensation liability. Moreover, there is no all-purpose,

Employer Liability for Temporary Total Disability Benefits When an Undocumented, Injured Worker Cannot Return to Modified Work

In a recent Appeals Board panel decision in *Flores v. Westside Accurate Courier Services and SCIF*, the Board held in an admitted injury case that an applicant could not legally be employed due to her undocumented status but

general formula for determining compensability related to COVID-19. However, recent case law can serve as a guideline for employers to better understand potential liability and when compensability has been found based on a special or increased risk analysis. Learn more [here](#).



was able to perform modified work, the employer was not liable for TTD benefits since if it rehired the applicant, the employer would be in violation of applicable federal law. We examine the impact of this case and similar decisions for employers and claims administrators [here](#).

Determining When There is a Duty to Provide a DWC-1 Claim Form for a COVID-19 Alleged Injury Claim and Related Issues

There has been a steady increase in the number of workers' compensation claims being filed from employees alleging they were exposed to or contracted COVID-19 as a result of their employment. While the same statutes and cases that were applicable before the pandemic still apply today, there has been confusion among employers and claims administrators on when and under what circumstances a duty to provide a claim form is triggered. Learn more about the threshold and criteria related to an employer's duty [here](#).

COVID-19 Business Closures and the Obligation to Provide Indemnity

Many non-essential businesses employed workers who suffered prior workers' compensation injuries not directly related to the coronavirus were receiving temporary total disability benefits, and now, their positions have been either temporarily or permanently eliminated due to COVID-19. Under what circumstances are there continuing legal obligations of California employers and their workers' compensation carriers/TPAs to pay indemnity benefits? Learn more [here](#).



Get to Know PB&W



Partner Spotlight – Olivia Gordon

Do you know Olivia Gordon? Well, you should. Olivia specializes in the defense of workers' compensation, from case inception through trial and appeal. Fun fact? She would work for a non-profit organization if she wasn't a lawyer. Get to know Olivia [here](#).

Honoring Her Hispanic Roots – Ada Rodriguez

Senior Associate Ada Rodriguez and her kids celebrated Hispanic Heritage Month by cooking bistec empanizado con cebolla (breaded sirloin steak with onions), crispy plantains, black beans and white rice. "As an adult I like to mimic my abuelita (grandma) and make family meals as often as possible. The kids and I enjoy the time together and it keeps them close to their roots. Abuelita would be proud," said Ada. Get to know more about Ada [here](#).



Black Belt Level Achieved – Rudy Grob

Did you know less than 1% of those who start training in



Jiu Jitsu will proceed to the Black Belt level? Despite the odds, Partner Rudy Grob was honored with his Black Belt after 18 years of dedication and hard work. We are proud of this accomplishment and to have a partner like Rudy! Learn more on Rudy [here](#).

ABOUT PEARLMAN, BROWN & WAX, LLP

Pearlman, Brown & Wax, LLP represents California employers, insurance companies and their insureds in employment law, workers' compensation defense, subrogation, liability defense, sports related injury defense and labor-related matters.

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