



WORKERS' COMPENSATION COVERAGE FOR COVID-19 (SB 1159)

SB 1159, effective immediately and continuing through January 1, 2023, creates rebuttable presumption standards to establish workers' compensation coverage for certain employees who contract COVID-19 after they have exhausted their COVID sick pay. It also creates additional reporting requirements.

Standards for the Application of the Rebuttable Presumption of Workers' Compensation Coverage for an Employee's COVID-19 Illness:

1. COVID-19 Illness Between March 19, 2020 through July 5, 2020 – The rebuttable presumption applies to any employee who reported to their place of employment between March 19 and July 5, 2020, and who tested positive for or was diagnosed with COVID-19 within the following 14 days during that time period.
2. Frontline Personnel Extension – This rebuttable presumption is extended beyond July 6, 2020, for firefighters, peace officers, fire and rescue coordinators, and certain kinds of healthcare and health facility workers, including in-home supportive services providers that provide services outside their own home. For health facility employees other than those who provide direct patient care, and other than custodial employees in contact with COVID-19 patients, the presumption does not apply if the employer can show the employee did not have contact with a COVID-19 positive patient within the 14-day period.
3. COVID-19 Outbreak Extension for Businesses with 5 or More Employees – For all other employees, the rebuttable presumption is only applied if the employee works for an employer with 5 or more employees and the employee tests positive for COVID-19 within 14 days after reporting to their place of employment during a COVID-19 "outbreak" at the employee's specific workplace. For purposes of this presumption, a COVID-19 "outbreak" exists if within 14 calendar days one of the following occurs at a "specific place of employment" (which excludes the employee's home):
 - If the employer has 100 employees or fewer at a specific place of employment, 4 employees test positive for COVID-19;
 - If the employer has more than 100 employees at a specific place of employment, 4% of the number of employees who reported to the specific place of employment, test positive for COVID; or
 - 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.

Employees Must First Exhaust All COVID-19 Related Sick Pay

Employees must exhaust any COVID-19 related supplemental paid sick leave benefits (e.g., FFCRA's Emergency Paid Sick Leave or California's supplemental paid sick leave under the new AB 1867) and meet certain certification requirements before receiving temporary disability benefits or an industrial injury leave of absence.

What Employers Must Do to Ensure Compliance

1. Report within 3 Business Days – For purposes of administering this “outbreak” presumption, employers must report to their workers’ compensation claims administrator in writing within three business days when they know or reasonably should know that an employee has tested positive for COVID-19, along with other relevant information.[1]
2. Provide a Workers’ Comp Claim Form – Employers should continue to provide COVID-19 positive employees with a worker’s compensation claim form regardless of whether you believe the employee to be covered. Your workers’ compensation carrier will assist you in making that determination.

¹ The Workers’ Compensation Appeals Board (“WCAB”) is bound by these presumptions unless presented with controverted evidence to dispute the presumption. Workers’ compensation awarded for covered COVID-19 related illness or death includes full hospital, surgical, medical treatment, disability indemnity, and death benefits. The bill also makes a workers’ compensation claim relating to a COVID-19 illness presumptively compensable, as described above, after only 30 days, rather than the standard 90-day time period for all other types of workers’ compensation claims.

IF YOU HAVE QUESTIONS PLEASE REACH OUT TO
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