



California Senate Bill #SB 1159 Summary

On September 17, 2020, a new law was enacted in California that expanded a presumption of compensability for COVID-19 Workers' Compensation claims. The new legislation codifies a previous Executive Order N-62-20 executed by California Governor Gavin Newsom, and further establishes a rebuttal presumption that illness or death related to COVID-19 is compensable for public safety and healthcare workers, and employees who contract the virus during an "outbreak" at the workplace – the definition of an outbreak as it pertains to this new law is further defined below. The new legislation affects all employees and employers in California who are not exclusively working from their home or residence from March 19, 2020, through January 1, 2023, who test positive for the virus and meet the requirements of each respective statute.

To help you better understand the law and how your business may be affected by the Workers' Compensation changes, we have provided a detailed summary of the new legislation below.

Understanding the Statutes

This new legislation, in following the prior executive order, separates out the following three statutes: LC 3212.86, LC 3212.87 and LC 3212.88.

LC 3212.86 pertains to those employees who tested positive for COVID-19 within the Executive Order N-62-20 window (March 19, 2020 through July 5, 2020). So long as all conditions of the order are met, the Workers' Compensation claim is presumed compensable. The Workers' Compensation carrier would have to accept or deny the claim within 30 days of investigation and the claim could only be denied thereafter if the evidence brought forth was not available in the initial 30 days.

LC 3212.87 pertains to public safety, healthcare and other front-line workers who contracted COVID-19 on or after July 6, 2020. The worker would have had to provide direct patient care or had contact with a patient within 14 days of the worker's positive COVID-19 test, and there must be a positive test for COVID-19 that was taken within the 14 days of service. The Workers' Compensation carrier would have to accept or deny the claim within 30 days of investigation and the claim could only be denied thereafter if the evidence brought forth was not available in the initial 30 days.

LC 3212.88 any employer who employs five or more employees and who has had an "outbreak" at the workplace. Outbreak is defined as follows:

- For employers that have 100 or less employees, 4 or more employees must test positive within a 14-day period.
- For employers that have more than 100 employees, 4% or more employees must test positive within a 14-day period.

The Workers' Compensation carrier would have to accept or deny the claim within 45 days of investigation and the claim could only be denied thereafter if the evidence brought forth was not available in the initial 45 days.

This Law Creates New Reporting Requirements for Employers

“Employers with more than 5 employees are required to report ALL positive results to their Workers’ Compensation administrator regardless of whether or not a Workers’ Compensation claim will be filed.”

The new law also specifies the information that employers must report to their Workers’ Compensation claims administrators within 3 business days of when they know or reasonably should know when an employee has tested positive for COVID-19. The specific information required to report are:

1. An employee has tested positive; however, the employer must not provide any personally identifiable information regarding the employee who tested positive unless he or she asserts that the infection is work related and or has filed a Workers’ Compensation claim pursuant to LC 5401 (claim form).
 2. An employee tested positive on a specified date, which is the date that the specimen was collected for testing (versus the date that the test results were made known).
 3. The specific address/addresses of the employee’s specific place of employment during the 14-day period preceding the date of his or her 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 that the employee worked.
- Employers have 30 business days from September 17, 2020, to report when they know or have known of an employee who tested positive for COVID-19 between July 6, 2020, and September 16, 2020. For these positive tests, the employer must report the first three items listed above and in place of the fourth, the employer must provide 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 that period.
 - If an employer does not report this information or intentionally submits false or misleading information, they may be subject to a civil penalty of \$10,000.

Understanding the Benefits

Benefits owed under this statute include full hospital, surgical, medical treatment, disability indemnity and death benefits; and there is no waiting period. For loss time benefits, the employee must completely exhaust any allocated pandemic-specific paid sick leave before receiving temporary total disability benefits. Should there be no pandemic-specific paid sick leave, temporary total disability will take immediate effect.

How USI Can Help

We recognize that this new order poses additional challenges for our clients and their Workers’ Compensation programs and your USI team is committed to providing continued support.

- We are monitoring the situation closely and are collecting additional information from our carrier partners to ensure that these COVID-19 Workers' Compensation claims are being properly reported and handled.
- Your claims consultants are here to assist with early and proper communication with the claim administrators due to the time sensitivity and can assist you with continued oversight as these claims develop.
- Your analytics teams can assist with projecting the impact of these COVID-19 Workers' Compensation claims on your overall claims experience.

Helpful Resources

To help clients navigate these challenging times USI has implemented a **STEER (Steer Through Epidemic & Economic Recovery) Task Force**. This cross-functional team is working to provide up-to-the-minute COVID-19 information, understand cross-industry and geography impact and evolving responses, and to develop and deliver tailored solutions to help clients **steer** through this epidemic challenge and economic recovery.

For additional resources, tools, information, and links, please visit our COVID-19 resource page: www.usi.com/public-health-emergencies



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