

The logo for ops forum, featuring the word "ops" in a lowercase sans-serif font, a stylized leaf icon, and the word "forum" in a lowercase serif font.

COVID CLAIMS
& CA WORKERS'
COMPENSATION

A grayscale background image showing a person's hands writing on a form. The form has fields for "Name:", "SSN:", "Age:", "Email:", "Account Number", and "Value". A calculator is visible on the left, and a spiral notebook is at the bottom left. The text "ARCHITECTURE" is visible on a document in the background.

UABT COVID-19 Claims and California Workers' Compensation - Rebuttable Presumptions and 2021 Reporting Requirements

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FEATURED SPEAKERS



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TOPICS



Governor's Executive Order N-62-20



Senate Bill 1159



Assembly Bill 685



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Workers' Compensation: Rebuttable Presumptions

Executive Order N-62-20

- Applicable for period of March 19, 2020 – July 5, 2020.
- Created a rebuttable presumption.
- Any covered worker who contracts COVID-19 while working mandatory onsite at the employer's direction for a period of 14 continuous days, the COVID-19 illness would be automatically "presumed" to be work-related.
 - Employee must have tested COVID-19 positive or diagnosed within the 14-day period of working at employer's worksite.
 - Diagnosis was done by a physician who has a physician and surgeon license issued by the California Medical Board and this diagnosis is confirmed by further testing within 30 days of the diagnosis.

Rebutting Executive Order N-62-20 Presumption

- Once Employee files workers' compensation claim, employer has 30 days to rebut the presumption that the employee's COVID-19 diagnosis is work related.
 - Reduced employer time period to deny claim from 90 to 30 days
- Two ways for employer to rebut the presumption:
 - Establish that the injured worker does not meet the criteria previously described or
 - Use "other evidence" to establish another cause of the COVID-19 illness
- Investigate employee's activities outside of work to determine if "other evidence" shows that employee most likely contracted COVID-19 outside of work.

SB 1159

- Effective September 17, 2020 retroactively for the period of July 6, 2020 through January 1, 2023.
- Codified as new Cal. Labor Code §§ 3212.86, 3212.88
- Establishes a cluster outbreak presumption.
- Applies to employers with more than 5 employees
- Positive COVID-19 test required.
 - Test must be Polymerase Chain Reaction (PCR).
 - Antibody test not acceptable.
- Outbreak rebuttable presumption triggered if at date of injury, an **outbreak** exists at employee's place of employment for a 14-day period.
- Date of Injury defined as **the last day worked prior** to the positive COVID-19 test.
- Employer has 45 days to investigate from date employee files the claim to make the decision.

SB 1159: What is an Outbreak?

- Outbreak is determined by the total number of employees and the total of employees who have tested COVID-19 positive within a 14-day continuous period.
- Outbreak exists if for 14 continuous days:
 - 4 employees test positive for an employer with 100 or less employees or
 - 4% of employees test positive for an employer with more than 100 employees.
- Specific place of employment is ordered to close by a local health department, State Department of Public Health, Cal OSHA or by a school superintendent due to a risk of COVID-19 infection.
- Workers Compensation claims administrator must determine whether or not there is an outbreak on a rolling and continuous basis.

SB 1159: Outbreak Example

For Example:

- Small employer with less than 100 employees with 1 business location.
 - Outbreak exists if there are 4 employees who test positive within a 14-day period for small employers.
- September 1, 2020 (Day 1) – 3 employees all test COVID-19 positive.
 - 3 verified COVID infections on Day 1.
 - At this point, none of these employees would trigger the outbreak presumption.
- September 10, 2020 (Day 10) – 4th employee tests positive.

Analysis:

- 4 positive COVID cases within a continuous 14-day period.
- All 4 cases would trigger the outbreak presumption.

SB 1159: Disputing the Presumption

- Employer can dispute the presumption by the following:
 - Evidence that the employer implemented COVID-19 safety measures in place.
 - Employee's statement that the COVID-19 illness was not contracted at work.
 - Evidence of employee's risk of COVID-19 outside of the workplace.
- Claims administrator has 45 days to determine whether or not there is an outbreak.

SB 1159: New Employer Reporting Obligations—3 Day Rule

- Effective September 17, 2020 forward, employer is subject to new employer reporting obligations.
- 3 Day Rule: Employer must report to their claims administrator in writing within **3 business days** all of the following:
 - When employer knows or has reason to know any employee has tested COVID positive,
 - Date the employee tested positive,
 - Place or places of employment where the employee worked during the 14 days preceding the positive test, and
 - Highest number of employees at each place where the employee worked for the previous 45 days.
- Civil penalty of up to \$10,000 imposed by the Labor Commissioner for any false or misleading information.

SB 1159: New Employer Reporting Obligations—3 Day Rule

- July 6, 2020 through September 17, 2020.
- If an employer is aware of an employee who tested COVID-19 positive during this time period, employer must report the following to claims administrator:
 - Employee tested COVID-19 positive
 - Date employee tested COVID-19 positive
 - Place or places of employment where the employee worked during the 14 days preceding the positive test, and
 - Highest number of employees at each place where the employee worked for the previous 45 days from July 6, 2020 through September 17, 2020.
- Claims administrator has 45 days to determine whether or not there is an outbreak.

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 A grayscale photograph of a person's hand holding a pen and filling out a form. The form has fields for 'Full name', 'Position', 'Age', 'ACCOUNT', 'AGENT', and 'INSURANCE CLAIM FORM'. A calculator is visible on the left, and a spiral notebook is at the bottom left. The background is a desk with various office supplies.

AB 685 Employer Notice / Reporting Requirements

Effective January 1, 2021

AB 685 Labor Code & Cal/OSHA Notices

Potential COVID-19 Exposure Notice to Employees

- If an employer received a notice of a potential exposure to COVID-19 in the workplace by a “qualified individual”, the employer must provide a written notice to all employees and to the employers of subcontracted employees who were present at the same worksite within the infectious period (as defined by the State Department of Public Health, stating they may have been exposed to COVID-19
- **Qualified Individual**
 - Laboratory confirmed case of COVID-19
 - A positive COVID-19 diagnosis from a licensed health care provider;
 - A COVID-19 related isolation order issued by a public health office; or
 - Death due to COVID-19 as determined by the County public health department

Notice

- The notice must be in a manner the employer normally uses to communicate employment related information.
 - Personal service
 - Email
 - Text Message
- Must be reasonably anticipated that the employees will receive the notice within one business day (requirement)
- Notice must be in both English and the language (Spanish) understood by the majority of employees
- Same notice to the exclusive representative of the affected bargaining unit

Notices

1

COVID-19 Related Benefits and Employee Protections

Employer must also provide all affected employees and the exclusive representative, if any, with a notice of information regarding any COVID-19 RELATED BENEFITS OR LEAVE RIGHTS UNDER Federal, state and local laws or pursuant to employer policy as well as the employee' protections against retaliation and discrimination.

2

Notice of A Safety Plan in Response to Potential COVID-19 Exposure

The employer must notify all employees, the employers of subcontracted employees and any exclusive representative of the employer's plans for implementing and completing a disinfection and safety plan pursuant to the guidelines issued by federal Center of Disease Control within one business day.

3

Failure to Comply

Employers that fail to comply with these requirements may be subject to a civil penalty. Employers are prohibited from requiring employees to disclose medical information except as required by law and prohibits employers from retaliating against an employee from disclosing a qualifying case of COVID-19.

Note: All records must be maintained at least 3 years.

COVID-19 Outbreak

- Where employers are notified of a number of cases that meet the definition of a COVID-19 “outbreak” as defined by 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 any “qualified individuals” related to the “outbreak”.
 - *An “outbreak” is currently defined by CDPH as “three or more laboratory confirmed cases of COVID-19 within a two-week period of employees who live in different households.*
- CPHD is also required to make workplace statistics received from local health departments under this provision – other than personally identifiable employee information – available on its website, such that members of the public can track the number of cases and outbreaks by industry.
- Health facilities, as defined in Section 1250 of the Health and Safety Code are exempt from reporting an “outbreak” within 48 hours (notices do not apply to exposures by employees whose duties include COVID-19 testing or screening or who provide patient care to COVID-19 patients.



Cal/OSHA

- Cal/OSHA will be authorized to shut down a workplace, operation or process that creates an imminent Hazard Due to COVID-19 Exposure Risk.
- AB 685 expands and clarifies Cal/OSHA's authority to determine that a workplace or operation/process within a workplace exposes employees to a risk of COVID-19 infection and thereby creates an imminent hazard to employees.
- Cal/OSHA now has authority to prohibit entry to workplace or to performance of operations. (Authority is limited to the immediate area where the imminent hazard exists and must not prohibit any entry into operations/process within the workplace that does not cause risk of infection.)
- Cal/OSHA applies workplace restriction, it must then prove to the employer with notice of the action and post that notice in a conspicuous place at worksite.

Cal/OSHA

Citations

1

Current Procedures

Cal/OSHA issues a citation alleging “serious violation” of occupational safety and health statutes and regulations. The employer can respond and rebut at time of citation or at hearing to contest citation.

2

AB 685 Modifications until January 1, 2023

For a COVID-19 serious violation citations Cal/OSHA is not obligated to provide an alleged violation at least 15 days prior to issuing the citation (inhibiting the employer’s ability to rebut the citation) but the employer would still be able to contest the citation through the existing Cal/OSHA appeal process.

3

Be Prepared

Employers have some time to prepare for this new notice and reporting requirements. Recommend employers review and revise their existing procedures relating to notification of COVID-19 exposures in the workplace in order they ensure they are ready to comply with this new notice.

Note: AB 685 amends §6325 and §6432 of and adds §§6325 and 6409.6 to the CA Labor Code

COVID-19 Plan

- Employers should develop a COVID-19 preparedness policy and plan. Consider development of disinfection protocols and safety plan to eliminate and inhibit further exposure. And informed employees and contracted workers of the safety plan for the worksite
- Employers should notify their employees with information about COVID-19 benefits under federal, state or local laws – this includes workers' compensation filings and benefits, company sick leave, state mandated leave, supplemental sick leave, negotiated leave and anti-retaliation and anti discrimination protections.

Employee Training

Agricultural employers must provide training in a way that is easily understandable by all employees. Training should include:

Information related to COVID-19 from the CDC, including

- What COVID is and how it is spread.
- Preventing the spread of COVID-19 if you are sick; and
- Symptoms of COVID-19 and when to seek medical attention.

Training should also include:

- Frequent handwashing with soap and water (at least 20 seconds)
- Mandatory use of cloth face covers (as required by the California Department of Public Health)
- Safely using cleaners and disinfectants on surfaces and objects
- Limiting close contact with others as much as possible and maintaining safe physical distancing.
- Not coming to work with symptoms of COVID-19 and seek medical attention.
- Physical distancing should be practiced, whether outdoors, in vehicles or structures.



Emergency COVID Regulations

The Cal/OSHA Standards Board has published an extensive 21-page emergency regulation regarding the spread of COVID-19 in the workplaces.

- Employers will be required to have a written COVID Protection Plan
- Identify, evaluate and correct COVID hazards
- Investigate and respond effectively to COVID cases and respond and notify employees who may have been exposed
- Report COVID cases to local health authorities
- Physical distancing and mask-wearing
- Return to work provisions
- Stringent requirements for multiple COVID infections and outbreaks
- Prevention procedures in employer provide housing (e.g. labor camps and employer provided transportation)

Emergency COVID Regulations

The Department of Industrial Relations (Occupational Safety and Health Standards Board) has also developed *proposed* Emergency Regulations.

- Thorough investigation conducted and review of COVID-19 hazards are identified and corrected to control and prevent further spread of the virus.
- In the event of an outbreak, provide twice a week COVID-19 testing (or more frequently if recommended by local health department, to all employees present at the exposed worksite during a 30-day period (at no cost to the employees)
- Physical distancing and controls for resident employees – maximize the quantity and supply of outdoor air and increase the filtration efficiency
 - Face coverings
 - Cleaning and disinfecting
 - Watch for symptoms
- Maintain transportation limitations to individuals in single crew/household

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QUESTIONS

