

Introduction

California Senate Bill 1159 was signed by Governor Gavin Newsom on September 17, 2020 and is effective immediately. It created various disputable COVID-19 work-related presumptions for employees. The bill is comprised of multiple sections. This article focuses on Sections three and four. Both are effective retroactively back to July 6, 2020 and expiring December 31, 2022. Section three creates a new Labor Code Section §3212.87 and applies to Firefighters, Peace Officers and healthcare workers. This presumption is disputable by a preponderance of the evidence. Section four creates a new Labor Code Section §3212.88 granting an “outbreak” presumption based on the number or percentage of employees at a specific worksite on any given day. This presumption is disputable by the employer establishing they did everything required to reduce the transmission of COVID-19 at the workplace and the employee engaged in non-occupational activities that increased the chances of contracting the virus.

Section IV Summary

Employer’s Obligations - Employee COVID-19 Positive Test

- ▶ **Report** all positive tests to your Workers’ Compensation Claims Administrator, deleting any personal identifiable information, within three business days of knowledge.
- ▶ **Provide** a DWC-1 Claim Form within one business day if an employee asserts they contracted COVID-19 on the job and report it to your Claims Administrator.
- ▶ **Track** the number of employees reporting to your various worksites daily for your Claims Administrator.
- ▶ **Record** how you are protecting employees by following federal, state, and local guidelines regarding personal protective equipment, social distancing, and other applicable measures.
- ▶ **Document** facts concerning how an employee may have contracted COVID-19.
- ▶ **Notify** all employees located at the same worksite of an infected individual, in writing, of their potential exposure to COVID-19. This notification should include the plans to disinfect and any leave benefits available including Workers’ Compensation.
- ▶ **Outbreaks** defined by the California Department of Public Health (CDPH) require the employer to notify their local public health agency within 48 hours of knowledge. The CDPH defines an outbreak as three individuals testing positive within a two-week period.

The Role of the Workers’ Compensation Claims Administrator

- ▶ Determine, based on the positive tests reported, if an outbreak has occurred at the employer’s worksite that extends an injury presumption to employees testing positive.
- ▶ Investigate and analyze the claim to determine if the employee met the necessary injury qualifiers.
- ▶ Apply the burden of proof appropriately for claims presumed work-related due to an outbreak.
- ▶ Within 45 days, decide if the employee contracted COVID-19 on the job.
- ▶ If the claim is determined to be work-related, provide and pay all benefits due to the injured worker(s).

Criteria Used by the Claims Administrator to Determine a COVID-19 “Outbreak”

- ▶ The Claims Administrator will analyze:
 - ▶ the number of positive tests at a specific worksite within a 14-day period; and
 - ▶ the highest number of employees on any given day at a specific worksite in the preceding 45-day period.
- ▶ An outbreak is declared if:
 - ▶ Four or more employees test positive within a 14-day period with a workplace of 100 or fewer employees at the worksite; or
 - ▶ Four percent or more employees test positive within a 14-day period with a workplace of 100 or more employees at the worksite.

The Declaration of an Outbreak Presumption Impacts the Burden of Proof

- ▶ When a COVID-19 outbreak is declared at a worksite by the Claims Administrator, it is presumed it occurred as a result of the employment.
- ▶ Absent the presumption, the injured worker has the burden to prove they were injured on the job.
- ▶ An injury presumption flips this burden, requiring the employer to prove whether or not COVID-19 was contracted on the job.

Disputing a COVID-19 Outbreak Presumption

- ▶ The Claims Administrator will have 45 days from the date the employee filed a DWC-1 Claim Form to investigate the claim.
- ▶ COVID-19 outbreak presumptions can be disputed by the employer by demonstrating:
 - ▶ they did everything required to protect the employee from COVID-19; and
 - ▶ the employee was participating in activities outside of work that led to contracting the virus.

COVID-19 Work-Related Injury Qualifiers

- ▶ 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 positive test occurred during a period of an outbreak at the employee’s place of business.

Benefits Payable

- ▶ When it is determined an employee contracted COVID-19 on the job, they are entitled to all benefits traditionally provided as part of an admitted claim. Benefits include:
 - ▶ Full Hospital
 - ▶ Surgical
 - ▶ Medical Treatment
 - ▶ Disability Indemnity; and
 - ▶ Death Benefits
- ▶ In the event a deceased employee does not have dependents, payment by insurer to the California Department of Death Without Dependents is waived.



Paid Leave from Work versus Temporary Disability Benefits

- ▶ If an employee has paid sick leave benefits specifically available in response to COVID-19, those benefits shall be exhausted before any temporary disability benefits are owed.
- ▶ If an employee does not have sick leave benefits, the employee shall be provided temporary disability benefits from the date of disability. There shall not be a waiting period.

The Worksite Defined

- ▶ 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 employer's home or residence.

Peace Officers, Firefighters, and Certain Healthcare Employees Treated Differently

- ▶ This section of Senate Bill 1159 created Labor Code Section 3212.87 and is effective from July 6, 2020 through December 31, 2022.
- ▶ No outbreak presumption applies to Peace Officers, Firefighters, and certain Healthcare Workers.
- ▶ When these employees test positive for COVID-19, it is presumed it occurred on the job.
- ▶ The Claims Administrator will have 30 days to investigate the claim from the date the DWC-1 Claim Form is filed.
- ▶ The presumption can be disputed by a preponderance of the evidence.

Conclusion

California Senate Bill 1159 created several work-related presumptions to COVID-19. The type of presumption applied varies based on the employee's job and in some cases, whether or not an outbreak occurred at the worksite. Due to the bill containing an urgency clause, it is effective immediately with each presumption expiring on January 1, 2023 or upon the bill being repealed.

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.