

Dear Risico Customers:

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.

It is essential to note that SB 1159 establishes three presumptions:

1. Labor Code § 3212.86 codifies Governor Newsom's [Executive Order N-62-20](#) that was in effect through July 5, 2020;
2. Labor Code § 3212.87 covers firefighters, peace officers, fire and rescue service coordinators, authorized R.N., E.M.T. I & II, or Paramedic, and 'home health agency direct patient care', custodial employees who are in contact with COVID-19 patients and work in a health facility, and In-Home Supportive Service employees providing services outside of their own home and is effective from July 6, 2020 (the day after the Executive Order expired); and
3. Labor Code § 3212.88 covers all other classifications of employment not mentioned in number 2 above whose employers employ five or more employees. This presumption deals with an "outbreak," during a 14-day period, and is the only section that covers *all* employees from July 6, 2020 to January 1, 2023.

NEW LABOR CODE § 3212.86

The new labor code 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.

According to Labor Code §§ 3212.86(b) (1 & 2), 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.

The date of injury is the last date that the employee performed labor or services at the employer's place of employment 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.

NEW LABOR CODE § 3212.87

New Labor Code § 3212.87 establishes a rebuttable presumption of compensability for firefighters, peace officers, fire and rescue service coordinators, authorized R.N., E.M.T. I & II, or Paramedic, and 'home health agency direct patient care', custodial employees who are in contact with COVID-19 patients and work in a health facility, and In-Home Supportive Service employees providing services outside of their own home. The rebuttable presumption applies to injured employees from July 6, 2020 to January 1, 2023.



Labor Code § 3212.87 specifies that injury is established, and the *30-day* rebuttable presumption of compensability applies, when an employee, in the aforementioned categories, tests positive within 14 days of the date last worked at the employer's place of employment and at the employer's direction. It is important to understand that a diagnosis followed by a positive test, as in LC § 3212.86, does **not** qualify for this presumption.

Testing must be PCR (Polymerase Chain Reaction), or other viral testing approved by the FDA and **does not include serologic (antibody) testing**.

The date of injury is the last date the employee performed labor or services at the employer's place of employment on, or after July 6, 2020.

An injury will be presumed compensable unless denied within **30 days** of the filing of the DWC-1.

Paid COVID-19-related sick leave must be exhausted prior to the commencement of TD, § 4800, § 4800.5, § 4850. If no COVID-19-related paid sick leave is available to the employee, payment of TD or § 4850 benefits begin from the date of disability, with no waiting period.

NEW LABOR CODE § 3212.88

Labor Code § 3212.88 applies to **all** employees not covered under Labor Code § 3212.87. 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 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 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."

As with § 3212.87, 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**.

The date of injury is the last date the employee performed labor or services at the employer's place of employment on, or after July 6, 2020.

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 is 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 your Risico Claims Management or Risico Total Managed Care Services representative, or call (866) RISICO1.

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

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