



KEY HIGHLIGHTS OF THE COVID-19 PRESUMPTION LAW

The passage of California's Senate Bill 1159 and AB 685 establish a series of new requirements and definitions, as well as possible civil penalties. Be sure to check with your workers' compensation attorney to find out what this new law means for you.

Employer Duties and Reporting Requirements:

- The employer has an affirmative duty to report to the claims administrator where the employer "knows or reasonably should know" an employee tested positive for COVID-19.

For positive tests on or after 9/17/20:

- For positive tests on or after 9/17/20, the employer must report within 3 business days to the claims administrator.
- The date the employee tested positive (i.e., the date the specimen was collected).
- The address(es) of the specific place(s) of employment during the 14-day period preceding the positive test.
- The highest number of employees who reported to work at the specific place(s) of employment on any given work day in the 45-day period preceding the last day the employee worked at each specific place of employment.
- False reporting or failure to report will result in civil penalties (see below).
- Unless the employee wants to pursue a claim, the employee's identifying information cannot be sent to the claims administrator.



For positive tests between 7/6/20 and 9/17/20, the employer must report the following by 10/29/20:

- An employee tested positive (not identifying the employee unless the employee is making a claim).
- The date the employee tested positive (i.e., the date the specimen was collected).
- The address(es) of the specific place(s) of employment during the 14 day period prior to the positive test.
- The employer must calculate the highest number of employees who reported to work at each specific place(s) of employment on any given work day between 7/6/20 and 9/17/20.
- False reporting or failure to report will result in civil penalties (see below).

Civil penalties:

- If an employer intentionally submits false or misleading information or fails to submit information to the claims administrator, the employer is subject to civil penalties of up to \$10,000 to be issued by the Labor Commissioner, otherwise known as the Department of Labor Standards and Enforcement (DLSE).
- The DLSE may inspect or investigate any place of employment and assess citations for failure to comply with this statute.
- The DLSE will then issue a summons with the specific allegations and notice of assessment of civil penalties.
- The employer would then have 15 days to respond and request an informal hearing (usually before a deputy commissioner).
- The DLSE must then hold a hearing within 30 days, at which time the civil penalty will be affirmed, modified, or dismissed.
- Thereafter, the DLSE will issue a notice of findings, findings and order, which will be served on all parties within 15 days after the hearing.



- If the employer is found liable for the civil penalty, it is due and payable within 45 days of the findings and order.
- Thereafter, the employer may file a writ of mandate in superior court, and there is a trial de novo on all issues.
- If the employer loses on the writ of mandate, the DLSE will recover costs and attorney fees.

Labor Code §3212.86:

- Codifies the governor's prior Executive Order.
- Does not extend past the EO end date of 7/5/20.
- Provision applies to dates of injury between 3/19/20 and 7/5/20.
- Statute sunsets 1/1/23.
- EE must test positive or be diagnosed with COVID-19 within 14 days after the employee performed services at his/her place of employment at the employer's direction between 3/19/20 and 7/5/20.
- The date of injury is the LAST DAY the employee performed services at the place of employment.
- If the employee was diagnosed within 14 days of the last day worked at the place of employment, the diagnosis must have been done by an MD or DO, or a PA or NP acting under the review and supervision of an MD or DO.
- The diagnosis must be confirmed by a positive "serologic test" (antibody test) within 30 days.
- If liability for a claim of a COVID-19-related illness is not rejected within 30 days after the date the claim form is filed pursuant to Section 5401, the illness shall be presumed compensable. The presumption of this subdivision is rebuttable only by evidence discovered subsequent to the 30-day period.
- For TTD benefits, the employee must first exhaust all COVID-19 specific sick time.



- To qualify for TTD benefits, if the employee tested positive or was diagnosed on or after 5/6/20, the employee must be certified for TTD within the first 15 days of the initial diagnosis, and shall be recertified for TTD every 15 days thereafter for the first 45 days following the diagnosis.
- If before 5/6/20, the employee must have obtained a certification, no later than 5/21/20, documenting the period of TTD and then recertified for TTD every 15 days thereafter for the first 45 days.
- TTD must be certified by an MD or DO.
- If the injury results in the employee's death, no DWD benefits are owed.

Labor Code §3212.87:

- Provides a rebuttable presumption for peace officers, firefighters, fire and rescue service coordinators, health care workers in contact with COVID-19 patients at a health facility, and In Home Support Services workers providing services outside their own homes.
- Effective 7/6/20 and the statute sunsets 1/1/23.
- Creates a rebuttable presumption if the employee TESTS POSITIVE within 14 days after the last day performing work at the place of business of the employer at the employer's direction on or after 7/6/20 (**cannot be made by diagnosis**).
- Test = PCR test or other comparable FDA-accepted test to prove the presence of viral RNA (i.e., active virus).
- Test does not include serologic test that is required under 3212.86, as that only tests for positive antibodies and not active virus.
- The date of injury is the last date the employee performed work at the employee's place of employment at the employer's direction prior to the test.
- If liability for a claim of a COVID-19-related illness is not rejected within 30 days after the date the claim form is filed pursuant to Section 5401, the illness shall be presumed compensable. The presumption of this subdivision is rebuttable only by evidence discovered subsequent to the 30-day period.



- TTD or 4850 benefits after COVID-19 specific sick time is exhausted.
- Presumption is extended for 14 days following last day actually worked following termination of employee.
- For healthcare workers, the presumption does not apply if the employer can show that the employee did not have contact with a facility patient within the last 14 days prior to the positive COVID-19 test.
- If the injury results in the employee's death, no DWD benefits are owed.

Labor Code §3212.88:

- This statute applies to all employees except those covered by 3212.86 and 3212.87 **AND** where there is an "outbreak" at the place of employment.
- Creates a rebuttable presumption for all employees from 7/6/20 to 1/1/23, other than firefighters, peace officers, and healthcare workers covered under 3212.87.
- For dates of injury on or after 7/6/20, the provisions of the original Executive Order no longer apply.
- If liability for a claim of a COVID-19-related illness is not rejected within 45 days after the date the claim form is filed pursuant to Section 5401, the illness shall be presumed compensable. The presumption of this subdivision is rebuttable only by evidence discovered subsequent to the 45-day period.
- Applies to dates of injury from 7/6/20 to 1/1/23 and also applies to all "pending matters," which affects the sun-setting of the statute on 1/1/23.
- The date of injury is the last date the employee performed services at the employee's specific place of employment on or after 7/6/20.
- Test = PCR test or other comparable FDA-approved test which shows the presence of viral RNA (i.e., active virus).
- Does not include serologic test which shows antibodies but not active virus.



- “Specific Place of Employment” is place (building, store, facility, etc.) where the employee performs work at the employer’s direction.
- Place of employment does not include the employee’s home unless the employee provides in-home health care services to another individual at the employee’s home or residence.
- The employee must test positive during an outbreak at the specific place of employment.
- The positive test must be within 14 days of performing services at the specific place of employment.
- The services at the direction of the employer must be on or after 7/6/20.
- The outbreak provisions only apply to employers with 5 or more employees.
- “Outbreak” = 4 or more employees test positive within a 14-day period if 100 or fewer employees at the facility OR 4% test positive within a 14-day period of over 100 employees at the facility.
- Local, state, OSHA or school superintendent may order a specific place of employment closed, and this would be deemed an “outbreak” as well.
- If the employee works at multiple locations at the direction of the employer, then the employee’s positive test must be counted for each of the locations for “outbreak” designation purposes.
- The claims administrator has an affirmative duty to use the collected data to determine whether an “outbreak” has occurred for purposes of administering the claim and determining whether the presumption applies.
- The presumption can be rebutted by evidence of measures to reduce potential transmission of COVID-19 in the place of employment and evidence of an employee’s non-occupational risks of COVID-19 infection.
- Some examples would include risks of workplace infection that are not particular to or characteristic of the employee’s specific employment or evidence of a known or likely non-industrial cause, such as an infection in the employee’s home or place where the employee spends time.



- Presumption is extended for 14 days following the last day actually worked following termination of the employee.
- If the injury results in the employee's death, no DWD benefits are owed.

AB 685:

As part of AB 685, Labor Code §6409.6 requires an employer, within one business day of notice of exposure, to provide written notice to all employees, and to the employers of subcontracted employees that they may have been exposed to COVID-19. The written notice should be distributed in the same manner as the employer normally uses to communicate employment-related information. This may include, but is not limited to, personal service, email, or text message if it can be reasonably anticipated that the employee will receive it within one business day of sending it. The notice is to be in English and the language understood by the majority of the employees.

The notice is required to advise all employees who may have been exposed that they may be entitled to COVID-19-related benefits. This includes workers' compensation, COVID-19 related leave, company sick leave, state mandated leave, supplemental sick leave, or negotiated leave provisions, as well as anti-retaliation and anti-discrimination protections of the employee.