



Workers' Compensation Presumption (SB 1159) Frequently Asked Questions

<https://www.dir.ca.gov/dwc/Covid-19/FAQ-SB-1159.html>

[SB 1159](#) (Hill), enacted on September 17, 2020, added Sections 3212.86, 3212.87, and 3212.88 to the Labor Code. The bill protects the health and safety of all employees and the public by facilitating the provision of workers' compensation benefits. The statutes take effect immediately and remain in effect through January 1, 2023.

Question: What does SB 1159 do?

SB 1159 codifies the COVID-19 presumption created by Executive Order N-62-20 and provides two new rebuttable presumptions that an employee's illness related to coronavirus is an occupational injury and therefore eligible for workers' compensation benefits if specified criteria are met. Employees who are sick can stay home and be provided workers' compensation benefits, thereby reducing the spread of the virus to others at work and in the community. The new law encourages employers to comply with all local health directives and guidance concerning safely reopening businesses to reduce risk of exposure and mitigate outbreaks in the workplace.

Question: Who is helped by SB 1159?

SB 1159 codifies and supersedes [Governor Newsom's Executive Order N-62-20](#), which had covered all California employees who worked at a jobsite outside their home at the direction of their employer between March 19 and July 5, 2020, including first responders, farmworkers, grocery store workers, warehouse workers and others.

It additionally helps the following categories of employees who get sick or injured due to COVID-19 on or after July 6, 2020, by creating a rebuttable presumption of eligibility for workers' compensation benefits if specified criteria are met.

- First Responders and Health Care Workers, including active firefighting members of specified fire departments or units; certain peace officers; fire and rescue services coordinators who work for the Office of Emergency Services; employees who provide direct patient care or custodial employees in contact with COVID-19 patients who work for designated health facilities; paramedics and emergency medical technicians; employees providing direct patient care for a home health agency; providers of in-home supportive services; and other employees of designated health facilities.

- Employees whose employers have five or more employees, and who test positive for COVID-19 during an outbreak at their specific workplace.
 - An outbreak exists if within 14 days one of the following occurs at a specific place of employment: (1) four employees test positive if the employer has 100 employees or fewer; (2) four percent (4%) of the number of employees who reported to the specific place of employment test positive if the employer has more than 100 employees; or (3) a specific place of employment is ordered to close 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 of COVID-19.

Question: How are employers affected?

This law creates a rebuttable presumption of an industrial injury or illness for the above-described categories of workers. It encourages employers to comply with local health orders and industry-specific guidance for safely reopening by allowing employers to introduce evidence regarding measures they have taken to reduce potential transmission of COVID-19 in the workplace, in addition to other relevant evidence, to rebut the presumption.

This bill limits the risk of employers being liable for claims where the infection did not occur at work by tailoring the presumptions to those first responders and frontline health care workers whose work puts them at the greatest risk of exposure and other employees where there is a demonstrated and verifiable COVID-19 outbreak at their worksite.

Reporting Requirements

This bill imposes reporting requirements on employers for purposes of the outbreak presumption. Specifically, when an employer knows or reasonably should know that an employee has tested positive for COVID-19, the employer must report certain information to its claims administrator. Employers may be subject to civil penalties of up to \$10,000 for intentionally submitting false or misleading information, or for failing to report required information.

Question: How will DIR implement this bill?

- Disputes over whether an injured worker is covered under a presumption will be decided by the Workers' Compensation Appeals Board. The Division of Workers' Compensation is currently hearing all cases via telephone or video during the COVID-19 crisis.
- The Division of Workers' Compensation's Audit Unit may review workers' compensation claim files to see if cases that were eligible for the presumption were improperly denied.
- The Labor Commissioner's Office can investigate failure to comply with reporting requirements and assess related penalties.



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Question: SB 1159 provides that the presumption of a work-related illness “is disputable and may be controverted by other evidence.” What does that mean?

This means that even when an employee is presumed to have become ill from COVID-19 at work, an employer may dispute that conclusion. In such a case, however, the employer bears the burden of proving that the injury or illness did not occur at work.

Question: SB 1159 requires that my doctor’s diagnosis be confirmed by a test. What kind of test is acceptable?

The [Centers for Disease Control and Prevention](#) (CDC) advise that there are generally two kinds of tests available for COVID-19: [viral tests](#) and [antibody tests](#).

- A viral test tells you if you have a current infection.
- An antibody test tells you if you had a previous infection.

For injuries that occurred between March 19 and July 5, 2020, under the presumption the employee may utilize either a viral test or serologic antibody test.

For injuries that occurred on or after July 6, 2020, the employee must test positive utilizing a PCR (Polymerase Chain Reaction) test approved for use or approved for emergency use by the United States Food and Drug Administration (U.S. FDA) to detect the presence of viral RNA. The employee may also utilize any other viral culture test approved for use or approved for emergency use by the U.S. FDA to detect the presence of viral RNA which has the same or higher sensitivity and specificity as the PCR Test. The employee may not rely on serologic testing, also known as antibody testing. Additional tests are in development. For your records, you will want to keep copies of all medical records, including records related to your test.

Question: I filed a workers’ compensation claim for a COVID-19-related illness that my employer denied before SB 1159 became law. Does the new law automatically reverse my employer’s decision?

No. Where the denial occurred before SB 1159 became law, the employer may reconsider and accept the claim based upon the new law or stand by the denial. However, if your employer does not reverse its decision and you believe that you are entitled to benefits under this law, you may file for a hearing at [your closest DWC district office](#). You may seek assistance from an attorney or speak with one of the division’s [information and assistance officers](#) to help you.

Question: If a presumption is not applicable to me, does that mean I’m unable to file a workers’ compensation claim for a COVID-19-related illness?

No. If you are an employee and suffer a job-related injury or illness, you are entitled to file for workers’ compensation benefits. You should tell your employer that you would like to file a workers’ compensation claim. They are then required to provide you with a claim form.



[DWC's website has detailed information on how to file a claim.](#) If you don't qualify for a presumption under the new law, you may still be eligible to receive workers' compensation benefits if you contracted COVID-19 at work. You will need to meet certain threshold requirements, including proving that your injury or illness arose out of your employment.

Question: I was diagnosed with COVID-19 and have been using my own sick leave while I have been unable to work. Under SB 1159, if my illness is deemed related to my work, is my employer required to give me my sick leave back?

As explained below, it depends upon the type of sick leave benefits you are using.

- If your employer is providing you paid sick leave specifically available in response to COVID-19 (such as under the Families First Coronavirus Response Act or Executive Order N-51-20), then you must use that sick leave before you receive temporary disability benefits.
- If you do not have any supplemental paid sick leave specifically available in response to COVID-19, temporary disability benefits should be paid by your employer from the time you became disabled. This means that, if you took paid leave (sick leave, vacation time, personal time off) through your employer's plan, that leave should be restored back to you. If you have any questions about this or to address your specific situation, please speak with your employer.

Question: I was working and then got sick and tested positive for COVID-19. Do I qualify for benefits under the presumption?

Maybe. If you are eligible under SB 1159's criteria, you will be presumed eligible for workers' compensation benefits. However, that presumption is rebuttable, which means that your employer can dispute your claim and present evidence that you did not contract COVID-19 at work or are otherwise ineligible for the presumption. If your employer disputes your claim, you have the right to have the issue heard and decided by a workers' compensation judge.

Question: How long does my employer have to decide whether it will accept or deny my claim?

If you meet the criteria for the presumption under Section 3212.87 (i.e., the First Responders and Health Care Workers presumption), your employer will have up to 30 days to investigate and make a decision whether to accept or deny your claim. If your employer fails to reject your claim within 30 days, your injury or illness is presumed compensable, and your employer can then rebut that presumption only with evidence it discovered after the 30-day period.

If you meet the criteria for the presumption under Section 3212.88 (i.e., the Outbreak presumption), your employer will have up to 45 days to investigate and make a decision whether to accept or deny your claim. If your employer fails to reject your claim within 45 days, your injury or illness is presumed compensable, and your employer can then rebut that presumption only with evidence it discovered after the 45-day period.



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Until your employer makes that decision, you will be eligible for up to \$10,000 in medical treatment for your COVID-19-related illness. During that time, you may be eligible to receive federal, state, or local COVID-19-specific paid sick leave benefits, so you should speak to your employer about those benefits. If such benefits are not available, you may be [eligible for benefits from the Employment Development Department](#).

Question: What benefits may I be entitled to as a result of the workers' compensation presumption?

Workers' compensation insurance provides five basic benefits:

- Medical care: Reasonable and necessary medical treatment paid for by your employer to help you recover from an injury or illness caused by work.
- Temporary disability benefits: Payments if you lose wages because your injury prevents you from doing your usual job while recovering.
- Permanent disability benefits: Payments if you don't recover completely.
- Supplemental job displacement benefits: Vouchers to help pay for retraining or skill enhancement if you don't recover completely and don't return to work for your employer.
- Death benefits: Payments to your spouse, children, or other dependents if you die from a job injury or illness.

Question: I filed a claim for a COVID-19-related illness. What notification is my employer required to give advising me of the status of my claim?

Regardless of whether an employee files a claim before or after September 17, 2020, the employer is required to notify you of acceptance or denial of your claim by letter, as they must do under current law.

Questions?

Contact Team WIS&G today!



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