

# HR COMPLIANCE BULLETIN

## California Extends Workers' Comp Presumption for COVID-19

On Sept. 1, 2020, California amended its workers' compensation (WC) law, under Senate Bill 1159 (SB1159), to provide a presumption that COVID-19 is a compensable, work-related condition under certain circumstances. The bill is expected to be signed into law but will otherwise go into effect on Sept. 30, 2020.

In general, the changes mean that it would be an employer's burden to prove that an employee **did not** contract COVID-19 on the job, rather than the employee's burden of proving that he or she **did** contract it on the job.

A similar presumption was previously implemented under Executive Order N-62-20, but that had only applied for employees who worked outside their homes between March 19 and July 5, 2020. With some modifications, the new law adopts and expands that order to cover certain employees through **Jan. 1, 2023**. It also creates retroactive and ongoing reporting requirements for employers with five or more employees in the state.

This Compliance Bulletin provides a general overview of the amendments.

### Action Steps

California employers should become familiar with SB1159, review their policies and procedures to ensure compliance, and prepare to submit reports on any employees who have tested positive for COVID-19 since July 6, 2020.

Employers should also follow all workplace safety guidance from the Occupational Safety and Health Administration (OSHA), the Centers for Disease Control and Prevention (CDC) and local health authorities to minimize the risk of employees contracting COVID-19 on the job.

### Highlights

#### Presumption for COVID-19

California Senate Bill 1159 changes the state's WC law so that COVID-19 is presumed to be a work-related illness under certain circumstances.

#### Extension to Jan. 1, 2023

The bill codifies and expands an existing presumption, which was created by an executive order that expired July 5, until Jan. 1, 2023.

#### Reporting Mandates

Once the new law goes into effect, employers with five or more employees will have 30 business days to submit reports regarding employees who have tested positive for COVID-19. Ongoing reporting requirements also apply.

#### Leave Use Requirement

The new law requires employees to exhaust any COVID-19-related paid leave before receiving WC benefits.



JP Griffin Group

This Compliance Bulletin is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice. Design ©2020 Zywave, Inc. All rights reserved.



## BACKGROUND

Workers' compensation is a no-fault system that provides medical expenses and lost-income replacement for employees who sustain injuries or illnesses that arise out of and in the course and scope of their employment.

Each state has its own workers' compensation law that governs the process of determining whether an injury or illness is work related and therefore compensable. Under California's workers' compensation law, employees typically have the burden of proving that any claimed condition is work related.

On May 6, 2020, however, California's governor issued [Executive Order N-62-20](#) to reverse that burden for employees who were diagnosed with or tested positive for COVID-19 within 14 days after working at their places of employment between (and including) March 19 and July 5, 2020. On Sept. 1, 2020, the California legislature passed SB1159 to add the provisions of that order to the state's workers' compensation law and to extend the presumption that COVID-19 is work related to certain employees **through Jan. 1, 2023**.

## NEW PRESUMPTIONS UNDER SB1159

SB1159 creates a new presumption that COVID-19 is compensable for the following types of workers, if they test positive for COVID-19 within **14 days** after working at a place of employment (not including their own homes), at an employers' direction, **on or after July 6, 2020**:

- Active firefighting members (including volunteers) of various, local, state and federal fire departments;
- Peace officers who primarily engage in active law enforcement activities;
- Fire and rescue services coordinators who work for the Office of Emergency Services;
- Health facility workers who provide direct patient care to or come into contact with COVID-19 patients;
- Certain registered nurses, emergency medical technicians and emergency medical technician-paramedics;
- Workers who provide direct patient care for a home health agency; and
- Workers who provide in-home supportive services outside their own homes.

In addition, SB1159 extends the presumption to **any employee** who tests positive for COVID-19 within **14 days** after working at a place of employment, at an employers' direction, **on or after July 6, 2020**, if:

- The employer has **five or more employees**; and
- The employee tests positive during an **outbreak** at the employee's specific place of employment.

For this purpose, an "outbreak" exists when:

- Four employees at a specific workplace test positive for COVID-19 within a 14-day period, if the employer has 100 employees or fewer at that workplace;
- Four percent of the employees who reported to a specific workplace test positive for COVID-19 within a 14-day period, if the employer has more than 100 employees at that workplace; or
- A specific workplace is ordered to close by a local or state public health authority due to COVID-19-related risk.

A specific workplace means the building, facility, store, field or other location where an employee performs work at the employer's direction. It does not include an employee's home, unless the employee provides home health care services to another individual there.



## NEW REPORTING REQUIREMENTS

SB1159 imposes two new reporting requirements on employers that have **five or more employees** in the state. These requirements aim to help claims administrators determine if an outbreak exists for purposes of administering an employee's claim.

The first requirement is retroactive. Specifically, if an employer is aware that an employee tested positive for COVID-19 between July 5, 2020, and SB1159's effective date, the employer will be required to file a written report with its workers' compensation claims administrator within **30 business days** after the effective date.

The second requirement is ongoing and applies any time an employer knows or reasonably should know that an employee has tested positive for COVID-19 after SB1159 has become effective. When this occurs, the employer must submit a written report to its workers' compensation claims administrator **within three business days**.

Both of these reports must indicate that an employee has tested positive but must not include any personally identifiable information, unless the employee asserts the infection is work related. The reports must also include:

- The date the employee's specimen was collected for testing;
- The addresses of the employee's specific places of employment during the 14-day period before the date of his or her positive test; and
- The highest number of employees who reported to work at the employee's specific place of employment either:
  - On any given work day between July 6, 2020, and SB1159's effective date (for the retroactive reporting requirement); or
  - In the 45-day period before the last day the employee worked at each specific place of employment (for the ongoing reporting requirement).

If an employee works in multiple places at the employer's direction and tests positive for COVID-19 within 14 days after last working in any of those locations (other than his or her own home), the employer must count that as a positive test for each of those workplaces. In addition, any location where an outbreak does exist would be considered the employee's "specific place of employment."

Civil penalties of up to \$10,000 may be assessed if an employer fails to file these reports or intentionally submits false or misleading information on them.

## DISPUTING COVID-19 CLAIMS

When an employee is presumed to have a compensable claim for COVID-19, the employer may present evidence to rebut the presumption. Types of evidence that may help prove that an employee did not contract COVID-19 on the job include, for example, any measures the employer has in place to reduce potential transmission in the employee's workplace and any nonoccupational risks of COVID-19 infection the employee may have.

An employer that wishes to dispute an employee's presumptively compensable claim for COVID-19 must formally reject liability within either 30 days (for claims that do not depend on the existence of an outbreak for the presumption) or 45 days (for claims associated with an outbreak). Otherwise, the employer will be barred from using any already-discovered evidence to dispute the claim.