

Category	Executive Order Presumption All Employees	Labor Code 3212.86 Presumption All Employees	Labor Code 3212.87 Presumption Firefighters/Peace Officers/Healthcare	Labor Code 3212.88 Outbreak Presumption
Effective Dates	March 19, 2020 through July 5, 2020	March 19, 2020 through July 5, 2020	July 6, 2020 through December 31, 2022	July 6, 2020 through December 31, 2022
Applies to	An employee tested positive for or was diagnosed with COVID-19 within 14 days after a day that the employee performed labor or services at the employee's place of employment at the employer's direction	An employee tested positive for or was diagnosed with COVID-19 within 14 days after a day that the employee performed labor or services at the employee's place of employment at the employer's direction	<ul style="list-style-type: none"> ▶ Firefighters ▶ Peace Officers ▶ Fire and Rescue Services ▶ Employee who provides direct patient care, or a custodial employee in contact with COVID-19 patients, who works at a health facility as defined by the Health and Safety Code ▶ Authorized Registered Nurse ▶ Emergency Medical Technician I & II ▶ Emergency Medical Technician Paramedic ▶ Employee providing direct patient care for a home health agency as defined by the Health and Safety Code ▶ Employee of health facilities, not otherwise described, that came into contact with a positive COVID-19 patient ▶ A provider of in-home supportive services performed outside their own home or residence 	Employees not described in Section 3212.87 who test positive during an outbreak at the employee's specific place of employment and whose employer has five or more employees
The Term "Injury" Includes	Silent	Illness or death resulting from COVID-19	Illness or death resulting from COVID-19	Illness or death resulting from COVID-19

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Injury Qualifiers	<ul style="list-style-type: none"> ▶ The employee tested positive for or was diagnosed with COVID-19 within 14 days after a day that the employee performed labor or services at the employee's place of employment at the employer's direction ▶ This date was on or after March 19, 2020 ▶ The employee's place of employment was not the employee's home or residence ▶ The diagnosis of COVID-19 was done by a physician who holds a physician and surgeon license issued by the California Medical Board and that diagnosis is confirmed by further testing within 30 days of the date of the diagnosis 	<ul style="list-style-type: none"> ▶ The employee tested positive for or was diagnosed with COVID-19 within 14 days after a day that the employee performed labor or services at the employee's place of employment at the employer's direction ▶ This date was after March 19, 2020 but on or before July 5, 2020 ▶ The diagnosis was done by a licensed physician and surgeon holding an M.D. or D.O degree or state licensed physician assistant or nurse practitioner, acting under the review or supervision of a physician and surgeon, and the diagnosis was confirmed by a COVID-19 serologic test within 30 days of the date of the diagnosis 	<ul style="list-style-type: none"> ▶ The employee tested positive for COVID-19 within 14 days after a day that the employee performed labor or services at the employee's place of employment at the employer's direction ▶ The day on which the employee performed labor or services at the employee's place of employment at the employer's direction was on or after July 6, 2020 	<ul style="list-style-type: none"> ▶ The employee tested positive for COVID-19 within 14 days after a day that the employee performed labor or services at the employee's place of employment at the employer's direction ▶ The day on which the employee performed labor or services at the employee's place of employment at the employer's direction was on or after July 6, 2020 ▶ The positive test occurred during a period of an outbreak at the employee's specific place of employment
Date of Injury	Silent	The date of injury shall be the last date the employee performed labor or services at the employee's place of employment.	The date of injury shall be the last date the employee performed labor or services at the employee's place of employment at the employer's direction prior to the positive test.	The date of injury shall be the last date the employee performed labor or services at the employee's place of employment at the employer's direction prior to the positive test.

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COVID-19 Diagnosis	The diagnosis was done by a licensed physician and surgeon holding an M.D. or D.O. degree or state licensed physician assistant or nurse practitioner, acting under the review or supervision of a physician and surgeon pursuant to the standardized procedures and protocols within their lawfully authorized scope of practice, and the diagnosis is confirmed by testing or by a COVID-19 serologic test within 30 days of the date of the diagnosis.	The diagnosis was done by a licensed physician and surgeon holding an M.D. or D.O. degree or state licensed physician assistant or nurse practitioner, acting under the review or supervision of a physician and surgeon pursuant to the standardized procedures and protocols within their lawfully authorized scope of practice, and the diagnosis is confirmed by testing or by a COVID-19 serologic test within 30 days of the date of the diagnosis.	Silent on diagnosis and instead states "Employee has tested positive for COVID-19"	Silent on diagnosis and instead states "Employee has tested positive for COVID-19"
Compensation Includes	Full hospital, surgical, medical treatment, disability indemnity, and death benefits and shall be subject to Labor Code Sections 4663 and 4664	Full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by this division	Full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by this division	Full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by this division
Paid Sick Leave	If an employee has paid sick leave benefits specifically available in response to COVID-19, those benefits shall be used and exhausted before any temporary disability benefits or benefits under Section 4850 are due and payable. If an employee does not have those sick leave benefits, the employee shall be provided temporary disability benefits from the date of disability. There shall not be a waiting period.	If an employee has paid sick leave benefits specifically available in response to COVID-19, those benefits shall be used and exhausted before any temporary disability benefits or benefits under Section 4800, 4800.5, or 4850 are due and payable. If an employee does not have those sick leave benefits, the employee shall be provided temporary disability benefits from the date of disability. There shall not be a waiting period.	If an employee has paid sick leave benefits specifically available in response to COVID-19, those benefits shall be used and exhausted before any temporary disability benefits or benefits under Section 4800, 4800.5, or 4850 are due and payable. If an employee does not have those sick leave benefits, the employee shall be provided temporary disability benefits from the date of disability. There shall not be a waiting period.	If an employee has paid sick leave benefits specifically available in response to COVID-19, those benefits shall be used and exhausted before any temporary disability benefits or benefits under Section 4800, 4800.5, or 4850 or Section 44977, 44984, 45192, 45196, 87780, 87787, 88192, or 88196 of the Education Code are due and payable. If an employee does not have those sick leave benefits, the employee shall be provided temporary disability benefits from the date of disability. There shall not be a waiting period.

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Qualifiers for Temporary Disability	<p>After testing positive or being diagnosed with COVID-19 on or after the date of the order, the employee shall be certified for Temporary Disability (TD) within the first 15 days after the initial diagnosis, and shall be recertified every 15 days thereafter, for the first 45 days following the diagnosis.</p> <p>If the employee has tested positive or was diagnosed with COVID-19 prior to the date of this order, the employee shall have obtained a certification within 15 days of the date of this order documenting the period for which the employee was temporarily disabled and unable to work, and shall be recertified for TD every 15 days thereafter for the first 45 days following the diagnosis.</p>	<p>After testing positive or being diagnosed with COVID-19 on or after May 6th, 2020, the employee shall be certified for Temporary Disability (TD) within the first 15 days after the initial diagnosis, and shall be recertified every 15 days thereafter, for the first 45 days following the diagnosis.</p> <p>If the employee has tested positive or was diagnosed with COVID-19 before May 6, 2020, the employee shall have obtained a certification no later than May 21, 2020 documenting the period for which the employee was temporarily disabled and unable to work, and shall be recertified for TD every 15 days thereafter for the first 45 days following the diagnosis.</p>	Silent	Silent
Physician Certifying TD Benefits	Physician shall hold a physician's and surgeon's license issued pursuant to Chapter 5 of Division 2 of the Business and Professions Code. The physician must be part of the applicable network, i.e. MPN or HCO or can be the predesignated physician, if applicable.	Physician shall hold a physician's and surgeon's license issued pursuant to Chapter 5 of Division 2 of the Business and Professions Code. The physician must be part of the applicable network, i.e. MPN or HCO or can be the predesignated physician, if applicable.	Silent	Silent

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Presumption	The presumption is DISPUTABLE and may be controverted by other evidence; unless so controverted, the Appeals Board is bound to find in accordance with it. This presumption shall apply to dates of injury occurring through 60 days following this order.	When the requirements of Labor Code Section 3212.86 are met, the injury is presumed to arise out of and in the course of the employment. The presumption is DISPUTABLE and may be controverted by other evidence; unless controverted, the Appeals Board is bound to find in accordance with the presumption.	The injury or illness as described in this section is presumed to arise out of and in the course of employment. This presumption is DISPUTABLE and may be controverted by other evidence; unless controverted, the Appeals Board is bound to find in accordance with the presumption. This presumption shall be extended to a person following termination of service for a period of 14 days, commencing with the last date actually worked in the specified capacity at the employee's place of employment.	The injury or illness as described in this section is presumed to arise out of and in the course of employment. This presumption is DISPUTABLE and may be controverted by other evidence; unless controverted, the Appeals Board is bound to find in accordance with the presumption. This presumption shall be extended to a person following termination of service for a period of 14 days, commencing with the last date actually worked in the specified capacity at the employee's place of employment. This section does not affect an employee's right to compensation for an injury or illness under this division in accordance with a preponderance of evidence.
Evidence Relevant to Controverting the Presumption	Silent	Silent	Silent	Evidence relevant to controverting the presumption may include, but is not limited to, evidence of measures in place to reduce 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	If liability for a claim of a COVID-19-related illness is not rejected within 30 days after the date the claim form is filed, the illness shall be presumed compensable, unless rebutted by evidence only discovered subsequent to the 30-day period.	If liability is not rejected within 30 days after the date the claim form is filed, the illness shall be presumed compensable. The presumption is REBUTTABLE only by evidence discovered subsequent to the 30-day period.	If liability is not rejected within 30 days after the date the claim form is filed, the illness shall be presumed compensable. The presumption is REBUTTABLE only by evidence discovered subsequent to the 30-day period.	If liability is not rejected within 45 days after the date the claim form is filed, the illness shall be presumed compensable. The presumption is REBUTTABLE only by evidence discovered subsequent to the 45-day period.

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Death Without Dependents	The Department of Industrial Relations shall waive the right to collect any death benefit payment arising out of claims covered by this section.	The Department of Industrial Relations shall waive the right to collect any death benefit payment arising out of claims covered by this section.	The Department of Industrial Relations shall waive the right to collect any death benefit payment arising out of claims covered by this section.	The Department of Industrial Relations shall waive the right to collect any death benefit payment arising out of claims covered by this section.
Home or Residence	The employee's place of employment does not include the employee's home or residence	The employee's place of employment does not include the employee's residence	The employee's place of employment does not include the employee's residence	The employee's place of employment does not include the employee's residence
Testing	Silent	Silent	"Test" or "testing" means a PCR (Polymerase Chain Reaction) test approved for use or approved for emergency use by the US FDA to detect the presence of viral RNA. "Test" or "testing" does not include serologic testing, also known as antibody testing. "Test" or "testing" may include a viral culture test approved for use or approved for emergency use by the US FDA to detect the presence of viral RNA which has the same or higher sensitivity and specificity as the PCR test.	"Test" or "testing" means a PCR (Polymerase Chain Reaction) test approved for use or approved for emergency use by the US FDA to detect the presence of viral RNA. "Test" or "testing" does not include serologic testing, also known as antibody testing. "Test" or "testing" may include a viral culture test approved for use or approved for emergency use by the US FDA to detect the presence of viral RNA which has the same or higher sensitivity and specificity as the PCR test.

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Reporting Positive Tests to the Claims Administrator - THREE BUSINESS DAYS	<i>Not applicable</i>	<i>Not applicable</i>	<i>Not applicable</i>	<p>When the employer knows or reasonably should know that an employee has tested positive for COVID-19, the employer shall report all of the following to their Claims Administrator in writing via electronic mail or facsimile within THREE BUSINESS DAYS:</p> <ul style="list-style-type: none"> ▶ An employee has tested positive without including any PII, unless the employee is claiming the infection is work-related ▶ The date that the employee tests positive, which is the date the specimen was collected for testing ▶ The specific address or addresses of the employee's specific place(s) of employment during the 14-day period preceding the date of the employee's positive test ▶ The highest number of employees who reported to work at the employee's specific place of employment in the 45-day period preceding the last day the employee worked at each specific place of employment
Penalties for Reporting Misleading Information or Failing to Submit Positive Test Results	<i>Not applicable</i>	<i>Not applicable</i>	<i>Not applicable</i>	<p>Civil Penalty in the amount of up to \$10,000.00 to be assessed by the Labor Commissioner</p>

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Duty of the Claims Administrator	<i>Not applicable</i>	<i>Not applicable</i>	<i>Not applicable</i>	The Claims Administrator shall use the information on positive cases reported by the employer to determine if an outbreak has occurred for the purposes of administering a claim.
Positive Tests On of After July 6th, 2020 and prior to September 17, 2020	<i>Not applicable</i>	<i>Not applicable</i>	<i>Not applicable</i>	Any employer who is aware of an employee testing positive on or after July 6, 2020, and prior to the effective date of this section, shall report to their Claims Administrator, in writing via electronic mail or facsimile, within 30 business days of the effective date of this section, all the data required. The employer shall report the highest number of employees who reported to work at each of the employee's specific places of employment on any given work day between July 6, 2020 and the effective date of this section. The Claims Administrator shall use this information reported to determine if an outbreak occurred from July 6, 2020 to the effective date of this section.
Claims NOT part of an outbreak	<i>Not applicable</i>	<i>Not applicable</i>	<i>Not applicable</i>	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.
Specific Place of Employment	<i>Not applicable</i>	<i>Not applicable</i>	<i>Not applicable</i>	A building, store, facility, or agricultural field where an employee performs work at the employer's direction. A specific place of employment does not include the employee's home or residence, unless the employee provides home health care services to another individual at the employee's home or residence.

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Outbreak Defined	<i>Not applicable</i>	<i>Not applicable</i>	<i>Not applicable</i>	<p>An outbreak exists if within 14 calendar days one of the following occurs at a specific place of employment:</p> <ul style="list-style-type: none"> ▶ If the employer has 100 employee or fewer 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, four percent of the number of employees who reported to the specific place of employment test positive for COVID-19 ▶ A specific place of employment is ordered closed 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

DISCLAIMER: This briefing has been prepared by Poms & Associates Insurance Brokers, LLC to provide information on recent developments of interest to our clients. It is not intended to offer legal or regulatory advice for a situation. Events are rapidly developing during this national state of emergency, and best practices are constantly changing. We recommend that individuals and entities carefully monitor and follow health directives of the WHO and CDC, along with federal, state and local authorities.