

# CA COVID-19 SBI 159, AB685, OSHA- Workers' Compensation Best Practices Understanding How the Vaccine will Affect Your Business

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## Questions & Answers

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1. What is the difference between a disability claim due to a positive test and a Workers' Compensation claim due to a positive test?  
A Workers' Compensation claim due to a positive test is a claim that the infection was due to work. A disability claim could be a request for accommodation under the ADA/FEHA due to COVID-19-related disability, regardless of whether the disability is work-related or not.
2. An "essential/first responder" employee presented a doctor's note in early 2020 stating the doctor recommended the employee follow CDC guidelines. Since then, the person was given a very "plush" assignment since their normal job would require them to be within six feet of someone from time to time. Could we turn the table and make the employee get the vaccine (i.e. return to their regular assignment) since CD recommends a vaccine?  
CDC/OSHA guidelines are within 6 feet for 15 minutes or more, so incidental or short-duration contact within 6 feet is still in compliance. So, the modifications may be "plusher" than they need to be. If you are going to mandate the vaccine for this EE, it should also be mandated for all others in their job class.
3. If the employer mandates the vaccine, are we required to pay employee for the time spent receiving the vaccine?  
Probably not under state labor laws, but it may be required by your MOU or union rules.
4. What constitutes as an "outbreak" in the workplace?  
Labor Code section 3212.88 also defines a COVID-19 "outbreak" as occurring when a "specific place of employment" with more than 100 employees has four (4) percent of the number of employees who reported to the specific place of employment, test positive for COVID-19, or 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, due to a risk of infection with COVID-19.
5. For filing claims, does the last workday have to be in the preceding 14 days of the positive testing date, 14 days surrounding the testing date, or 14 days preceding and forward from the testing date?  
14 days preceding the positive testing date.

6. Does the employer need to send information to our WC carrier, if we believe that an employee has COVID, even before we receive the actual positive test?  
No, only upon knowledge of a positive test, which could include verbal knowledge. Knowledge of symptoms alone is not enough
7. On the Outbreak rule of 4% or 4 or more during a 14-day period, would this include all temp and staffing employees as well?  
No, only your employees. Temps who work for a staffing agency are not counted.
8. Are employers required to pay separately for COVID sick leave (i.e. in addition to the annual 3 days sick pay all employees receive) if an employee is out due to COVID? Are employers REQUIRED to pay for those days the employee is out?  
If it is work-related, Workers' Comp benefits may be due. There is no requirement for paid leave under Works' Comp law for a non-work-related illness. However, Emergency Paid Sick Leave Act (2 Weeks) or Emergency Family and Medical Leave Expansion Act (12 Weeks or 10 Additional Weeks to Emergency Paid Sick Leave Act) may be owed. Here is a helpful link: <https://www.dir.ca.gov/dlse/COVID19resources/>
9. What if three employees test positive who live in the same household? Is this considered an outbreak in the workplace and need to be reported to OSHA?  
Yes, if they all work are the same "worksite." If any of them file a Work Comp claim, they can be denied because of more likely transmission at home.
10. Regarding the exposure of 15-minute proximity rule, was the timing reduced due to the extra-transmissible virus variants?  
"COVID-19 exposure" is defined by U.S. OSHA and Cal/OSHA under Title 8, Cal. Code of Regs. Sec. 3205 as: being within six feet of a COVID-19 case for a cumulative total of 15 minutes or greater in any 24-hour period within or overlapping with the "high-risk exposure period" defined by this section.
11. Could we deny a claim if the employee cannot prove they were exposed to a COVID positive person in the previous 14 days at work, even if the employee tested positive?  
Yes.
12. We have seen a few CT applications with Covid added to all the other claimed body parts. It is likely this was discussed at the most recent CAA meetings. What should we do to prepare a Defense of these claims?  
Yes, it was. Immediately investigate the COVID aspect (was there a positive PCR test or an "outbreak") because the time limit to deny the claim may be a short as 45 days, rather than the normal 90 days. The robust investigation that should be applied to every "cumulative trauma" claim should be applied here as well and denied in the absence of substantial medical evidence proving injury.

13. If an employee is not exposed, but there is a positive case in the workplace, do they still need to be notified within one business day?  
Probably not. Only people exposed to a "qualifying individual" in the workplace need to be notified.
14. Could I have different workplaces in the same room?  
No. A "worksite" under Cal/OSHA is a floor in a building; a "specific place of employment" under Workers' Comp is the whole building.
15. If you cannot deny a COVID claim within 45 days, but receive info after 45 days, can you then deny?  
Only in very limited circumstances, always try to deny those within the 45-day timeframe.
16. Once 75% is vaccinated at work, will the same restrictions at work still be applied?  
Right now, there are no forward-looking rules addressing that, but the more people who are vaccinated, the more likely it is that life and work will return to normal.
17. If a person refuses to have the vaccine and they cannot work from home, the presenter mentioned not to terminate them, but to give them LOA unpaid until the issues goes away. If you do this, could they collect unemployment or State Disability, etc., during the time off from work?  
Probably not unemployment, since they were not terminated or laid off, and no SDI unless they are disabled as verified by a physician.
18. Are we required to pay employees when they are required to quarantine? Is there exception to this rule?  
That may be required under Emergency Paid Sick Leave Act (2 Weeks) Emergency Family and Medical Leave Expansion Act (12 Weeks or 10 Additional Weeks to Emergency Paid Sick Leave Act) Here is a helpful link: <https://www.dir.ca.gov/dlse/COVID19resources/>
19. Can Employers make the COVID-19 vaccination mandatory?  
Yes, they can request an accommodation, such as work from home or a leave of absence.
20. Have you seen many COVID-19 cases going to the WCAB? If so, what are the issues (AOE/COE, TD continuance)? Do you get a sense of what COVID cases the Applicant Bar will take to the board for decisions?  
As with all things, the applicant bar is looking for high PD cases, because their fees come from PD. They are most likely to drive cases where employees allege lingering symptoms, such as pulmonary or cognitive residuals that can be highly rated, or death cases.