



DANNIS WOLIVER KELLEY

Attorneys at Law

COVID-19 Advisory



Governor Newsom Signs Two COVID-19 Related Employment Bills

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On September 17, 2020, Governor Newsom signed Senate Bill (SB) 1159 and Assembly Bill (AB) 685, as part of his worker protection package to address the COVID-19 pandemic. These new laws are summarized below.

Senate Bill 1159

SB 1159 is urgency legislation, effective September 17, 2020. This bill amends existing workers' compensation laws to address the impact of COVID-19 on employees, expanding the protections contained in Governor Newsom's Executive Order N-62-60 which applied to any worker who tested positive for COVID-19 within 14 days of going to work between March 19 and July 5, 2020. Current law provides that employees injured in the course and scope of their employment are generally entitled to compensation for their injuries, and certain injuries and illnesses are presumed to be occupationally related and automatically qualify for workers' compensation benefits, unless the employer can rebut the presumption and show the injury or illness is non-occupationally related. SB 1159 adds illness or death related to COVID-19 to the list of injuries and illnesses presumed to be occupationally related under certain circumstances, and therefore eligible for workers' compensation benefits, until January 1, 2023.

SB 1159 creates a "disputable presumption" that death or illness related to COVID-19 is compensable under workers' compensation, in three situations:

1. For any employee who tested positive or was diagnosed with COVID-19 within 14 days of performing work at his or her place of employment at the employer's direction between March 19, 2020 and July 5, 2020. Diagnosis must come from a licensed medical doctor and/or physician assistant or nurse practitioner acting under the review or supervision of a physician and surgeon, and must be confirmed by testing within 30 days of diagnosis. (new Labor Code section 3212.86.)
2. For firefighters, peace officers, nurses, EMTs, paramedics, homecare workers, healthcare providers, and in-home support service providers, the disputable presumption extends beyond July 6, 2020. (new Labor Code section 3212.87.)
3. For all other employees who test positive during an "outbreak" where the employer has five or more employees and the employee tests positive within 14 days of performing work at the place of employment at the employer's direction. (new Labor Code section 3212.88.)

An "outbreak" exists, if within 14 calendar days, one of the following happens at the place of employment:

- A. If the employer has 100 or fewer employees at a specific place of employment, at least four employees test positive for COVID-19; or
- B. If the employer has 100 or more employees at that location, at least four percent of the number of employees who reported to the specific place of employment test positive for COVID-19; or
- C. The local public health department, State Department of Public Health, the Division of Occupational Safety and Health, or a school superintendent orders the workplace closed due to a risk of infection with COVID-19.

Notably, "specific place of employment" does not include an employee's home or residence under most circumstances, and therefore employees who are performing distance or virtual learning from home are not included in the presumption created by this new law. Furthermore, under SB 1159, employees must exhaust any COVID-19 related paid sick leave benefits (i.e. FFCRA Emergency Paid Sick Leave or California's supplemental paid sick leave under AB 1867) and meet certain other requirements before receiving temporary disability benefits or an industrial injury leave of absence. As noted, SB 1159 expires on December 31, 2022, unless the Legislature extends it further.

Employers must respond to claims within 45 days of filing, or the employee's illness is presumed compensable. Furthermore, employers who know or reasonably should know that an employee has tested positive for COVID-19 must report to their claims administrator by email or FAX within three (3) business days that an employee has tested positive, the date the employee tested positive and the address of the place of employment, and the highest number of employees who worked at the specific place of employment during the 45-day period prior to the employee's last day of work. Failure to make a required report can result in a civil penalty up to \$10,000.

Assembly Bill 685

AB 685 requires employers to notify employees who may have been exposed to COVID-19 at their worksite, and expands Cal/OSHA's ability to enforce health and safety standards related to COVID-19.

If an employer receives notice of potential exposure to COVID-19, the employer must notify all employees at the work site. Specifically, employers must take all the following actions within one business day of the notice of potential exposure:

1. Provide a written notice to all employees, and the employers of subcontracted employees, who were at the same worksite as the "qualifying individual" (the potentially exposed employee) during the qualifying period, that they may have been exposed to COVID-19. An employee is considered as "qualifying" if they received a lab-confirmed positive test, received a positive diagnosis from a licensed health care provider, received a COVID-19-related order to isolate provided by a public health official, or died from COVID-19 within the infectious period as defined by the state. The notice to all employees must be provided in a manner the employer normally uses to communicate employment-related information, so long as it reasonably can be received within one day. Written notice must be in both English and the language understood by the majority of employees.
2. Provide written notice to the exclusive representative, if any, of the employees as described above.
3. Provide all employees who may have been exposed, and the exclusive representative(s), with information regarding COVID-19-related benefits to which the employees may be entitled including, but not limited to, workers' compensation, and options for exposed employees, including COVID-19-related leave, state-mandated leave, supplemental sick leave, or negotiated leave provisions, as well as anti-retaliation and anti-discrimination protections.
4. Notify all employees, and the employers of subcontracted employees, and the exclusive representative(s), about the disinfection and safety plan the employer plans to implement and complete.

Failure to comply with these requirements may subject the employer to a civil penalty.

In addition, when an employer receives notification of an "outbreak" according to the California Department of Public Health (CDPH), the employer must also notify the applicable local public health agency, within 48 hours, of the names, number, occupation, and worksite of employees who meet the definition of "qualifying individual." CDPH currently defines an "outbreak" as "three or more laboratory-confirmed cases of COVID-19 within a two-week period among employees who live in different households." (Note, this definition differs from that in SB 1159.)

Under previous law, Cal/OSHA was required to send a notification to the employer describing an alleged violation at least 15 days before issuing a citation, providing the employer an opportunity to respond. AB 685 amends this procedure for serious violations related to COVID-19. Cal/OSHA is no longer required to provide an employer a 15-day buffer period before issuing a citation in these cases. Employers may still contest the citation through existing procedures, but no longer will receive the traditional 15-day warning.

In preparation for AB 685 taking effect on January 1, 2021, school districts should prepare new notice and reporting procedures, and review existing policies. Nothing prevents the District from coming into compliance with AB 685 prior to January 1. Please contact us with any questions or to assist with reviewing the District's current procedures and practices to make sure the District is ready to comply with SB 1159 and AB 685.

If you have any questions, please do not hesitate to contact a DWK attorney in our [Labor, Employment and Personnel](#) (LEAP) practice group. DWK will continue to provide guidance as information becomes available. For more information regarding the impact of COVID-19 on your district's operations, please visit our COVID-19 Resources page at <https://www.dwkesq.com/covid-19-resources-page/>.

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