

# California Senate Bill 1159



**September 18, 2020**

## **Background**

- As the COVID-19 pandemic has progressed and a statewide stay-at-home order was issued, employees across a variety of industries were asked to continue reporting to work.
- Due to continued exposure outside of the home, these workers are more susceptible to contracting COVID-19.

## **Executive Order**

- Issued by Governor Newsom on May 6, 2020, and in effect through July 5, 2020
- Removed burdens of access to workers' compensation for all employees risking their own health and safety to deliver critical services outside their home during the statewide stay-at-home order
- Created a time-limited emergency workers' compensation benefit (rebuttable presumption) that COVID-19 was contracted at a workplace.
- After this timeframe, as the stay at home order is modified, exposure to the virus is likely to occur in a variety of settings.
- Employees could still submit a claim for workers compensation for COVID-19, but it would no longer be presumed to have occurred at a workplace.

## **Senate Bill 1159**

- Signed into law by Governor Newsom on September 17, 2020
- Creates presumptions of workers' compensation compensability until January 1, 2023, and applies retroactively to July 6, 2020
- Codifies the Executive Order, and should not affect already existing claims from prior to July 6, 2020. The employee must test positive or be diagnosed within 14 days after the employee performed services at his/her place of employment, at the employer's direction, between March 19, 2020 and July 5, 2020. The date of injury is considered to be the last date on which the employee performed services at the place of employment. The diagnosis must have been made by a licensed physician and surgeon holding an MD or D.O. degree, or a state licensed P.A. or Nurse Practitioner acting under the review or supervision of a physician or surgeon, within that authorized scope of practice and followed up with a 'serologic test' (antibody test) within 30 days.

### **Rebuttable Presumption For Safety And Medical Professions**

- Section 3 creates a disputable presumption until January 1, 2023 for employees working as a firefighter, peace officer, or as health professionals in the following capacities:
  - An employee who provides direct patient care or a custodial employee in contact with COVID-19 patients who works at a health facility
  - Employees of health facilities, other than those described above. For these employees, the presumption shall not apply if the employer can establish that the employee did not have contact with a health facility patient within the last 14 days who tested positive for COVID-19.
  - An authorized registered nurse, emergency medical technician I, II, or paramedic
  - An employee who provides direct patient care for a home health agency
  - A provider of in-home supportive services when the services are provided outside their own home or residence
- To qualify for this presumption, the worker must receive a positive Polymerase Chain Reaction (PCR) test (not an antibody test) for COVID-19 within 14 days of working at a place of employment on or after July 6, 2020, and within 14 days of termination of employment.
- Compensability decisions under Section 3 must be made within 30 days. If the case is not resolved or accepted prior to January 1, 2023, any potential presumption is lost.
- Requires the use of any COVID-19 related sick leave (under federal or state law), prior to using Temporary Disability benefits. There is not a waiting period for Temporary Disability benefits.

### **Rebuttable Presumption For All Other Employees Working Outside Of The Home**

- Section 4 creates a disputable presumption until January 1, 2023, applying to all other businesses in California that have more than 5 employees.
- The presumption arises if an outbreak occurred and is defined as follows:
  - An outbreak of 4 or more positive tests in a specific place of employment where the employer has 100 employees or fewer
  - An outbreak of 4% of employees test positive in a specific place of employment with more than 100 employees
  - If the employee works at multiple places at the direction of his/her employer, then the specific location of where an outbreak occurred within 14 days of the positive test is to be considered the 'outbreak' location, and all data from that particular location needs to be analyzed to determine if an outbreak occurred.
    - Specific place of employment is defined to encourage separation of work units by building, facility, agricultural field, etc. Place of employment does not include an employee's residence.
- To qualify for this presumption, the worker must receive a positive Polymerase Chain Reaction (PCR) test (not an antibody test) for COVID-19, within 14 days of working at a place of employment, on or after July 6, 2020, and within 14 days of termination of employment.
- Compensability decisions must be made within 45 days.
- Evidence to rebut the presumption can include: showing there were measures in place to reduce potential transmission, and the employee had non-occupational risks of infection.

- Employers are required to retroactively report positive tests back to July 6, 2020, to determine if any presumption existed between then and the time the law passes.
- Requires the use of any COVID-19 related sick leave (under federal or state law) prior to using Temporary Disability benefits. There is not a waiting period for Temporary Disability benefits.

### **Employer Duty To Report After July 6, 2020**

- Employer has a new affirmative duty to report to the claims administrator
- Once the employer “knows or reasonably should know” an employee tested positive for COVID-19, the employer MUST report to the claims administrator within 3 business days all of the following:
  - An employee tested positive with a PCR test (not identifying employee by name unless employee asserts the infection was work related).
  - Date employee tested positive (date specimen was collected)
  - Address of specific place of employment during the 14-day period preceding the positive test
  - 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 each specific place of employment
  - False reporting will result in civil penalties.
  - Potential \$10,000 fine for failure to report properly
- Additionally, the reporting requirement stretches back to July 6th, 2020, for all known Covid-19 positive tests.
  - The bill allows for 30 days to collect the relevant information noted above and report it to the employer.
  - Instead of 45 days to report the highest number of employees, for positive tests before the bill is signed into law, the bill requires reporting of employees working back to July 6th, 2020.
- The claims administrator has a new affirmative duty to use the above data to determine if an ‘outbreak’ occurred, for purposes of administering a claim.

## **Resources**

A full copy of the California Senate Bill 1159 can be found [here](#)

Please contact your local Lockton service team member with any questions you may have.

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*Lockton Insurance Brokers, LLC*

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