

Dear Policyholder:

On September 17, 2020 Governor Gavin Newsom signed Senate Bill 1159 (Hill and Daly). This new law states that under certain circumstances an employee contracting COVID-19 is presumed to have a workers' compensation claim. Because this measure was passed as urgency legislation, it became effective immediately on September 17, 2020

SB 1159 applies generally to work performed on and after July 6, 2020. However, the new law also makes adjustments to the rebuttable presumption created by Governor Newsom in his Executive Order N-62-20, which expired on July 5, 2020. New **Labor Code § 3212.86**, similarly, only applies to work performed between March 19 and July 5 of this year. Its provisions apply to open claims.

Going forward, the requirements of **Labor Code § 3212.87** (for Health Care and Public Safety/Rescue employees) are substantially similar to those in Governor Newsom's Executive Order in terms of what an employee must demonstrate in order to have the claim presumed to be covered under workers' compensation. The presumption is still rebuttable.

For **most other employers** with five or more employees, the presumption applies when there is an "outbreak" at a specific place of work as described in **Labor Code § 3212.88**. An outbreak is defined as at least four employee cases of COVID-19 if you have 100 or fewer employees. For larger employers it is four percent of your employees. *To emphasize, this number applies to a specific place of work and not to all places of work combined.* For us, as your claims administrator, to determine whether there is an outbreak, the new law requires you to send us certain information on a timely basis:

- COVID-19 cases from July 6 until September 17: If you are aware of an employee testing positive between July 6, 2020 and September 17, 2020, you must report to us, in writing via electronic mail or facsimile, *within 30 business days* of September 17, 2020 certain specific information that is required for your ongoing reporting obligations (see "Ongoing reporting" below).

For purposes of this report, you must also report the highest number of employees who reported to work at each of the specific places of employment where the employee(s) who tested positive worked on any given work day between July 6, 2020, and September 17, 2020, instead of the information required in (4), below.

- Ongoing reporting: In order for us to determine whether the presumption applies to a given claim, when you know, or reasonably should know, that an employee has tested positive for COVID-19, you must report to us in writing via electronic mail or facsimile *within three business days* all of the following:

- (1) An employee has tested positive. For purposes of this reporting, **the employer shall not provide any personally identifiable information regarding the employee who tested positive for COVID-19 unless the employee asserts the infection is work related or has filed a claim form pursuant to Section 5401.**
- (2) The date that the employee tests positive, which is the date the test specimen was collected for testing.

- (3) The specific address or addresses of the employee's specific place of employment during the 14-day period preceding the date of the employee's positive test.
- (4) The highest number of employees who reported to work at the employee's specific place of employment in the 45-day period preceding the last day the employee worked at each specific place of employment.

We want to emphasize that the cases you are reporting to are *all* cases, not just workers' compensation claims. We take the privacy of your employees' personal information seriously. Only in cases where the employee is claiming COVID-19 arose out of a workplace exposure are you to send us any personally identifiable information.

SB 1159 also allows us to challenge a claim that COVID-19 arose at work. One way to challenge such a claim is to show evidence of measures in place to reduce potential transmission of COVID-19 in the employee's place of employment. If you have not already done so, we urge you to visit Cal/OSHA's website (<https://dir.ca.gov/dosh/coronavirus/Health-Care-General-Industry.html>) to review measures you can take to reduce COVID-19 at your business.

We have posted a summary of the provisions of SB 1159 on our website <https://www.republicindemnity.com/employers/about-workers-comp/sb189-ab2883>. As you can see, there are potential penalties which could be assessed against you by the Labor Commissioner if you do not report the necessary case information to us. This summary is being provided for informational purposes only and is not intended to constitute legal advice. Please contact your own attorney for advice about legal compliance. You may access the entire text of SB 1159 on the California Legislature's website:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB1159

To submit your reports, please email your information to: SB1159@ri-net.com or fax to 866-448-1159.