

COVID reporting and SB 1159 guidelines

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General guidelines and principles

1. All presumptions, regardless of DOI, are rebuttable.
2. There is a requirement for a positive test (must be PCR) and must be within 14 days after working at place of employment (not just home).
3. LC 4850, Ed Code benefits due, AFTER COVID-19 benefits exhausted. There is a requirement in section 2 of certification every 15 days within 45 days after diagnosis.
4. MPN is enforceable for claims on delay and accepted injuries.

SB 1159, LC 3212.86 (effective 5/6/20), LC 3212.87, LC 3212.88

- *NOTE: If the work did NOT occur outside of the home at the ER's direction - No presumption*
- *NOTE: If the work was NOT performed between 3/19/20 (EO) and before 1/1/23 (SB 1159) - No presumption*

1. LC 3212.86 (Sec. 2) (3/19/20-7/5/20 DOI)

- Involves employees who perform work at employer's direction OUTSIDE of home during this period
- Date of decision is within 30 days of filing of the DWC-1 form
- Positive test required within 14 days of working at the employer's place of business
 - If test completed timely - **COVID PRESUMED INDUSTRIAL**
 - If no test or not completed timely - if there is a diagnosis from a medical doctor holding physician/surgeon license issued by CA medical board AND diagnosis

confirmed with a positive test or antivirus test within 30 days - **COVID PRESUMED INDUSTRIAL**

- Contraction can occur while performing duties per ER request OR after working at ER's place of business and at their direction.
- MPN can be enforced
- 30 DAY DECISION ON COMPENSABILITY
- **Defenses - in the event all facts apply as indicated above, defendant must prove COVID-19 NOT contracted at work.**

2. LC 3212.87 (Sec. 3) - Involves Firefighters, police, health facility workers and home healthcare workers only

- Healthcare facility workers
 - "Health Facility" Defined: Section 3/LC 3212.87(a)(7), (a)(10) states that "For the purposes of this subdivision, "health facility" means a health facility as defined in subdivision (a), (b), (c), (m) or (n) of Section 1250 of the Health and Safety Code."
 - Classes of workers:
 - Employees with direct patient care or custodial in contact with COVID- 19 who work at a health facility
 - RN/EMT/Paramedics
 - EEs who provide care for a HH agency (H.S.C. 1127)
 - In-home support services outside of EE's own home
 - EEs of health facilities (other than direct patient care)
 - If applicant had contact with a patient who tested positive within 14 days AND they received a positive test that was taken within 14 days of working the ER - **COVID PRESUMED INDUSTRIAL**

- If no to either - **NO PRESUMPTION**
- Contraction can occur while performing duties per ER request OR after working at ER's place of business and at their direction.
- MPN can be enforced.
- *Claim form must be reported within 24 hours of knowledge and reported to TPA/Carrier within the same time.*
- **30 DAY DECISION ON COMPENSABILITY**
- **Defenses - No positive test within timeframe, alternative sources of infection/contraction, post-termination* (subject to limitations)**
 - *Provision in this section allows for filing of claim within 14 days following last day worked

For #1 and #2

- **If the claim is denied within 30 days of investigation - Alternative causation evidence must be provided.**
- **If the claim is not denied, it is presumed compensable and can only be denied with rebuttable evidence not available within initial 30 days of investigation.**

3. LC 3212.88- Everyone not covered by LC. 3212.86, 3212.87, during a COVID "outbreak"*

- The reporting of COVID-19 cases applies to BOTH exposure at work claims and exposure that is NOT determined to be work-related.
- If employer has 5 or less employees - **NO PRESUMPTION**
- If more than 5 employees and there is an "outbreak"* at work - **COVID PRESUMED INDUSTRIAL**

- 45 DAY DECISION ON COMPENSABILITY
- **Defenses - LC 3212.88(e)(2) - The employer has measures in place to reduce the potential transmission of COVID-19. Non-occupational risks, such as family member who tested positive. No contact within last 14 days of patient who tested positive. All other defenses according to fact/law**

REPORTING REQUIREMENTS PER LC 3212.88

NOTE: Failure to report timely can subject ER to a civil penalty of up to \$10,000.00 for failure to report. This MAY include a penalty for each infraction

NOTE: This does NOT require the EE to file a DWC-1 claim form (Sec. 4)

NOTE: Personally identifiable information is NOT to be provided UNLESS EE is reporting a claim/workplace injury

Prior to 9/17/20 (7/6/20 – 9/17/20)

In the event of a positive test:

- **SAFE HARBOR PROVISION- 7/6/20 to date of SB 1159 signature - report within 30 days**

The report must include:

- The date of the positive test (date sample taken must be included)
- For each separate location an employee worked in the 14 days prior to the test date, provide:
 - The work location address
 - 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

- Reports must be emailed or faxed to the TPA/Carrier
- Reporting does not require a claim form
- Reporting obligations of employer include protecting employees' privacy (see above Note)

After 9/18/20

In the event of a positive test:

- Report within 3 business days when they knew/should have known of a possible COVID-19 case

The report must include:

- The date of the positive test (date sample taken must be included)
- For each separate location an employee worked in the 14 days prior to the test date, provide:
 - The work location address
 - 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
- Reports must be emailed or faxed to the TPA\Carrier
- Reporting does not require a claim form
- Reporting obligations of employer include protecting employees' privacy (see above Note)

DETERMINING WHAT CONSTITUTES AN “OUTBREAK”, LC 3212.88 (Sec. 4)

Note: The information collected from reporting the cases as indicated above is for the CARRIER/TPA to determine if there is an “outbreak.”

Note: The determination of an “outbreak” is to establish the applicability of the rebuttable presumption on causation.

An “outbreak” is defined as follows:

- Employer has at least 5 employees
- DOI - on or after 7/6/20
- EE NOT covered by LC 3212.87 (Sec. 3)
- Number of employees at the workplace who received a positive test - taken within 14 days of the employee’s positive test- to be considered an outbreak
 - 4 or more EEs test positive for COVID at a work site with 5-100 employees.
 - 4% or more EEs test positive for COVID at a work site with 101+ employees.
 - *This section DOES indicate “specific place of employment”, see below, to trigger the designation of an “outbreak”*

MISCELLANEOUS ITEMS TO NOTE

- Temporary EEs are not separated from “employee” status- rule of thumb. If they are working in your facility, you may wish to report them to be on the safe side.
- A specific place of employment- can be a building, store, facility or agricultural field where the EE performs work at the ER’s direction.
- A specific place of employment does not include the EE’s home/residence unless they provide HHC services to another individual at the EE’s home or residence.
- *All facts may vary on a case-by-case analysis and assessment*