

### Introduction

Senate Bill 1159, creating a work-related COVID-19 disputable presumption, was passed by the California Legislature on August 31st, 2020. While it has not yet been signed into law by Governor Gavin Newsom, the bill will immediately go into effect upon his doing so. This bill is unique as the disputable presumptions outlined create several different paths depending on the nature of the employment and rate of infection at a specific worksite.



The bill codifies Governor Newsom's May 6th Executive Order with the expiration date of July 6th intact and is comprised of five sections.

### What is a Presumption?

A presumption places this burden on the employer to prove the injury did not arise out of and in the course of employment. Absent a presumption, the onus is on the employee to prove they sustained an injury on the job.

### Section One

The California Commission on Health and Safety and Workers' Compensation is required to conduct a study on the impact COVID-19 had on the workers' compensation system. The preliminary report is due on December 31st, 2021 with the final report to be delivered to the Governor no later than April 30th, 2022.

### Section Two

This section codifies Governor Newsom's May 6th Executive Order extending a disputable presumption to employees that were required by their employer to report to a worksite. The July 6th, 2020 expiration date is intact.

### Section Three

Remains in effect until January 1, 2023 and provides a disputable presumption to first responders and healthcare providers. Unlike section four, this section has no requirement for an outbreak for the presumption to apply.

### Applicable Employees

- ▶ Firefighters
- ▶ Department of Forestry
- ▶ Peace Officers
- ▶ Employees providing direct patient care
- ▶ Custodial employees in contact with COVID-19 patients while working at a health facility
- ▶ Authorized Registered Nurses
- ▶ Emergency medical technicians
- ▶ Paramedics
- ▶ Employees who provide direct care for a home health agency
- ▶ Providers of in-home supportive services



## Qualifiers

The applicable employee must test positive on or after July 6, 2020 and within 14 days after the day that the employee performed labor or services at the employee's place of employment at the employer's direction. The test used to detect COVID-19 must be a PCR (Polymerase Chain Reaction) or other viral culture tests approved for use or approved for emergency use by the FDA to detect the presence of viral RNA. Testing does not include serologic testing, also known as antibody testing.

## Paying for Time Away from Work

If the employee has paid sick leave benefits specifically available in response to COVID-19, those benefits must be exhausted before any temporary disability benefits or benefits allowable under California Labor Code Sections 4800, 4800.5, or 4850 are due and payable. If an employee does not have sick leave benefits, temporary disability or Section 4850 benefits, if applicable, are payable from the date of injury, without the standard three-day waiting period applying.

## Disputable Presumptions

As of July 6, 2020, it is presumed employees listed in section three, that contract COVID-19, did so while on the job. This presumption is disputable and can be controverted by a preponderance of the evidence. The place of employment does not include the employee's home or residence.

## Timeframe to Investigate

The carrier or employer will have 30 days to investigate the claim from the date the DWC-1 Claim Form is filed. If a decision is not made within this timeframe, the claim is automatically deemed related to the job.

## Section Four

This section remains in effect until January 1, 2023. It applies to all employees not covered in section three, that test positive during an "outbreak" at the employee's specific place of employment, and employers with five or more employees. There are some similarities to section three. It should be noted that if the qualifying factors for a presumption are not met, the employee can still assert a claim.

## Employers Duty to Report

When an employer knows or reasonably should have known that an employee tested positive for COVID-19, the employer must send a report to their claim's administrator in writing within three business days including all of the following:

- ▶ Employee(s) that tested positive. The employer is not to provide any personally identifiable information regarding the employee who tested positive for COVID-19, unless the employee asserts the infection is work related and/or has filed a DWC-1 Claim Form.
- ▶ The date the employee tests positive is the date the specimen was collected for testing.
- ▶ The specific address or addresses of the employee's specific place of employment during the 14-day period preceding the date of the employee's positive test.
- ▶ The highest number of employees in the 45-day period preceding the last day the employee worked at each specific place of employment.

Any employer aware of an employee testing positive on or after July 6, 2020 and prior to the effective date of this section, must also report all information noted above to the claim's administrator within 30 business days of this section's effective date.



## Obligation of the Claim Administrator

The claims administrator is required to use this information to determine if an outbreak has occurred for the purposes of administering a claim pursuant to this section. To calculate the number of employees at a specific place of employment, the claims administrator shall utilize the data reported by the employer.

## Outbreak Defined

An outbreak exists if, within 14 calendar days, one of the following occurs at a specific place of employment:

- ▶ An employer has 100 employees or fewer at a specific place of employment and 4 employees test positive for COVID-19.
- ▶ If the employer has more than 100 employees at a specific place of employment and 4 percent of the number of employees who reported to this specific place of employment test positive for COVID-19.
- ▶ 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 with COVID-19.

A claim is not part of an outbreak if it occurs during a continuous 14-day period where the requisite number of positive tests have not been met. The claims administrator must continually evaluate each incident reported to determine whether the requisite number of positive tests have occurred during the surrounding 14-day periods.

The absence of an outbreak does not preclude an employee from asserting they contracted COVID-19 on the job. However, the disputable presumption will not apply. This places the onus on the employee to prove they contracted COVID-19 at work.

## A Specific Place of Employment

This means the building, store, facility, or agricultural field where an employee performs work at the employer's direction. It does not include an employee's home or residence, unless the employee provides home health care services to another individual at the employee's home or residence.

## Multiple Worksites & Specific Place of Employment

In the case of an employee who performs work at the employer's direction in multiple places, each worksite within 14 days of the employee's positive test shall be evaluated for the purposes of determining the existence of an outbreak and if one exists at any one of the worksites, that shall be deemed the employee's "specific place of employment."

## Qualifiers

The employee's positive test occurred during a period of an "outbreak" at the employer's specific place of business. The applicable employee must test positive on or after July 6, 2020 and within 14 days after the day that the employee performed labor or services at the employee's place of employment at the employer's direction. The test used to detect COVID-19 must be a PCR (Polymerase Chain Reaction) or other viral culture tests approved for use or approved for emergency use by the FDA to detect the presence of viral RNA. Testing does not include serologic testing, also known as antibody testing.



## Paying for Time Away From Work

This provision is very similar to section three with the exception of including the Education Code. If the employee has paid sick leave benefits specifically available in response to COVID-19, those benefits must be exhausted before any temporary disability benefits or benefits allowable under the Education Code, California Labor Code Sections 4800, 4800.5, or 4850 are due and payable. If an employee does not have sick leave benefits, temporary disability, salary continuation or Section 4850 benefits (if applicable), benefits are payable from the date of injury, without the standard three-day waiting period applying.

## Disputable Presumptions

As of July 6, 2020, it is presumed employees that test positive for COVID-19 during an outbreak at their employer's specific place of business contracted the virus on the job. This is a disputable presumption and can be controverted by a preponderance of the evidence. Relevant evidence may include, but is not limited to, evidence of measures put 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.

## Timeframe to Investigate

The carrier or employer will have 45 days to investigate the claim from the date the DWC-1 Claim Form is filed. If a decision is not made within this timeframe, the claim is automatically deemed related to the job.

## Conclusion

Senate Bill 1159 creates a disputable presumption for Peace Officers, Firefighters, Healthcare Workers and employees working during a defined outbreak at a specific work location. These presumptions are effective as of July 6th and will conclude on January 1st, 2023. It is possible to controvert the presumption by a preponderance of the evidence. When dealing with outbreak presumptions it is important to gather the preventative measures put in place by the employer regarding contracting COVID-19. As with any investigation, knowing the employee's activities outside of work is also critical.

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