

MPCC Roundtable
September 29, 2020 TPO Update



*These updates are a small sample of important topics and information we provide and discuss with our members in helping manage to FFCRA and everything HR. For questions about this week's topic or information about TPO Membership and the products and services we provide, please contact Michaelle Stanford, PHR-ca, M.A. at michaelles@tpohr.com. **TPO Note:** As a reminder, these updates are for informational purposes only. For unique situations to your business, consult with your Human Resource provider or employment expert.*

At TPO, we continue to monitor the many different federal, state and local resources. September 17, 2020 was an extremely busy day in the signing of multiple bills; one of which is of immediate importance,

California SB 1159 & “Disputable Presumption” of Workers’ Compensation Liability for COVID-19 Illness Claims

Signed into law on September 17, 2020 and effective immediately, SB 1159 expands OSHA’s Interim Guidance & Reporting requirements allowing the state to track COVID-19 cases more closely and by stating that a “disputable presumption” exists for an employee who suffers illness or death resulting from COVID-19 on or after July 6, 2020 through January 1, 2023.

How is “Illness or Injury” Defined? The bill defines “injury” to include illness or death resulting from the 2019 novel coronavirus disease (COVID-19) under specified circumstances, until January 1, 2023. The bill creates a “disputable presumption” that the employee’s injury arose out of and in the course of employment and is compensable, for specified dates of injury. The employer may dispute the presumption as refuted by other evidence.

Which Employees Are Covered? SB 1159 applies to all employees whose employer has **5 or more employees** where all of the following apply:

- 1) The employee tests positive for or was diagnosed with COVID-19 **within 14 days** after a day the employee performed labor or services at their place of employment or at the employee’s place of employment or at the employer’s direction, and
- 2) The day on which the employee performed labor or services at the employee’s place of employment at the employer’s direction was **on or after July 6, 2020**. The date of injury shall be the last date the employee performed labor or services prior to the positive test, and
- 3) The employee’s positive test occurred during a period of an **“outbreak”** at the employee’s specific place of employment.
 - For Healthcare and First Responders this does not apply.

What is an Outbreak? Under Labor Code 3212.88, an “outbreak” exists if within 14 calendar days one of the following occurs at a specific place of employment:

- A. If the employer has **100 employees or fewer** at a specific place of employment, **4 employees** test positive for COVID-19, or

- B. If the employer has **more than 100 employees** at a specific place of employment, **4 percent (4%)** of the number of employees who reported to the specific place of employment, test positive for COVID-19, or
- C. 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.

What are the Reporting Requirements? When an employer “*knows or reasonably should know*” that an employee has tested positive for COVID-19, the employer shall **report to their claims administrator** in writing via electronic mail or facsimile within 3 business days all of the following:

- 1) An employee has tested positive. For purposes of this reporting, 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.
- 2) The date the employee tests positive, which is the date the specimen was collected for testing.
- 3) The address or addresses of the employee’s specific place of employment during the 14-day period preceding the date of the employee’s positive test.
- 4) 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.

**NEW requirement!
When to Contact Your
Claims Examiner!**

The employer and claim administrator must work quickly to gather evidence to dispute the presumption. If the date of injury is on or after July 6, 2020, the claim administrator *has *45 days to deny the claim*, or the injury is presumed compensable.

*Healthcare and First-Responders have 30 days.

Looking for resources on safety? (both general and industry-specific):

- **Federal OSHA COVID-19 landing page** – <https://www.osha.gov/SLTC/covid-19/>
- **Cal/OSHA COVID-19 landing page** – <https://www.dir.ca.gov/dosh/coronavirus/Health-Care-General-Industry.html>
- **Cal OSHA Chief letter affirming alignment to Federal OSHA -**
<https://californiasmacna.wildapricot.org/resources/construction%20and%20injury%20reporting%20letter%2004%2008%202020.pdf>
- **Your Workers’ Compensation Carrier** – as well as your trusted Broker.
- **CDC** – <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html>
- **California Department of Public Health** –
<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx>
 - To search by county or city -
<https://www.cdph.ca.gov/Pages/LocalHealthServicesAndOffices.aspx#>

Note from TPO: Due to the seriousness of this topic, TPO recommends clients work closely with their Workers’ Compensation Carrier and their trusted broker. This is critical in that employers have 45 days (30 days for direct care workers) to reject (dispute or rebut) the claim.