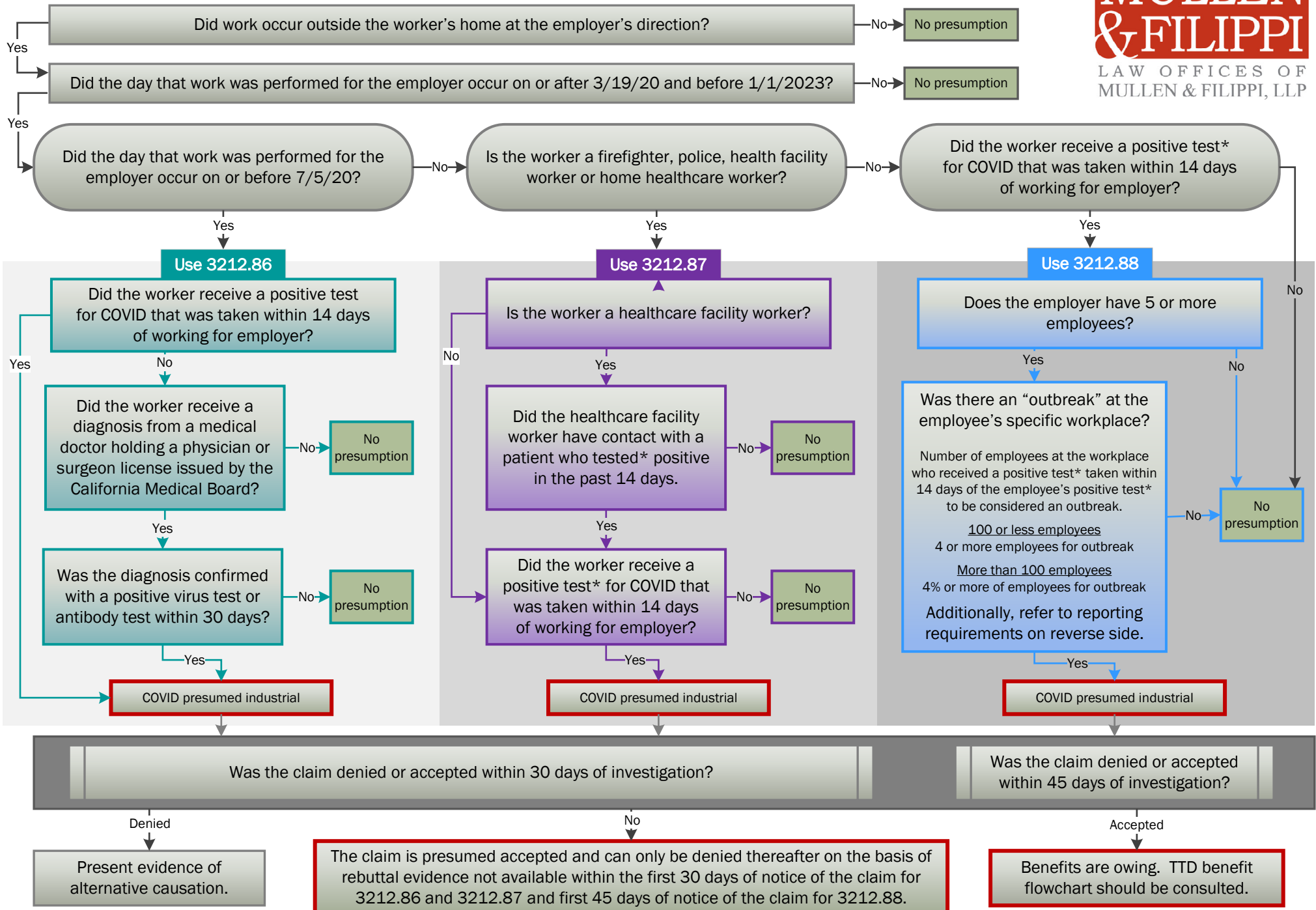


# COVID Presumption Flowchart - September 2020



\* Under 3212.87 and 3212.88, the test must be approved by the FDA to detect to viral RNA and not antibody or serologic testing.

# COVID Claim Presumption Flowchart

Per 3212.86, 3212.87, 3212.88



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This flowchart is not a substitute for legal advice and may not address every factual scenario. If you have a COVID-19 case, we encourage you to contact your favorite M&F attorney to discuss the legal issues applicable to your unique case.

## Reporting Requirements for 3212.88 (Employers subject to a civil penalty of up to \$10,000 for failure to report)

### Positive Test on or before 9-17-2020

Employer must report to administrator within 30 days.

For each separate location employee worked in the 14 days prior to the test date, provide the address and the highest number of employees who reported to the work location on any given day between July 6 and September 17. Claims examiner shall use information to determine if an outbreak occurred.

- Report must be sent via fax or email.
- Include the test date of when the specimen was collected.
- Omit personally identifiable information unless the employee is filing a claim.

### Positive Test on or after 9-18-2020

Employer must report to administrator within 3 days.

For each separate location employee worked in the 14 days prior to the test date, provide the address and the highest number of employees who reported to the work location on any given day during the 45-day period preceding the employee's last day at the location. Claims examiner shall use information to determine if an outbreak occurred.

- Report must be sent via fax or email.
- Include the test date of when the specimen was collected.
- Omit personally identifiable information unless the employee is filing a claim.

### Apportionment

Is there permanent disability?

Yes

Apportionment to nonindustrial causes of disability such as comorbidities is still available under Labor Code 4663, and Labor Code 4664 still applies if there was any prior award of disability as to the body part or organ affected.

### Compensable Consequences

Are there possible compensable consequences?

Yes

Substantial medical evidence must establish COVID caused the alleged compensable consequences.

No benefits are owing to the state's Death Without Dependents for claims accepted due to the presumption.

### Death Benefits

Did the worker die?

Yes

Is the death industrial? While the death will not be presumed industrial even if the COVID is, the contribution standard from the South Coast Framing case will likely apply.

Yes

Did the worker have dependents?

Yes

Death benefits are owing as they otherwise would for an industrial injury resulting in death.

### TTD Benefits

Did the worker miss time from work due to COVID or compensable consequences of COVID?

Yes

Did the employer provide leave pay specifically in response to the COVID crisis?

Yes

Worker must exhaust leave benefits set aside for COVID prior to obtaining any TTD or 4850 benefits.

No

Does 3212.86 apply?

No

TTD Benefits owing as usual except no waiting period applies.

Yes

Did the worker miss work due to COVID prior to the date of 5/6/2020?

Yes

The worker must have obtained a certification no later than 5/21/2020 documenting the period of temporarily total disability, and must then recertify TTD every 15 days thereafter for the first 45 days following diagnosis.

No

For ongoing claims of TTD entitlement, worker must have a medical doctor with a physician or surgeon license from the California Medical Board certify that the worker is TTD every 15 days within the first 45 days of the diagnosis.

Evidence relevant to rebutting the presumption includes evidence of measures in place to reduce potential transmission of COVID-19 in the workplace and employee's nonoccupational risks of COVID.