

WORKER'S COMPENSATION COVID-19 SB 1159 (HILL)

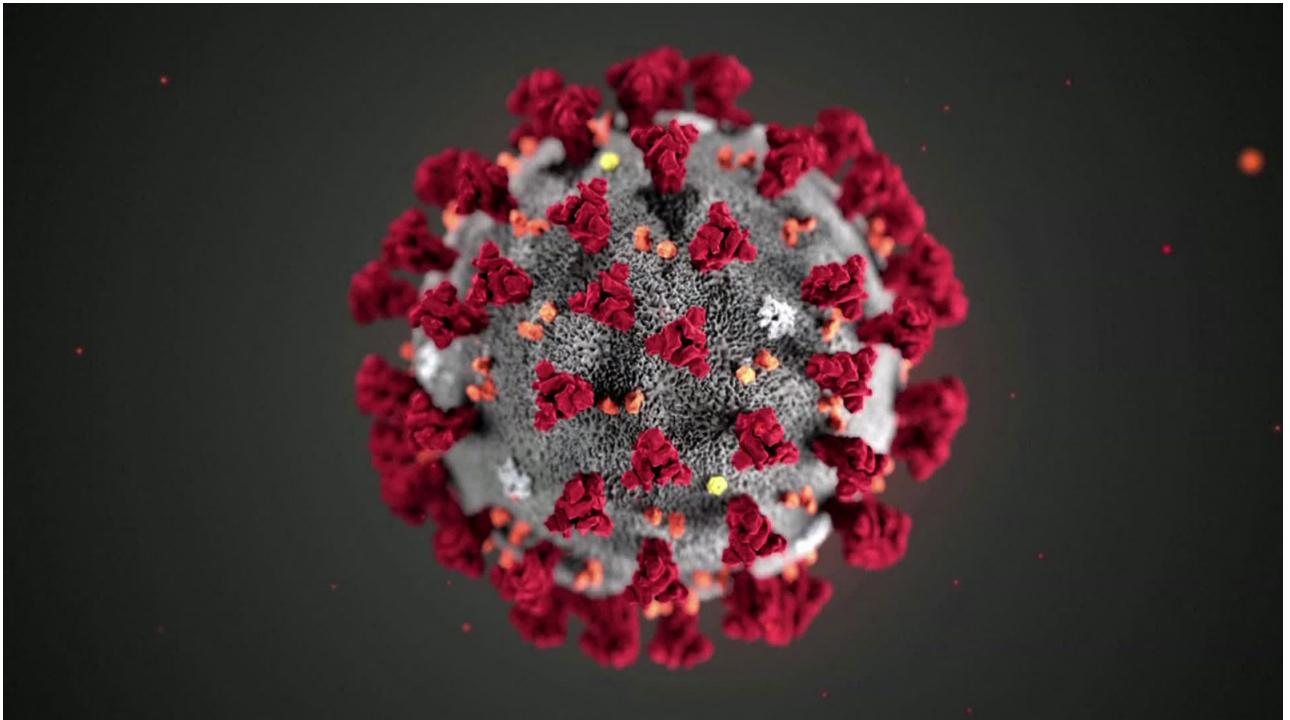


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Worker's Compensation COVID-19 SB 1159 (Hill)



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HOW DID WE GET HERE?

- Governor's Objective
- Executive Order
- AB 196 (Gonzalez)
- SB 1159 (Hill)

GOVERNOR NEWSOM

“We are removing a burden for workers on the front lines, who risk their own health and safety to deliver critical services to our fellow Californians, so that they can access benefits, and be able to focus on their recovery. Workers’ compensation is a critical piece to reopening the state and it will help workers get the care they need to get healthy, and in turn, protect public health.”

EXECUTIVE ORDER

N-62-20

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

EXECUTIVE ORDER N-62-20

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

EXECUTIVE ORDER
N-62-20 EFFECTIVE
MAY 6, 2020

- Any COVID-19-related illness of an employee shall be presumed to arise out of and in the course of the employment for purposes of awarding workers' compensation benefits ...The presumption is disputable and may be controverted by other evidence ...This presumption shall only apply to dates of injury occurring
 - through 60 days following the date of this Order.

AB 196 (GONZALEZ)

AMENDED IN SENATE AUGUST 25, 2020

AMENDED IN SENATE MAY 5, 2020

AMENDED IN ASSEMBLY MARCH 26, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 196

Introduced by Assembly Member Gonzalez

January 10, 2019

An act to add Section 3213.5 to the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 196, as amended, Gonzalez. Workers' compensation: COVID-19: essential occupations and industries.

AB 196 (GONZALEZ)

- Extends a rebuttable conclusive presumption to all essential employees, as defined, that COVID-19 is an industrial injury.
- Provides that the presumption applies to an injury that occurs on or after March 1, 2020.

SB 1159 (HILL)

Senate Bill No. 1159

CHAPTER 85

An act to add Section 77.8 to, and to add and repeal Sections 3212.86, 3212.87, and 3212.88 of, the Labor Code, relating to workers' compensation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 17, 2020. Filed with
Secretary of State September 17, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1159, Hill. Workers' compensation: COVID-19: critical workers.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee, as defined, for injuries sustained in the course of employment. Existing law creates a disputable presumption that specified injuries sustained in the course of employment of a specified member of law enforcement or a specified first responder arose out of and in the course of the employment. Existing law governs the procedures for filing a claim for workers' compensation, including filing a claim form, and provides that an injury is presumed compensable if liability is not rejected within 90 days after the claim form is filed, as specified. Existing case law provides for how certain presumptions may be rebutted.

SB 1159 (HILL)

- Codifies Executive Order (N-62-20).
- Provides a rebuttable presumption for front line workers.
- Establishes a presumption of compensability for employees who contract COVID-19 where there is an "outbreak" at a particular work location.



Review of SB1159

September 1, 2020





When does it expire?

- ▶ SB1159 will remain in effect until January 1,2023. It can be repealed.
- ▶ SB1159 shall not be a basis to rescind, alter, amend, or reopen any final award for workers compensation.
- ▶ SB1159 passed and it was signed into law on September 17, 2020.
- ▶ SB1159 was passed as an urgency statute, meaning it will go into effect immediately when signed.



COVID-19 SB1159

Injury includes illness or death resulting from COVID-19 if all following circumstances apply

- ▶ Employee tests positive within 14 days after a day that the employee performed labor or services at the employee's place of employment at the employer's direction.
- ▶ Place of employment does not include illness at employee's residence.
- ▶ Updated SB1159 authorizes a year long study of COVID-19 impacts on the workers' compensation system
- ▶ On or after March 19, 2020 and on or before July 5, 2020. Update applies retroactively to July 6, 2020 and lasts until January 1, 2023 and the same rules apply for covering dates March 19-July 5.
- ▶ Date of injury shall be the last date the employee performed labor or services at the employee's place of employment at the employer's direction.
- ▶ Diagnosis must be done by a licensed physician and surgeon holding an MD or DO degree or state licensed physician assistant or nurse practitioner.



COVID-19 Benefits

Benefits 3212.86 3212.87 3212.88

- ▶ Benefits provided are full hospital, surgical, medical treatment, disability, indemnity and death benefits.
- ▶ Department of Industrial Relations shall waive collection on death benefit payment if there is no beneficiary.



COVID-19 All Other Businesses

September 1, 2020





SB1159 Outbreak Qualification July 6, 2020

Outbreak All Other Employees 3212.88

- ▶ Test positive for COVID-19 at the employee's specific place of employment and whose employer has 5 or more employees.
- ▶ Tests positive within 14 days after the employee performed labor or services at the employee's place of employment at the employer's direction on or after July 6, 2020.
- ▶ Employee tests positive during a period of an outbreak at the employee's specific place of employment. (i.e., the building, store, facility or agricultural field where he/she performs work at the employer's direction).
- ▶ The specific place of employment was not the employee's home or residence, unless he/she provides home health care services to another individual at his/her home or residence.
- ▶ Date of injury shall be the last date the employee performed labor or services at the employee's place of employment at the employer prior to the positive test.



Outbreak Definition

- ▶ An “outbreak” exists for the purposes of §3212.88 if within 14 calendar days, one of these occurs at a specific place of employment:
 - ▶ Four employees test positive for COVID-19 at a specific place of employment with 100 employees or fewer.
 - ▶ Four percent of the number of employees test positive for COVID-19 where more than 100 employees reported to the specific place of employment.
- ▶ The place of employment is ordered to close due to a risk of infection with COVID-19 by a local public health department, the State Department of Public Health, the Division of Occupational Safety and Health or a school superintendent.



Outbreak Definition Continued

- ▶ If an employee performs in multiple places of employment within 14 days of his or her positive test, the positive test must be counted for the purpose of determining the existence of an outbreak at each of those places of employment.
- ▶ If an outbreak exists at any one of them, that is the employee's "specific place of employment."
- ▶ If these conditions are met, the injury or death related to COVID-19 is presumed to arise out of and in the course of the employment.



SB1159 Outbreak July 6, 2020

Temporary Disability 3212.88

- ▶ Paid sick leave benefits specifically available in response to COVID-19 shall be used and exhausted before any temporary disability is paid.
- ▶ If there are no sick leave benefits available , temporary disability shall be paid.
- ▶ No waiting period.
- ▶ Unlike for COVID-19 related illnesses before July 6, 2020, there is no requirement for employees to be certified for temporary disability every 15 days for the first 45 days following the COVID-19 diagnosis.



Outbreak Delay Period 3212.88

- ▶ 45 days to determine compensability.
- ▶ Only rebuttable if evidence discovered subsequent to the 45 day period.



Presumption 3212.88

- ▶ Presumption is disputable and may be controverted by other evidence. Unless controverted, the appeals board is bound to find in accordance with the presumption.
- ▶ Extends to an employee following termination of services for a period of 14 days, commencing with the last date actually worked.
- ▶ Evidence relevant to controverting the presumption may include evidence of measures in place to reduce potential transmission of COVID-19 in the place of employment.
- ▶ Evidence of an employee's non occupational risks of COVID-19 infection.



Formerly Ascension Insurance

Claim Administrator Reporting & Tracking

September 1, 2020





COVID 19 Claim Administrator Reporting

All COVID-19 CLAIMS

- ▶ When the employer knows or reasonably should know that an employee has tested positive for COVID-19, the employer shall report to the claim administrator in writing via electronic mail or facsimile within 3 business days all the following:
 - For purposes of reporting, the employer **shall not provide** any personally identifiable information who tested positive for COVID-19 **unless the employee asserts the infection is work related or has filed a claim form.**
 - The date the employee tests positive, which is the date the specimen was collected for testing.
 - The specific 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.
 - 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.



SB1159 Claim Administrator Tracking

COVID-19

- ▶ Employer is aware of an employee testing positive on or after July 6, 2020, shall report all data required to their claim administrator within 30 business days.
- ▶ Employer shall report the highest number of employees who reported to work at each of the employee's specific places of employment on any given work day between July 6, 2020 and the effective date of this section.
- ▶ Claims administrators must use the information "to determine if an outbreak has occurred for the purpose of administering a claim."
- ▶ A claims administrator must also "continually evaluate each claim to determine whether the requisite number of positive tests have occurred during the surrounding 14-day periods."



Civil Penalties

- ▶ An employer or other person acting on behalf of an employer who **intentionally files false or misleading information or fails to submit information when reporting is subject to a civil penalty up to \$10,000 .**
- ▶ The Labor Commissioner may issue a citation following inspection or investigation.



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