



September 23, 2020

Dear Client

Re: California SB 1159 Expands Presumption of Workers' Compensation Liability for COVID-19 Illness Claims

As you may be aware, in May 2020, California Governor Newsom signed Executive Order N-62-20, which created a rebuttable presumption that certain employees who test positive for COVID-19 contracted the virus at work for workers' compensation purposes. With the governor's order expiring on July 5, 2020, there has been widespread speculation as to whether the executive order would be substantively formalized into legislation and, if so, what portions of the executive order would be expanded, extended, or amended. As expected, the California legislature has passed Senate Bill 1159, which creates a new framework for COVID-19-related workers' compensation claims. As emergency legislation, this bill would take effect the day it was signed and chaptered, September 17, 2020.

SB 1159 expands access to workers' compensation by creating a rebuttable presumption of compensable injury for front line workers — health care workers, firefighters and peace officers. The presumption, while rebuttable, makes it easier for certain essential employees to receive workers' compensation benefits if they contract COVID-19. The law puts the onus on employers to rebut the presumption.

In addition to first responders and those in the health care field, the law also establishes a rebuttable presumption of workers' compensation coverage when there is a workplace **"outbreak"** at the employee's particular work location. This presumption applies to employers with five or more employees. An "outbreak" exists if within 14 calendar days one of the following occurs:

- If the employer has 100 employees or fewer at a specific place of employment, at least four employees test positive for COVID-19.
- If the employer has more than 100 employees at a specific place of employment, four percent of the number of employees who report to the place of employment test positive for COVID-19.
- 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 with COVID-19.

Reporting Requirements:

SB 1159 creates new reporting requirements for an employer. Beginning immediately, when an employer “knows or reasonably should know that an employee has tested positive for COVID-19” the employer must report to its claims administrator the following information *within three business days*, via e-mail or fax:

- An employee has tested positive. 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 Labor Code Section 5401.
- The date the employee tests positive—this is the date the specimen was collected for testing.
- The address or addresses of the employee’s specific place(s) of employment during the 14-day period preceding the date of the employee’s positive test.
- The highest number of employees who reported to work at the employee’s specific place of employment in the 45-day period preceding the last day the employee worked at each specific place of employment.

Wait, there’s More Reporting Requirements:

There are also separate reporting requirements for positive tests between July 6, 2020 and up to the September 17, 2020. If an employer is aware of an employee who has tested positive during this period, the employer must report the information in the first three bullet points above, via e-mail or fax, to its claims administrator within 30 business days from September 17 or by October 29, 2020. However, instead of the last bullet point above, the employer must report the highest number of employees who reported to work at each of the employee’s specific places of employment on any work date between July 6, 2020 and September 17, 2020.

The claims administrator will use the above information to determine whether an outbreak has occurred.

Following these reporting requirements is crucial as SB 1159 institutes a penalty of \$10,000 for an employer that “intentionally submits false or misleading information or fails to submit information.”

To assist AIMS in complying with SB 1159, we has developed a COVID-19 Reporting/Tracking Program. Attached you will find an overview of the COVID-19 Reporting/Tracking Program along with a COVID-19 Positive Test Report document. These need to be utilized to be in compliance with this new law.

If you have any questions, please do not hesitate to contact Lynn Cavalcanti, Sr. VP Operations – AIMS at 916-563-1900 or email at LCavalcanti@aims4claims.com



What Employers Need to Know About COVID-19 Reporting

Governor Newsom signed SB 1159 on September 17, 2020 that created new laws, which impact California employers who have employees who test positive for COVID-19.

One of these, Labor Code Section 3212.88 applies to California employers who have 5 or more employees. The new law says that if a COVID-19 outbreak occurs at a place of employment it is assumed employees who test positive for COVID-19 contracted it at work.

This law creates new reporting obligations for employers. Employers are now required to report to their claims administrator via email or fax, when the employer is aware that an employee tested positive for COVID-19. The report must be made within 3 business days.

COVID-19 Positive Test Report form shall include all the following Information.

Employers are required to report:

1. Notice that an employee has tested positive. Do not include any Personal Identifiable Information (such as SSN, DOB, etc.).
2. The date the specimen was collected for the positive test.
3. Positive PCR COVID-19 test or other FDA approved viral test. Serologic (antibody) testing is not a viable test.
4. All locations where employee worked at your direction during the 14-day period prior to the positive test result.
5. The highest number of employees who worked at the employee's specific work location(s) in the 45-day period preceding the last day that the employee worked there.

COVID-19 Positive Test Report Information from July 6, 2020 – September 16, 2020

If an employer is aware of an employee who tested positive prior to the effective date of this statute, between July 6, 2020 and September 16, 2020 they have until October 29, 2020 to report those cases to their claims administrator. The employer reporting requirements are the same as above for items 1 through 3, however the data under 4 should indicate the highest number of employees who reported to each specific work location during the period of between July 6, 2020 and September 17, 2020.

Failing to submit this information, or providing false or misleading information can result in an employer being assessed with a \$10,000 civil penalty and/or a citation.

An outbreak occurs if, within a 14-day calendar period, one of the following happens:

- Employers with 100 employees or less at a specific work location and **4** or more employees test positive at that specific location; or
- Employers with more than 100 employees at a specific work location and at least **4%** of employees test positive at that specific location; or
- A specific place of business is closed by local public health department, State Department of Public Health or school superintendent due to risk of infection with COVID-19.

A “specific work location” means the building, store, facility or agricultural field where the employee worked at your direction. Many workers may transition between multiple places of employment during their shift. So tracking the locations that they are required to work at is essential.

In addition, the employee must:

- Have worked on or after 7/6/2020; and
- Have worked outside their home or residence at the employer’s direction; or worked to provide home health care services to another individual at their home or residence; and
- Have a positive PCR COVID-19 test or other FDA approved viral test (does not include serologic (antibody) test) within 14 days after performing the labor or services; and
- The positive COVID-19 test must have occurred during a period of outbreak at the employee’s specific place of employment.

Claims administrators are tasked with using the reported information to calculate whether an outbreak has occurred. So providing timely, detailed reporting is critical.

Additionally, if a claim becomes accepted under this section an employee is required to exhaust any paid sick leave benefits specifically available in response to COVID-19 before temporary disability benefits may be paid.

The reporting form is attached to this information is in PDF fillable format. These forms and notices are also available on our Website at www.Aims4claims.com

If you have any questions please contact Lynn Cavalcanti, Sr. VP Operation at 916.563.1900 or email at LCavalcanti@aims4claims.com