

Legislative Bill SB 1159

On Thursday, Sept. 17, 2020, California Governor, Gavin Newsom, signed legislative bill SB 1159 to expand workplace protections for workers in response to the COVID-19 pandemic, effective immediately.

The bill is a continuation of Executive Order N-62-20 and establishes rebuttable presumptions for two categories of employees testing positive for COVID-19:

1. Frontline healthcare and public safety workers: peace officers, firefighters, healthcare providers, homecare workers, and IHSS workers. (Labor Code section: 3212.87)
2. Other employees who contract COVID-19 in the midst of a workplace outbreak. (Labor Code section: 88)

The Bill also maintains key provisions of **Labor Code section: 3212.86**, which entitles injured employees to the full array of workers' compensation benefits including coverage for hospitalization, all required medical treatment, disability indemnity and death benefits. Once again, prior to receiving Temporary Disability or Labor Code section 4850 benefits, the employee must exhaust any available COVID-19 sick leave benefits.

Labor Code section 3212.87 applies to claims with dates of injury on or after July 6, 2020, and creates a rebuttable presumption that peace officers, firefighters, and certain health care and custodial employees who contracted COVID-19 were infected due to workplace exposure. This section allows for the presumption to be rebutted by other evidence, but it does not specify what evidence may be used for rebuttal. The presumption extends for 14 days from the last day the employee worked or from the date of termination.

This presumption applies to public safety and healthcare workers who meet the following criteria:

- The employee worked outside the home at the employer's direction
- The date of workplace exposure was on or after July 6, 2020
- The employee tested positive for COVID-19 within 14 days after the last day the employee performed labor or services
 - Employees of healthcare facilities, other than those who provide direct patient care, shall not be entitled to the presumption if the employer can demonstrate that the employee did not have contact with a patient testing positive for COVID-19 in the preceding 14 days
 - In-home support providers will qualify for the presumption when they provide supportive services outside their own home or residence

The Bill further specifies that the date of injury for these exposures shall be the last date the employee performed labor or services prior to the positive test.



As with the original Executive Order, this section shortens the time to investigate COVID-19 claims from 90 days to only 30 days, and allows for apportionment of permanent disability pursuant to Labor Code sections 4663 and 4664.

This section does not specify an end date for the rebuttable presumption.

Labor Code section 3212.88 applies to claims with dates of injury on or after July 6, 2020 for employees not covered by the presumption of **Labor Code section 3212.87**. It also creates a rebuttable presumption of compensability for employees testing positive for COVID-19 during an “outbreak” at the place of employment, if the employer has 5 or more employees.

The legislation defines an “outbreak” as follows:

1. 4 employees testing positive for COVID-19 at worksites with 100 or fewer employees within a rolling 14-day period
2. 4% of employees testing positive for COVID-19 at worksites with over 100 employees within a rolling 14-day period
3. Where a specific work location has received an order to close from 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

Once an outbreak has been established, the presumption may then apply when the following criteria are met:

1. The employee tests positive for COVID-19 within 14 days after a day that the employee performed labor or services
2. The employee was not working from home, at the direction of the employer
3. The day the employee last performed services is on or after July 6, 2020
4. The employee’s positive test occurred during a period of an outbreak at the employee’s specific place of employment

The presumption may be rebutted by other evidence which includes but is not limited to measures the employer has in place to reduce potential transmission of COVID-19 in the workplace and evidence of an employee’s non-occupational risks of a COVID-19 infection.

For **Labor Code section 3212.88** the investigation period is reduced from 90 days to 45 days, and apportionment of permanent disability is allowed, pursuant to Labor Code sections 4663 and 4664.

This section shall remain in effect until January 1, 2023.



The legislation also assigned new reporting duties to the employer:

To establish whether an outbreak has occurred at a worksite, the employer is now required to report to its administrator when the employer knows or reasonably should know that an employee working at the location has tested positive for COVID-19. The following information must be reported to the claims administrator in writing, via e-mail or facsimile, within 3 business days:

1. An employee has tested positive. For purposes of this reporting, the employer shall not provide any personally identifiable information regarding the employee who tested positive for COVID-19 **unless** the employee asserts the infection is work related or has filed a claim form pursuant to Section 5401
2. The date the employee tests positive, which is the date the specimen was collected for testing
3. The specific address or addresses where the employee worked during the 14-day period preceding the date of the positive test
4. The highest number of employees who reported to work at the specific place of employment in the 45-day period preceding the last day the employee worked at the location.

The administrator is expected to log this information and use it to establish whether an outbreak has occurred at the injured worker's location each time they receive a new claim for COVID-19. In cases where no outbreak has been established, there will be no presumption of compensability and the administrator will have the customary 90 days to investigate the claim.

To prepare for the new record-keeping requirement:

- If the testing date for an employee is July 6 through September 16, 2020, you have 30 business days to report the information using the [SB 1159 COVID-19 Reporting Form 1-CA](#).
- If the testing date for an employee is on or after September 17, 2020, you have three (3) business days to report the information using the [SB 1159 COVID-19 Reporting Form 2-CA](#).

Once completed, please email the forms to GuideOneCACOVID19@guideone.com.

If you have any questions, please contact Christine Opfer at 1-515-267-5166.

