

# California workers' compensation COVID-19 legislation

*September 17, 2020, California Governor Gavin Newsom signed two pieces of legislation tied to the COVID-19 pandemic: Senate Bill 1159 and Assembly Bill 685. Following is an overview of the bills along with information about our processes to support SB 1159's reporting and administrative requirements and actions employers need to take.*

## **SB 1159 OVERVIEW**

SB 1159 signed into law by California Governor Gavin Newsom on September 17, 2020, legislated the following:

- Establishes injury to include an illness or death resulting from COVID-19 according to specific dates of injury and criteria;
- Establishes a rebuttable presumption of injury with certain limitations in each of the three substantive sections;
- Shortens the period to accept or deny to either 30 days or 45 days from the filing of DWC-1; and
- Requires exhaustion of COVID-related paid sick leave prior to compensation.

The three substantive sections of SB 1159 address the following:

- Section one: Codifies Governor Newsom's executive order (N-62-20) as to COVID-related illnesses occurring between March 19, 2020 and July 5, 2020.
- Section two: Applies a rebuttable presumption to COVID-related illness for firefighters, peace officers and specified health care workers for injuries from July 6, 2020-January 1, 2023.
- Section three: Applies a rebuttable presumption to COVID-related illnesses for all other employees (as defined in SB 1159) if and when an "outbreak" (as defined) is determined for injuries from July 6, 2020-January 1, 2023.

**This law is effective immediately and includes added responsibility for employers and administrators.**

## WHAT EMPLOYERS ARE NOW RESPONSIBLE FOR

- Report employees testing positive between July 6, 2020 and September 17, 2020 (effective date of SB 1159) to their claims administrator within 30 business days of September 17, 2020, including all data as required by the bill.
- Report positive tests that occur from September 18 going forward. “When an employer knows or reasonably should know that an employee has tested positive for COVID-19, the employer shall report to their administrator within three (3) business days all data as required by the bill.”
- Report the highest number of employees who reported to work at the employee’s specific place of employment in the 45 days preceding the last day the employee worked at each specific place of employment.

## WHAT SEDGWICK IS NOW RESPONSIBLE FOR

- Use reported information to determine if an outbreak has occurred.
- Notify the employer if an outbreak has occurred.
- Adjudicate workers’ compensation claims that occur during an outbreak according to the new requirements.

## WHAT CLIENTS NEED TO DO

- We've created a COVID-19 portal for California clients to report positive test results. This portal is targeted to go live on Monday, September 28. **Your client services director will reach out to you to provide a portal URL and unique access code for use within your company or organization. The URL will be available on Monday, September 28th.**
- **To obtain the access code required for utilization of this portal site, please email [QBEWCClaimAssistants@sedgwickcms.com](mailto:QBEWCClaimAssistants@sedgwickcms.com). We will email you back the access code for your organization as soon as they become available.**
- The bill also requires employers to report positive test results retrospectively:
  - Use this [form](#) or [spreadsheet](#) to report employees testing positive between July 6-September 17, 2020 (effective date of SB 1159) to Sedgwick by October 29 (within 30 business days). Once complete, email it to [QBEWCClaimAssistants@sedgwickcms.com](mailto:QBEWCClaimAssistants@sedgwickcms.com).
  - You can use the same form or spreadsheet to report employees testing positive between September 18-September 30, 2020 to Sedgwick within three business days.

## IMPORTANT INFORMATION

- This law applies to positive test results for both work-related and non-work-related cases.

- Reports cannot include personally identifiable information for employees who have not alleged a workplace exposure.
- Employees must provide medical documentation from a doctor that confirms the positive test. Ask for this documentation, record the date you requested it and the date received, and keep it in the employee's file.
- The law allows us to rebut the presumption and conduct an investigation to prove that the illness occurred or was contracted somewhere other than work.
- The law defines an "outbreak" at the employee's specific place of employment as:
  - If the employer has less than 100 employees at the employee's specific place of employment, four (4) employees test positive for COVID-19 in 14-day period.
  - If the employer has more than 100 employees at the employee's specific place of employment, 4% of the employees that reported to the specific place of employment tested positive for COVID-19.
  - If a specific place of employment is ordered to close by a local public health department, the State Department of Public Health, the Division of Occupational Safety and Health or a school superintendent due to a risk of infection with COVID-19.
  - If an outbreak is determined, your client services director will reach out to you to confirm the data.
  - Clients should advise their client services director of any place of employment ordered to close as noted above.

### ASSEMBLY BILL 685

We understand that many of you also have questions on AB 685. Following is an overview. **We will communicate more information to you on this bill in the next few weeks.** Click [here](#) to view the complete bill.

**This bill takes effect on January 1, 2021**, and is designed to ensure timely notification by employers to employees as well as to local and state health officials when positive cases are reported in the workplace. AB 685 requires employers to notify employees when someone tests positive at work. It also gives the state Division of Occupational Safety and Health the authority to close any business or work site if it believes the risk of exposure to COVID-19 constitutes an "imminent hazard to employees."

The bill requires an employer to take the following actions when it "receives notice of potential exposure to COVID-19" at a particular place of employment:

- Provide a written notice to all employees and the employers of sub-contracted employees. The notice can come via personal service, text or email. It should also be available both in English and the language of the majority of the employees.
- Provide a written notice to the exclusive representative, if any, of the above referenced employees.

- Provide an explanation of possible benefit entitlements.
- Explain the employer’s disinfection and safety plan pursuant to directives from the Centers for Disease Control and Prevention (CDC).
- When an employer is notified of the number of cases that meet the definition of a COVID-19 outbreak, as defined by the State Department of Public Health, the employer shall within 48 hours notify the public health agency. Current documentation from the State Department of Health defines outbreak in the workplace as, “three or more laboratory-confirmed cases of COVID-19 within a two-week period among employees who live in different households.” Note that the outbreak definition is different from SB 1159.
- As regards the written notice referenced above, provide the notice in a manner consistent with the information gathered on an OSHA 300 log, whether or not the employer is customarily required to maintain such records.

### QUESTIONS?

Please direct questions regarding this legislation and our SB 1159 reporting process to [COVIDReporting@sedgwick.com](mailto:COVIDReporting@sedgwick.com).

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