

Workers' Compensation Presumption (SB 1159)

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SB 1159, enacted on September 17, 2020, added Sections 3212.86, 3212.87, and 3212.88 to the Labor Code. The bill protects the health and safety of all employees and the public by facilitating the provision of workers' compensation benefits. The statutes take effect immediately and remain in effect through January 1, 2023.

1. What does SB 1159 do?

SB 1159 codifies the COVID-19 presumption created by Executive Order N-62-20 and provides two new rebuttable presumptions that an employee's illness related to coronavirus is an occupational injury and therefore eligible for workers' compensation benefits if specified criteria are met. Employees who are sick can stay home and be provided workers' compensation benefits, thereby reducing the spread of the virus to others at work and in the community. The new law encourages employers to comply with all local health directives and guidance concerning safely reopening businesses to reduce risk of exposure and mitigate outbreaks in the workplace.

2. Who is helped by SB 1159?

SB 1159 codifies and supersedes Governor Newsom's Executive Order N-62-20, which had 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 and others.

It additionally helps the following categories of employees who get sick or injured due to COVID-19 on or after July 6, 2020, by creating a rebuttable presumption of eligibility for workers' compensation benefits if specified criteria are met.

- First Responders and Health Care Workers, including active firefighting members of specified fire departments or units; certain peace officers; fire and rescue services coordinators who work for the Office of Emergency Services; employees who provide direct patient care or custodial employees in contact with COVID-19 patients who work for designated health facilities; paramedics and emergency medical technicians; employees providing direct patient care for a home health agency; providers of in-home supportive services; and other employees of designated health facilities.
- Employees whose employers have five or more employees, and who test positive for COVID-19 during an outbreak at their specific workplace.
 - An outbreak exists if within 14 days *one* of the following occurs at a specific place of employment: (1) four employees test positive if the employer has 100 employees or fewer; (2) four percent (4%) of the number of employees who reported to the specific place of employment test positive if the employer has more than 100 employees; or (3) a specific place of employment is ordered to close by a local public health department, the State Department of Public Health, the Division of Occupational Safety and Health, or a school superintendent due to a risk of infection of COVID-19.

3. How are employers affected?

This law creates a rebuttable presumption of an industrial injury or illness for the above-described categories of workers. It encourages employers to comply with local health orders and industry-specific guidance for safely reopening by allowing employers to introduce evidence regarding measures they have taken to reduce potential transmission of COVID-19 in the workplace, in addition to other relevant evidence, to rebut the presumption.

This bill limits the risk of employers being liable for claims where the infection did not occur at work by tailoring the presumptions to those first responders and frontline health care workers whose work puts them at the greatest risk of exposure and other employees where there is a demonstrated and verifiable COVID-19 outbreak at their worksite.

Reporting Requirements

This bill imposes reporting requirements on employers for purposes of the outbreak presumption. Specifically, when an employer knows or reasonably should know that an employee has tested positive for COVID-19, the employer must report certain information to its claims administrator. There are conditions caused by COVID-19 that would be presumed industrial for people diagnosed on or after July 6 and before Jan 1, 2023. Part of the presumption applies to workers who test positive within 14 days of going to the workplace that is experiencing an outbreak. An "outbreak" exists if:

- At least 4% tested positive at a specific place of employment with more than 100 workers
- At least 4 tested positive at a specific place of employment with 100 or fewer workers
- A specific place of employment is ordered to close by a local or state public health department or a school superintendent due to the risk of infection with COVID-19

Employers may be subject to civil penalties of up to \$10,000 for intentionally submitting false or misleading information, or for failing to report required information.

4. SB 1159 provides that the presumption of a work-related illness “is disputable and may be controverted by other evidence.” What does that mean?

This means that even when an employee is presumed to have become ill from COVID-19 at work, an employer may dispute that conclusion. In such a case, however, the employer bears the burden of proving that the injury or illness did not occur at work.

5. SB 1159 requires that doctor’s diagnosis be confirmed by a test. What kind of test is acceptable?

The Centers for Disease Control and Prevention (CDC) advise that there are generally two kinds of tests available for COVID-19: viral tests and antibody tests.

- A viral test tells you if you have a current infection.
- An antibody test tells you if you had a previous infection.

For injuries that occurred between March 19 and July 5, 2020, under the presumption the employee may utilize either a viral test or serologic antibody test.

For injuries that occurred on or after July 6, 2020, the employee must test positive utilizing a PCR (Polymerase Chain Reaction) test approved for use or approved for emergency use by the United States Food and Drug Administration (U.S. FDA) to detect the presence of viral RNA. The employee may also utilize any other viral culture test approved for use or approved for emergency use by the U.S. FDA to detect the presence of viral RNA which has the same or higher sensitivity and specificity as the PCR Test. The employee may not rely on serologic testing, also known as antibody testing.

6. If a presumption is not applicable to an employee, does that mean they are unable to file a workers’ compensation claim for a COVID-19-related illness?

No. If an employee suffers a job-related injury or illness, they are entitled to file for workers’ compensation benefits. If they do not qualify for a presumption under the new law, they may still be eligible to receive workers’ compensation benefits if they contracted COVID-19 at work. They will need to meet certain threshold requirements, including proving that their injury or illness arose out of your employment.

7. If employees are working and then got sick and tested positive for COVID-19. Do they qualify for benefits under the presumption?

Maybe. If they are eligible under SB 1159’s criteria, they will be presumed eligible for workers’ compensation benefits. However, that presumption is rebuttable, which means that the employer can dispute their claim and present evidence that they did not contract COVID-19 at work or are otherwise ineligible for the presumption. If the workers’ compensation claim is disputed, employees have the right to have the issue heard and decided by a workers’ compensation judge.

8. How long does my employer/administrator have to decide whether it will accept or deny workers’ compensation claims?

If the criteria for the presumption is met under Section 3212.88 (i.e., the Outbreak presumption), the employer will have up to 45 days to investigate and make a decision whether to accept or deny claims. If the employer fails to reject claims within 45 days, the injury or illness is

presumed compensable, and the employer/administrator can then rebut that presumption only with evidence it discovered after the 45-day period.

Until your employer/administrator makes that decision, an employee will be eligible for up to \$10,000 in medical treatment for their COVID-19-related illness. During that time, an employee may be eligible to receive federal, state, or local COVID-19-specific paid sick leave benefits, so they should speak to their employer about those benefits. If such benefits are not available, an employee may be eligible through the Employment Development Department.

9. What benefits may employees be entitled to as a result of the workers' compensation presumption?

Workers' compensation insurance provides five basic benefits:

- **Medical Care:** Reasonable and necessary medical treatment paid for by their employer/administrator to help recover from an injury or illness caused by work.
- **Temporary Disability Benefits:** Payments if there are loss wages because the injury prevents an employee from doing their usual job while recovering.
- **Permanent Disability Benefits:** Payments if employees don't recover completely.
- **Supplemental Job Displacement Benefits:** Vouchers to help pay for retraining or skill enhancement if employees don't recover completely and don't return to work for their employer.
- **Death benefits:** Payments to employee's spouse, children, or other dependents if you die from a job injury or illness.