

COVID DECISION-MAKING

California Workers' Compensation ~ SB 1159

DOI 3/19/20 – 7/05/20 (LC 3212.86)

Applies to employees who reported to work at employer's direction during the stay-at-home orders. Special TD rules including need for MD/DO certification within 15 days of test/diagnosis and periodically recertify.

DOI 7/06/20 – 12/31/22 (LC 3212.87 or LC 3212.88)

If neither section applies, there is no presumption and EE can pursue COVID as a "regular" workers' comp claim.
Note: Absence of a PCR test is not sufficient grounds on its own to deny a claim; Non-PCR test must be approved & equivalent in sensitivity.

Is claimant a type of employee covered by LC 3212.87?

(certain emergency responders and certain healthcare workers (H&S 1250 (a, b,c,m,n)); not all health and safety workers are covered!)

YES →

- Rebuttable AOE/COE presumption
- 30-day decision period.
- Good faith investigation must still take place.



↓ NO

Was there an outbreak at the EE's specific place of employment at the time of injury?
(LC 3212.88)

YES →

- Rebuttable AOE/COE presumption
- 45-day decision period.
- Good faith investigation must still take place.



↓ NO

- Presumption does not apply.
- Good faith investigation must take place before accept/denying case.
- Even though Applicant's burden, still define any defenses & discovery.
- Continue to assess as new cases arise.

WAS THERE AN OUTBREAK?

Outbreak for WC purposes (LC 3212.88) is defined as EITHER:

- Where less than 100 EEs physically reported to work at EE's specific jobsite w/in 45 days prior to this case: 4 positive cases (not necessarily workers' compensation claims) within rolling 14 day period of this claimant's positive case. OR
- 100+ EEs physically reported to work at EE's specific jobsite w/in 45 days prior to this case: 4% of the number that reported to the jobsite had positive cases (not necessarily workers' compensation claims) within rolling 14 day period of this claimant's positive case OR
- Site shut down by State/local Public Health Dept., OSHA or School Superintendent due to COVID.

REBUTTING THE PRESUMPTION

- Defendant's burden to show COVID transmission to this claimant was highly unlikely to be AOE/COE.
 - Med-Legal, Factual, and Legal investigation
 - ID Employer's PPE, social distancing and other COVID prevention policies.
- EEs non-occupational risks of COVID-19..." For example:
 - Any risky activities in 14 days before positive test:
 - Interaction with public / colleagues,
 - Recreation / Faith-based activities, travel, secondary work, spouse's work, close friend/family's activities.
- Apportionment and Affirmative Defenses also apply.

IF NO PRESUMPTION

- Claimant must provide substantial medical and legal evidence that they contracted COVID and that it was more likely than not AOE/COE (higher risk at work vs public).
- Cannot deny a claim just because there is no presumption.
- Must still conduct good faith investigation re: AOE/COE as with any other claim.
- FDA has given emergency use authorization to some rapid antigen tests. Antibody tests not acceptable.

TD Rules for presumptive injuries: If an employee has paid sick leave benefits specifically available in response to COVID-19, those benefits should be used and exhausted before any temporary disability benefits or benefits under Section 4800, 4800.5, or 4850 are due and payable. If an employee does not have those sick leave benefits, the employee shall be provided temporary disability benefits or Section 4800, 4800.5, or 4850 benefits, if applicable, from the date of disability. There shall not be a waiting period for temporary disability benefits. (LC 3212.86(d); LC 3212.87 and 3212.88 include Ed Code benefits)

DISCLAIMER: This information was prepared on 1/19/2022 and is subject to change. You should consult an attorney for current law before making any decisions.

“Peace Officer” as defined in California SB 1159

Section 830.1	<p>(a)</p> <ul style="list-style-type: none"> - Any sheriff - undersheriff - deputy sheriff ... employed in that capacity, of a county <ul style="list-style-type: none"> • any chief of police of a city • chief, director, or chief executive officer of a consolidated municipal public safety agency that performs police functions • any police officer, employed in that capacity and appointed by the chief of police or chief, director, or chief executive of a public safety agency, of a city, • any chief of police, or police officer of a district, • including police officers of the San Diego Unified Port District Harbor Police, authorized by statute to maintain a police department • any marshal or deputy marshal of a superior court or county • any port warden or port police officer of the Harbor Department of the City of Los Angeles • any inspector or investigator employed in that capacity in the office of a district attorney, is a peace officer. <p>(b) The Attorney General and special agents and investigators of the Department of Justice are peace officers, and those assistant chiefs, deputy chiefs, chiefs, deputy directors, and division directors designated as peace officers by the Attorney General are peace officers.</p> <p>(c) Any deputy sheriff of the County of Los Angeles, and any deputy sheriff of the Counties of Butte, Calaveras, Colusa, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Mariposa, Mendocino, Plumas, Riverside, San Benito, San Diego, San Luis Obispo, Santa Barbara, Santa Clara, Shasta, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, and Yuba who is employed to perform duties exclusively or initially relating to custodial assignments with responsibilities for maintaining the operations of county custodial facilities, including the custody, care, supervision, security, movement, and transportation of inmates</p>
Section 830.2(a), (b), (e), (f)	<p>(a) Any member of the Department of the California Highway Patrol including those members designated under subdivision (a) of Section 2250.1 of the Vehicle Code, provided that the primary duty of the peace officer is the enforcement of any law relating to the use or operation of vehicles upon the highways, or laws pertaining to the provision of police services for the protection of state officers, state properties, and the occupants of state properties, or both, as set forth in the Vehicle Code and Government Code.</p> <p>(b) A member of the University of California Police Department appointed pursuant to Section 92600 of the Education Code, provided that the primary duty of the peace officer shall be the enforcement of the law within the area specified in Section 92600 of the Education Code.</p> <p>(e) Employees of the Department of Fish and Game designated by the director, provided that the primary duty of those peace officers shall be the enforcement of the law as set forth in Section 856 of the Fish and Game Code.</p> <p>(f) Employees of the Department of Parks and Recreation designated by the director pursuant to Section 5008 of the Public Resources Code, provided that the primary duty of the peace officer shall be the enforcement of the law as set forth in Section 5008 of the Public Resources Code.</p>
Section 830.3 (a)	<p>(a) Persons employed by the Division of Investigation of the Department of Consumer Affairs and investigators of the Dental Board of California, who are designated by the Director of Consumer Affairs, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 160 of the Business and Professions Code.</p>
Section 830.37 subdivisions (a) and (b)	<p>(a) Members of an arson-investigating unit, regularly paid and employed in that capacity, of a fire department or fire protection agency of a county, city, city and county, district, or the state, if the primary duty of these peace officers is the detection and apprehension of persons who have violated any fire law or committed insurance fraud.</p> <p>(b) Members other than members of an arson-investigating unit, regularly paid and employed in that capacity, of a fire department or fire protection agency of a county, city, city and county, district, or the state, if the primary duty of these peace officers, when acting in that capacity, is the enforcement of laws relating to fire prevention or fire suppression.</p>
Section 830.5 subdivisions (a) and (b)	<p>(a) A parole officer of the Department of Corrections and Rehabilitation, or the Department of Corrections and Rehabilitation, Division of Juvenile Parole Operations, probation officer, deputy probation officer, or a board coordinating parole agent employed by the Juvenile Parole Board.</p> <p>...</p> <p>(b) A correctional officer employed by the Department of Corrections and Rehabilitation, or of the Department of Corrections and Rehabilitation, Division of Juvenile Justice, having custody of wards or</p> <ul style="list-style-type: none"> - any employee of the Department of Corrections and Rehabilitation designated by the secretary or any correctional counselor series employee of the Department of Corrections and Rehabilitation or - any medical technical assistant series employee designated by the secretary or designated by the secretary and employed by the State Department of State Hospitals or - any employee of the Board of Parole Hearings designated by the secretary or employee of the Department of Corrections and Rehabilitation, Division of Juvenile Justice, designated by the secretary or any superintendent, supervisor, or - employee having custodial responsibilities in an institution operated by a probation department, or any transportation officer of a probation department.

For more information on testing requirements and Return-To_Work protocols, see the 1/14/2022DIR NewsLine with links to key FAQs and Cal/OSHA Guidance:
<https://www.dir.ca.gov/DIRNews/2022/2022-07.html>

What Employers and Workers Need to Know About COVID-19 Isolation and Quarantine

January 19, 2022

This fact sheet provides employers and workers not covered by the [Aerosol Transmissible Diseases standard](#) with information on when and for how long workers must be excluded from the workplace if they test positive or are exposed to someone who has COVID-19. The chart below reflects the new California Department of Public Health (CDPH) isolation and quarantine periods guidance from January 6, 2022, which overrides the Cal/OSHA COVID-19 Prevention Emergency Temporary Standards in certain circumstances.

More information is available on [Cal/OSHA's ETS FAQs](#).

Vaccination status	Isolation or quarantine	Period of time to be excluded from work
All workers that test positive for COVID-19, regardless of vaccination status	Isolation	<ul style="list-style-type: none"> Must be excluded from the workplace for at least 5 days. A worker can return to work after day 5 if they do not have symptoms <u>and</u> test negative. If a worker cannot test or declines to test¹ they can return to work after 10 days. Must wear a face covering around others at work for a total of 10 days after the positive test.
Unvaccinated workers exposed to someone with COVID-19	Quarantine	<ul style="list-style-type: none"> Must be excluded from the workplace for 5 days after the close contact <u>and</u> take a test on day 5. A worker can come back to work after day 5 if they test negative and do not have any symptoms. If the worker cannot test or declines to test¹ they can return to the workplace after day 10 if they do not have symptoms. Must wear a face covering around others at work for 10 days after exposure. If the worker develops symptoms, they must be excluded pending a test result.
Booster-eligible, but not boosted workers exposed to someone with COVID-19	No quarantine	<ul style="list-style-type: none"> Does not need to be excluded from work if asymptomatic but must have a negative test 3-5 days after close contact. Must wear a face covering around others at work for 10 days after exposure. If the worker develops symptoms, they must be excluded pending a test result.
Workers received a booster, or are fully vaccinated but not yet booster-eligible.	No quarantine	<ul style="list-style-type: none"> Does not need to be excluded from work if asymptomatic, but must take a test on day 5 after exposure. Must wear a face covering around others at work for 10 days after exposure. If they develop symptoms, the worker must be excluded from the workplace pending a test result.

¹ An employer may require a test. More information is available in the [Department of Fair Employment and Housing FAQ](#).

Commonly Asked Questions

When do workers need to be paid exclusion pay if exposed to COVID-19?

When workers are required to be excluded from work due to work-related COVID-19 exposure, they must be paid exclusion pay. Workers should speak with their employers about available exclusion pay. Some exceptions apply, for example if the worker can work from home, or they are receiving disability pay or Workers' Compensation Temporary Disability Payments.

What is required if a worker was exposed to COVID-19 but tests are not available?

If a worker that is unvaccinated cannot be tested as required, quarantine must continue for at least 10 days as explained in the table. If a worker is fully vaccinated, whether or not they are booster eligible or have received a booster, and the worker cannot be tested on or by day 5, as applicable, employers should follow the ETS by ensuring the worker wears a face covering and maintains six feet of distance for 14 days following the close contact.

This guidance is an overview, for full requirements see Title 8 sections [3205](#), [3205.1](#), [3205.2](#), [3205.3](#), [3205.4](#)

- January 19, 2022 – Updated to clarify this fact sheet does not apply to workplaces covered by the Aerosol Transmissible Diseases Standard.



For assistance with developing a COVID-19 Prevention Program, employers may contact Cal/OSHA Consultation Services at 1 800 963 9424 or InfoCons@dir.ca.gov
For Consultation information or publications, access the following link or copy the site address: [DOSH Consultation www.dir.ca.gov/dosh/consultation.html](http://www.dir.ca.gov/dosh/consultation.html)