

Dear Risico Ag Customers and Insurance Partners:

California Governor Gavin Newsom signed [Senate Bill 1159](#) into law on September 17, 2020, creating a rebuttable presumption of compensability and awarding workers' compensation benefits to workers who contract COVID-19. Due to the bill being urgency legislation, it becomes effective immediately and requires action by most employers and claims administrators immediately. SB 1159 sunsets on January 1, 2023, unless Legislature acts before that time.

SB 1159 establishes three separate presumptions that cover most employees in the State of California. In an effort to deliver only the most important and relevant information to our customers and insurance partners in the Ag community, we've limited this letter to cover only the sections of the legislation impacting you directly.

CODIFYING EXECUTIVE ORDER N-62-20

The new labor code established by the first relevant presumption mostly conforms to the form and substance of [Executive Order N-62-20](#) and applies to all employees with COVID-19-related illness from March 19, 2020 to July 5, 2020.

Accordingly, injury is established when an employee tests positive, or is diagnosed within 14 days of the date last worked at the employer's place of employment, and at the direction of the employer.

Where the employee satisfies the injury requirement via diagnosis within 14 days of the date of injury, the diagnosis must be confirmed by a positive test or serologic test (antibody test) within 30 days of the diagnosis. The diagnosis must be made by a state licensed M.D., D.O., or a state licensed P.A. or Nurse Practitioner under the review or supervision of a physician or D.O.

The remainder of SB 1159, pertinent to this presumption, echoes Executive Order N-62-20.

REBUTTABLE PRESUMPTION THROUGH JANUARY 2023

The second relevant presumption establishes new Labor Code § 3212.88 and applies to *all* employees, other than most safety officers and several classes of healthcare workers. The intent of this section is to provide workers whose employers employ five or more workers a *45-day* rebuttable presumption that COVID-19 is a work-related injury from July 6, 2020 to January 1, 2023.

In order to qualify as an injury, the employee must test positive during an "outbreak" at the specific place of employment within 14 days of performing labor on or after July 6, 2020.

An outbreak exists if at a specific worksite, the employer has 1 to 100 employees working and 4 tested positive within a 14-day period, OR the employer has 101 or more employees working and 4% tested positive within a 14-day period, OR the specific place of employment was ordered to close by State, local Public Health Department, OSHA, or Superintendent due to risk of infection with COVID-19.

In contrast to Executive Order N-62-20, a diagnosis followed by a positive test does **not** qualify. Additionally, testing must be PCR (Polymerase Chain Reaction), or other viral testing approved by the FDA and **does not include serologic (antibody) testing**.

An injury will be presumed compensable unless denied within *45 days* of the filing of the DWC-1.

REQUIRED REPORTING AND RISICO'S SUPPORT TO YOU



New Labor Code § 3212.88 requires ongoing reporting of all COVID-19, **regardless of whether the employee claims that it is work-related**. Risico has developed a COVID-19 Reporting Form available to all customers and partners online in our [library of resources](#).

Employers who know, or reasonably should know, that an employee has tested positive are required to report to the Claims Administrator in writing (electronic or facsimile) within 3 business days that an employee has tested positive, the date of the employee's positive test, specific address(es) of the employee's specific place of employment during the 14-days preceding the positive test, and the highest number of employees reporting to work during the 45 days preceding the employee's last day worked at each specific place of employment.

Of critical importance, no personally identifiable information is to be reported unless the employee asserts the infection is work-related and has filed a claim form.

Reporting for positive tests occurring between July 6, 2020 and the effective date of the legislation shall be reported within 30 days of the effective date of legislation.

An employer, or other person acting on behalf of the employer, who fails to report the required data or who intentionally submits false or misleading information is subject to a civil penalty up to \$10,000 to be assessed by the Labor Commissioner.

For additional questions, or concerns please contact Risico's Client Services Coordinator, Juanita Rodriguez, by email at jrodriguez@risico.com.

Risico's Executive Leadership team remains at your convenience to answer any other questions or concerns that arise.

Thank you for being a Risico policyholder and considering us a partner that you can trust. We hope you keep safe and healthy.

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Dated: September 23, 2020

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