

## California Enacts COVID-19 Presumption for Workers' Compensation

On September 17, California enacted [SB 1159](#), which—among other things—establishes a disputable presumption that an employee's contraction of COVID-19 is an "occupational injury" or illness under the state's workers' compensation laws and therefore renders certain employees eligible for workers' compensation benefits.

***Eligibility for the Presumption of Compensability.*** The bill presumes that an employee's injury related to COVID-19 occurred at work if the employee tests positive for COVID-19 within 14 days after performing labor or services at their place of employment. Specifically, the bill:

- Codifies Governor Gavin Newsom's [Executive Order N-62-20](#), which covered all California employees who worked at a jobsite outside their home at the direction of their employer between March 19 and July 5, 2020, including first responders, farmworkers, grocery store workers, warehouse workers, etc. who tested positive for/were diagnosed with COVID-19.
- Creates a disputable presumption for first responders and healthcare workers who get sick or injured from COVID-19 on or after July 6, 2020.
- Creates a disputable presumption for employees who test positive during an "outbreak" at their specific place of employment (e.g., building, store, facility, etc.) and whose employer has five or more employees (i.e., the so-called "outbreak" presumption). An "outbreak" exists if, within 14 calendar days, *one* of the following occurs:
  - If the employer has 100 or fewer employees at a specific place of employment, four employees test positive for COVID-19.
  - If the employer has more than 100 employees at a specific place of employment, 4% of the employees who reported to the specific place of employment test positive for COVID-19.
  - A specific place of employment is ordered to close by a local or state public health department or a school superintendent due to a risk of COVID-19 infection.

To ensure eligibility, an applicable employee must have tested positive for COVID-19 via a Polymerase Chain Reaction (PCR) test or other viral culture test approved by the federal Food and Drug Administration (i.e., not an antibody test). Note, however, that for injuries that occurred between March 19 and July 5, 2020, the employee may bring a workers' compensation claim based on a diagnosis by a licensed physician/registered nurse that is supported by either a viral test or an antibody test.

***Benefits Awarded.*** SB 1159 provides that the compensation awarded for a COVID-19-related injury must include full hospital, surgical, medical treatment, disability indemnity, and death benefits. Prior to receiving such benefits, an employee that has paid sick leave benefits specifically available in response to COVID-19 must exhaust such benefits before using any disability benefits. If an employee does not have such sick leave benefits, however, the employee will have immediate access to temporary disability benefits (i.e., certifies temporary disability benefits for employees that test positive for COVID-19 within 14 days of the initial diagnosis).

***Disputing the Presumption.*** While COVID-19-related injuries are presumed to arise out of/in the course of employment, an employer can rebut this presumption. For instance, for employees eligible for the “outbreak” presumption, employers may controvert the presumption by presenting “evidence of measures in place to reduce the potential transmission of COVID-19 in the employee’s place of employment and evidence of an employee’s nonoccupational risks of COVID-19 infection.”

How this works in practice will depend on the circumstances. If an employee qualifies for the presumption as a first responder or healthcare worker, the employer will have 30 days to investigate and determine whether to accept or deny the claim. For employees eligible under the “outbreak” presumption, employers will have up to 45 days. If the employers fail to act within that timeframe, the COVID-19-related illness or injury is presumed compensable, and the employer can only dispute the presumption with evidence it discovered after the 30-day or 45-day period.

If the claim is denied and appealed to the state’s Workers’ Compensation Appeals Board, the Board will be bound to find in accordance with the presumption, unless viable evidence is offered to dispute it.

***Reporting Requirements.*** Under the “outbreak” presumption, SB 1159 imposes reporting obligations on employers. Specifically, it requires an employer to notify its claims administrator whenever it knows/reasonably should know that an employee has tested positive for COVID-19. The notice must occur within three business days via email or fax and must include:

- The fact that an employee has tested positive.
- The date the employee tested positive.
- The address of the employee’s specific place of employment during the 14 days preceding the positive test.
- The highest number of employees who reported to work at the same specific place of employment in the 45 days prior to the positive employee’s last day of work.

If an employer (or person acting on their behalf) intentionally submits false or misleading information/fails to submit the required information, they will be subject to a civil penalty of up to \$10,000.

This requirement—and its associated penalties—also applies retroactively to employers that were aware of an employee who tested positive between July 6, 2020 and September 17, 2020, requiring submission of the necessary information within 30 business days from the legislation’s effective date.

***Effective Date.*** SB 1159 became law upon Governor Newsom’s signature and will remain in effect until January 1, 2023.

***Enforcement.*** The bill will be enforced by the Department of Industrial Relations, which has compiled a set of [Frequently Asked Questions](#) for review.