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CALIFORNIA SB 1159

In the September 9, 2020 edition of [The Way](#), we reported that SB1159 had passed the CA legislature and was in the hands of the governor for review.

On September 17, 2020, [Governor Gavin Newsom](#) (D-CA) signed [SB 1159](#), a bill that sets the ground rules for workers' compensation presumptions concerning employees who contract COVID-19 in the workplace. The legislation takes effect immediately and remains in effect through Dec. 31, 2022.

The [bill establishes two timeframes](#) for claims involving employees with COVID-19. The first period falls within the state's original Executive Order of March 19th through July 5th. Most of the elements contained in [Governor Newsom's original order still apply](#). The second period applies to employees who test positive with COVID-19 from July 6, 2020 through Dec. 31, 2022.

COMPENSABILITY

When it comes to determining compensability for work-related COVID-19 claims by [all classes of employees](#), the second half of the bill sets out a playbook for employers. In cases that involve [health workers, peace officers, firefighters, and other frontline workers](#), the presumption applies in most cases with just a positive COVID-19 test.

In all other cases, for all employers with five or more employees, the presumption applies only when the employee tests COVID-19 positive during an outbreak. To allow for a proper compensability determination, the bill authorizes a 45-day investigative period. The statute diagrams a specific claim handling schema and calls for an information hand-off between the employer and the claims administrator.

REPORTING REQUIREMENTS

Specifically under SB 1159, once an employer knows (or reasonably should have known) that an employee tested positive for COVID-19, [the employer must alert the claims administrator within three business days](#). This includes both work-related and non-work related COVID-19 diagnoses.

- For work-related exposures, please report claims as you would in the normal course of business.
- For non-work related exposures, please complete this [web form](#), which will get us the information quickly.
- Gallagher Bassett has developed and implemented processes to capture this information. [Click here to see our workflow](#).

The employer may not provide identifying information about the employee unless that employee asserts the infection is work-related. The bill prohibits employers from providing

Personal Identifiable Information (PII). We need a unique way to identify each individual so we recommend using employee IDs or numbers. The [employer must then give the claims administrator](#) the date of the test, each location the employee worked for the last 14 business days, the highest number of employees who reported to work during the 45 days before the last day the infected employee worked for each location. This is considered "outbreak" information under the statute.

Please note that a "location" is defined as a singular building, store, facility, or field where work is performed. The "location" may be different from the account location pyramid or hierarchy. Therefore, if the pyramid location encompasses more than one building, we need the specific address for the building that was exposed. Please remember, if the employee was present in more than one location, each location must be reported.

The outbreak information puts the statute in motion. [The presumption only applies if the positive test occurred during an outbreak](#) at the specific place of employment. The "rebuttable presumption" applies only after an identified outbreak. In such circumstances, the employer may produce its evidence of preventative measures taken to reduce transmission in order to dispute the presumption.

PENALTY POTENTIAL

The bill [lays out penalties for employers](#) (or anyone acting on their behalf) who fail to comply with the information exchanges. Employers who intentionally report false or misleading claims data or fails to submit information when reporting will be subject to a civil penalty of up to ten thousand dollars (\$10,000) to be assessed by the Labor Commissioner.

Gallagher Bassett has a dedicated email address for your questions about SB1159. Send any question you may have to GB_COVID_CA_SB1159@gbtpa.com with a copy to your Account Manager.

We will continue to communicate developments to our processes through your Account Manager.

In the meantime, please visit our [COVID-19 Resource Center](#) for more information on COVID-19, and for breaking state-by-state regulatory changes, please consult our interactive [COVID-19 Legal Update Map](#).

Although we have gathered information relevant to COVID-19 and its impact to worker's compensation claims and your businesses, this is not legal advice, it does not include all pertinent information, nor should it be the basis for legal, claim benefit safety, or human-resource-related decisions. If you would like guidance on legal issues arising from COVID-19, including whether a COVID-19 related claim is compensable under a specific state's law, please seek advice from legal counsel with expertise in the relevant subject areas and state laws