
California's Recent Legislation & the Impact on Workers' Compensation – Do we still need to worry?

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November 3, 2022

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The Intent of Covid-19 Legislation in California

AB 1751 – Introduced by Assemblyman Daly of Anaheim; signed into law by the Governor on 09/29/2022

- Extends LC 3212.87 and 3212.88 to 01/01/2024 (initial proposal was to extend to 01/01/2025)
- What about 3212.86? Window period claims – applied to everyone at employer's premises from 03/19/2020 to 07/05/2020

So – what are the provisions of 3212.87 and 3212.88? And do they still matter?

Presumption definition:

- A presumption is defined by Black's Law legal dictionary as a **legal inference, or assumption that a fact exists, based on the known or proven existence or some other fact or group of facts.**
- There are two types of presumption: **rebuttable presumption and conclusive presumption.** A rebuttable presumption is assumed true until a person proves otherwise (for example the presumption of innocence).

Claim Forms

When should a claim form (DWC-1) be provided to an employee?

Generally, the employee must ask for a claim form or tell the employer they believe COVID-19 was contracted as a result of their employment in order to trigger the duty to provide a claim form.

However, what if the employer learns that an employee tested positive within 14 days from last date of work (not at home)?

Labor Code 5401(a) provides:

Within one working day of receiving notice or knowledge of injury under Section 5400 or 5402, which injury results in lost time beyond the employee's work shift at the time of injury or which results in medical treatment beyond first aid, the employer shall provide, personally or by first-class mail, a claim form and a notice of potential eligibility for benefits under this division to the injured employee, or in the case of death, to his or her dependents.

Best Practices for Policy Compliance:

Workers should be encouraged to notify their employer if they think they contracted COVID-19 at work, and the employer should provide the employee the workers' compensation claim form once they are placed on notice.

LC 5402 Presumption:

- Knowledge of an injury, from any source, is sufficient to afford the opportunity to make an investigation into the facts
- If liability is not rejected within 90 days after the claim form is filed, the injury shall be presumed compensable
- The presumption is rebuttable only by evidence discovered subsequent to the 90-day period

Covid Presumptions

- Labor Code §3212.86
 - Any worker diagnosed with COVID-19 within 14 days of work between 03/19/20-07/05/20 (**30 days investigation period**)
- Labor Code §3212.87
 - Peace Officers, Firefighters, and certain Healthcare workers diagnosed with COVID-19 within 14 days of work on or after 07/06/20 (**30 days investigation period**)
- Labor Code §3212.88
 - Any other worker diagnosed with COVID-19 within 14 days of work on or after 07/06/20 during an “outbreak” at their employer’s place of employment (**45 days investigation period**)
- If employee does not meet any of the above...
 - Revert to 3202.5 and 5402 (**90-day investigation period**)

AB 1751 – signed by the Governor on 09/29/2022

- AB 1751 extends the current Covid presumptions, which now expire 1/1/24 (original version was through 1/1/25)
- AB 1751 also expands the type of employees who qualify for the presumption without an outbreak to include active firefighters for certain State Departments, and officers of state hospitals

LC §3212.87: Peace Officers, Firefighters, and Healthcare Workers

- Positive test must be within 14 days of the last date of work at the employer's place of employment at the employer's direction
- Test must be made by Polymerase Chain Reaction (PCR) test (typically nasopharyngeal swab) or other USFDA approved test with similar or higher sensitivity
- Serologic (blood/antibody) testing is insufficient
- Date of injury is the last date worked prior to the positive test
- Presumption extends for up to 14 days following termination from the last day worked
- Shortened investigation period – 30-day delay period

LC §3212.88

- **EXCLUDES** employees described in LC 3212.87
- Employer must have 5 or more employees
- Positive test must be within 14 days of the last date of work at the employer's place of employment at the employer's direction AND during an "**outbreak**"
- Test must be made by PCR test (or similar USFDA approved test to detect viral RNA)
- Date of injury is the last date worked prior to the positive test
- Presumption extends for up to 14 days following termination from the last day worked
- Shortened Investigation Period – Denial must issue 45 days from the date a claim form is filed or injury is presumed compensable

Rebutting the Presumption

- **Peace Officer/Firefighter/Healthcare Workers**
- Evidence of no opportunity for occupational exposure (difficult)
- **“Other” Workers at Outbreak Locations**
- Evidence of measures in place to reduce transmission (use of PPE/masks, hygiene requirements, enforcement of social distancing)
- Evidence of potential non-industrial exposure (investigation, interviews, social media searches)

Rebutting The Presumption

- Multiple/Concurrent Employers
- Date of Injury is defined as the last day worked at a specific location prior to the positive test
- Possible to have multiple dates of injury for one case (reimbursement vs. contribution claims)
- **May** have a basis to rebut the presumption if concurrent employer admitted the claim (acknowledged COVID-19 contracted therein)

Common Questions

- LC §3212.88 – Presumption applies if outbreak at employer’s “specific place of employment”
- What exactly is “specific place of employment”
 - Multiple sites/buildings? Segregated areas within same building?
 - SB 1159 (LC §3212.88(m)(3)(A)) defines specific place of employment as:
 - “Building, store, facility or agricultural field where an employee performs work...” does not include the employee’s home or residence
 - No case law yet to further clarify
 - AB 685 defines “worksites” as the building, store, facility, agricultural field, or other location where an employee worked. Expressly notes that it does **not** apply to buildings, floors or other locations where the qualifying individual did not enter.
- Outbreak definition under SB 1159
 - “4 and 4 rule”
 - Outbreak defined differently under AB 685 and CCR 3205 – pertaining to employer notice requirements

Common Questions cont'd

- Do you have to admit claim if employee tests positive within 14 days of last day of work, during an outbreak?
- Do you still have to pay up to \$10K for medical treatment while the claim is in delay (upon receipt of hospital bill)?

Investigation: Employer Level

The adjuster may ask many if not all of the following questions:

- Does the employee's job duties present any risk of contracting illness over and above that of the general population?
- Was a specific known source of exposure identified that the employee was exposed to?
- What level of interaction did the employee have with the source?
- Was the employee wearing any specific safety gear to prevent/minimize exposure?
- Are there any specific safety procedures being followed in the work environment such as wearing masks, gloves, sanitizing common shared areas or items?
- If employee is off work pending test results – is the employer paying the administrative pay or is the employee using their own sick/PTO time?
- Is the employer aware of any activities that the employee engages in that would potentially allow for exposure outside of the workplace?
- Any evidence of an Outbreak?

Investigation: Employee Level

- Was there a specific known positive source of exposure?
- If yes ask: How do you know the specific source was positive?
- When did the exposure occur?
- What was your specific interaction with the person?
- How long did you spend with the person?
- How physically close were you to the person?
- Were you wearing any specific safety equipment such as a mask/gloves? What type of masks?
- Additional questions to ask on all exposure cases:
 - Have you been tested and what were the results?
 - If employee is off work pending testing, please find out if the employer is paying them administrative pay or are they having to use their sick time.
 - Is employee following any specific safety protocols such as wearing a mask at work?
 - Have you been exposed to any family member, friend, neighbor, or roommate with a known exposure to the illness?
 - Who lives at home?

Investigation: Employee Level *cont'd*

- Is there a room for isolation, if needed?
- Do you have any compromised immunity concerns? (cancer, asthma, other respiratory issues, etc)
- What specific activities are you engaged in outside of work?
- Gym? If so where and when?
- Do you go to the grocery store? Where & when?
- Have you been to any malls? If so where and when?
- Have you traveled on public transportation (such as BART, Airplane, Bus, Train, Muni)? If so where, when, what dates? (focus on last 30-45 days)
- Have you traveled outside of the country in the last 60 days? If so, where?
- Have you attended any public events or venues? (Such as farmer's market, fairs, sporting events, school events, concerts, theaters, hotels, spas)
- Are you currently taking any classes/attending any schools?
- Are they part of any local clubs, PTA or volunteer for any groups? If so when did they last attend a meeting or do volunteer work?

Consequences Of Pandemic On All WC Claims

- Applicants refusing/delaying treatment
- Applicants refusing/delaying medical-legal evaluations
- Medical-legal (AME/PQME) evaluators delaying evaluations or requiring tele-medicine evaluations
- Basis to terminate TD if applicant refusing/delaying authorized treatment?
- “Unreasonable” refusal to undergo treatment or evaluation

Other Considerations

- Potential Psyche Claims
- S/W Claims
- Civil Claims
- Stipulations
- Body Parts
- Compromise and Release

Potential Civil Liability

Does an Employer owe a duty of Care to an Employee's Family Members?

- Necessity of employer/employee relationship, right?
- Certainly for workers' compensation – what about civil liability?

See's Candies, Inc. V. Superior Court *(288 Cal. Rptr 3d 66 (Cal. Ct. App. 2021)*

- Employee at See's Candies contracts Covid, allegedly at work
- Allegations of lack of safety protocols at work
- Employee's husband contracts Covid, allegedly from his wife
- Husband dies; wife (who recovered) files civil suit against See's
- See's Candies files a Demurrer
- CA Appellate Court allows case to proceed – CA Supreme Court refused to hear
 - The Duty of Care issue, though is not addressed – only decision is that the Derivative Injury Doctrine did not apply – The death is independent of the wife's work injury.
- Many cases in the country now involving Amazon, WalMart, McDonald's and Royal Caribbean Cruises
- What about strangers then?

Kuciemba V. Victory Woodworks, Inc. *(2022 U.S. App. Lexis 10786)*

- Does an employer owe a duty of Ordinary Care of the households of its employees?
 - Construction company in San Francisco – applicant contracts Covid, brings it home to his wife
 - Wife is hospitalized more than a month on a respirator
 - Federal district court granted motion to dismiss – the derivative injury doctrine bars the plaintiff’s claim, and, alternatively, employer owes no duty of care
 - Derivative Injury Doctrine – long-held precedent – Exclusive Remedy
 - Some cracks in the precedent – Snyder decision (injury to fetus when pregnant mother exposed to chemicals); asbestos cases – family members getting sick
- On appeal, the Federal Circuit court raises the Duty of Care issue, and asks the CA Supreme Court to certify the issue for an answer

Kuciemba, Cont'd

- The issue is certified – Does an employer owe an ordinary duty of care to households of employees?
- Allegation – company knowingly transferred infected workers from one construction site to the other
- Certified because the case presents issues of significant public importance, including the scope of an employer's liability in tor for the spread of Covid-19
 - Also – whether the Derivative injury doctrine applies to injuries derived in fact from an employee's workplace injury.

Kuciemba, Cont'd.

- A test of “Reasonable Foreseeability?”
- If so, how do you insure against this?
- Instructions to your insureds – Covid may seem like it’s in the rearview mirror, but legally, it is not.
- If the issue is one of negligence in the civil arena – the question will be, “What did you do to mitigate the exposure and risk?”
 - Remain vigilant about contact tracing
 - Temperatures, distancing, masking if unvaccinated, policies re: staying home if sick or exposed; hand sanitizer availability

Sevillano Vs. State Of California And IHSS (In-home Health Support Services) – Decision Date – 09/28/2022

- Can you rebut the Covid Presumption?
- WCJ found that applicant, a home healthcare worker, did not suffer Covid-19 on an industrial basis. Though she qualified for the presumption under LC 3212.86, defendant successfully rebutted the presumption.
- **Facts:**
 - Every body part imaginable alleged, due to Covid-19
 - Applicant provides IHSS in a retirement complex/apartment building. Contracts Covid and is hospitalized for 8 days.
 - Applicant tells her doctors (in the hospital) that her two roommates were also Covid positive. But she has her own room.
 - Applicant tells workers' comp doctors a married couple she worked for at the complex also tested positive.
- **At trial, applicant denies her roommates ever tested positive for Covid**
 - Trial Judge determines applicant lacks credibility
 - Testimony was inconsistent with statements and records during hospitalization re: her roommates
 - Result on Appeal?

Sevillano, cont'd:

Legislative Intent of Covid-19 laws:

Provide compensation benefits to employees who provide vital and hazardous services by easing their burden of proof of industrial causation

3212,86m 3212,87 and 3212.88 were “urgency legislation” as part of SB 1159, enacted on 09/17/2020

Once facts giving rise to the presumption have been proven, the burden of proof to negate the presumption falls upon the defendant employer

Sevillano, cont'd:

Did employer do so here?

- No medicals ascribe her Covid to nonindustrial exposure
- No witness testimony re: her roommates
- Remember – applicant testified contrary to the medical note while hospitalized about her roommates....defendant did not present the roommates to refute her testimony
- What about credibility finding? Remember – it's a *presumption*.
- Overturned by the WCAB – applicant prevails.

AB 2693: Talk of outbreaks – so how do employees know?

Employers – Notification Requirements pertaining to Covid

- Current law: if employer receives notice of potential exposure to Covid-19, the employer within one business day must notify all employees on the premises by providing written notice to all employees on the premises at the same worksite that they may have been exposed.

AB 2693 cont'd.

- LC 6409.6 – effective 01/01/2023: No longer need to provide written notice to each employee; notification requirement is satisfied by posting....
- Employers shall prominently display a notice (where all notices are customarily posted) all of the following:
 - Date on which an employee, or employee of a subcontractor, was on the worksite premises with a confirmed case of Covid-19 within the infectious period.

AB 2693 cont'd.

- What is an infectious period?
 - The time a confirmed case of Covid-19 is infectious
 - Varies – period of greatest infectiousness peaks at two days before and one day after symptom onset, but declines within seven days; but Omicron variant's infectious period was slightly later – 3 to 6 days after symptom onset
 - Generally accepted infectious period – within 7 to 10 days of infection

AB 2693 cont'd.

- The location of the exposure, including the department, floor, building, or other area (but don't be so specific that you identify the individual worker....)
 - The notice must provide contact information for all employees re: covid-19 related benefits (federal, state, local, workers' comp, covid-related leave, company sick leave, state mandated leave, supplemental sick leave, or negotiated leave provisions)
 - This notice must be posted within one business day
 - Must remain posted for 15 calendar days
 - In English – or the language spoken by the majority of employees
 - May still provide notice individually, in writing, as you were doing in 2022
 - The notice must provide contact information to obtain the employer's cleaning and disinfection plan
-
- Employers must keep a log of all the dates the notice required by LC 6409.6 was posted at each worksite of the employer, and allow the Labor Commissioner to access these records upon request.

Don't ignore AB 685 – still in effect

- Employer must notify public health department with 48 hours of notice of a Covid outbreak as defined by the CA Dept of Public Health.
 - What's an outbreak here? Not a workers' presumption issue – CA Dept of Public Health definition is 3 or more lab confirmed cases of covid-19 within a 2-week period.
- Stiff penalties -- \$25,000 for each occurrence if show fraudulent concealment of failure to report.

AB 152: California's Covid-19 Supplemental Paid Sick Leave

- Signed into law on 09/29/2022
- Extends the Supplemental paid sick leave that was scheduled to end as of 09/30/2022 – now extended through the end of 2022.
- Signed initially on 02/09/2022, and was applied retroactively to 01/01/2022
 - Applies to employers with more than 25 employees
 - Caps of \$511 per day, or \$5,110 in the aggregate
 - Two tracks/avenues to receive 40 hours of pay
 - The I don't feel good track, or my child doesn't feel good, or my spouse doesn't feel good – so pay me 40 hours.
 - The I tested positive track, or my family member for whom I now have to provide care tested positive track – 40 hours

AB 152, cont'd.

- The extension of AB 152 to the end of the year does NOT grant additional time, if already used....
- Employer has a right to demand a copy of the positive test. It is not a privacy issue.
- Employer has a right to demand a copy of the family member's positive test, for whom the employee is now caring.
- If on track 1 ("I feel sick), employer has the right to demand a positive test after day 5 (of either employee or employee's family member), and, if a positive test is returned, employer has right to demand a second positive test within 24 hours.

SB 1127 – Expansion of Police officer presumptions and extension of benefits:

- Police officers and firefighters with Cancer – a presumption of compensability
- Temporary Disability --- current law limits TD benefits to 104 weeks of TD within a period of 5 years from the date of injury (generally)
 - Now – TD eligibility is increased to 240 weeks without limitation as to time from the date of injury

SB 1127, cont'd.

- Investigation period for presumption of compensability is reduced from 90 days to 75 days to address presumptive injuries covered by LC 3212 to 3212.85 and 3212.9 to 3213.2
- In other words – all claims involving police or fire alleging hernia, heart trouble, pneumonia, or tuberculosis – now a 75 day period to deny/investigate
- All cancer cases for police and fire; all meningitis cases
- All lower back injuries for police officers who wear a duty belt

Penalties imposed by SB 1127

LC 54134.3 – Unreasonable denials for injuries pertaining to police and fire may result in a penalty of five times the amount of benefits unreasonably delayed due to rejection of liability, not to exceed \$50,000.

Note – this new penalty provision for police and fire denials applies to all dates of injury – regardless of whether the injury occurred before the enactment of LC 5414.3.

Takeaways

1. Claim Form
2. Monitor and Report all COVID post to all Employees
 - a) Report to Health Department 3 or more in a 10 day period
 - b) Continue to Report COVID cases to your carrier
 - c) Be Aware of potential for civil liability
3. When in doubt reach out to your Broker and/or Carrier/TPA for guidance.

QUESTIONS?

Workers Compensation Webinar: New Laws New Regulations

1. Should we provide a claim form DWC1 for COVID? in case the employee said that he got Covid at work?

Absolutely. Do so immediately.

2. I thought an outbreak was defined to be 3 or more employees with COVID?

The distinguishing factor is whether we are talking about a workers' compensation claim, or whether we are simply talking about reporting to the CA Health Department.

In terms of workers' compensation, Per Labor Code section 3212.88, an "outbreak" is defined as 4 employees (or 4% if you have more than 100 employees on site) testing positive for Covid within 14 days – you then have a presumption of a compensable workers' compensation claim.

Per AB 685, an outbreak is defined as 3 employees testing positive (lab confirmed cases) within 14 days, in which case, the employer must notify the local public health department of this outbreak within 48 hours.

3. The state of emergency will end next year. Will these requirements still be in place after the state of emergency ends?

They are indeed. The state of emergency ends as of 02/28/2023 (for now). All that means is a return to standards for hospitals with respect to hiring out of state employees who aren't licensed in CA; a return to bed ratios for hospitals; funding issues for Covid-related conditions; declaration by the governor with respect to stay-at-home orders, mask mandates, etc. The laws we discussed with respect to Covid in workers' compensation and reporting requirements have been passed by the legislature and signed by the Governor on 09/29/2022. They are in effect through the end of 2023.

4. If an employee states that they got Covid19 from their mom/dad/sister/bf, are we still required to provide them a DWC-1 claim form, and are we required to report those to our TPA for investigation?

No. If the employee is certain they contracted it elsewhere, you are not required to provide the claim form. However, how can anyone be certain? I would still offer the claim form – the employee will probably refuse it. But document the conversation. Document the fact that the claim form was offered and refused.

5. Do you recommend posting in the breakroom if the majority of your workforce still isn't back in the office?

You may do that, by law, effective 01/01/2023. However, I would continue to notify employees in the mode that you have become accustomed to. If that is by email, I would continue to do so.

6. Can an employee retroactively file a claim?

Yes – employees do it all the time. The statute of Limitations(one year) per LC 5405 remains in effect. But that is often a difficult bar for defendants to overcome because an employee is rarely charged with the “you should have known” you contracted it at work standard.

7. Should a business require PCR or Provider Rapid tests for Covid confirmation or are home tests allowed for workers comp purposes?

For workers’ compensation cases, a PCR test (or equivalent, as approved by the USFDA with similar or higher sensitivity) is required. A home test is not sufficient.

8. Please confirm it is 3 or more per worksite not company-wide and that this reporting is in addition to any local health department notification

You are correct – it is 3 or more (for reporting requirements to the health department) or 4 or more (for purposes of establishing a workers’ compensation presumption of compensability) ON SITE – not company-wide.

9. As an employer can we decline a home test as a positive/negative result?

The home test is not sufficient to support a compensable workers’ compensation claim. A PCR test is required for workers’ compensation purposes.

It is, however, sufficient to afford an employee entitlement to the Covid Supplemental Sick Leave (the up to 80 hours provision that has been extended through the end of 2022). Keep in mind, the first 40 hours of SPSL do not even require a positive test. The employee can say they have covid-like symptoms; or even symptoms related to receiving the Covid-19 vaccine; or they are caring for a family member with covid-like symptoms. The second track of 40 hours do pertain to a positive test. After 5 days, the employer has the right to request another positive test.

PLEASE KEEP IN MIND THE COVID SUPPLEMENTAL PAID SICK LEAVE ONLY APPLIES TO EMPLOYERS WITH 25 OR MORE EMPLOYEES.

10. For reporting purposes: Are those three people who contract COVID-19 need to be infected between themselves? Or are the three cases all considered "patient 0"?

It is simply 3 people working on site. They need not be infected between themselves.

11. If your employee does a home test and is positive, do they have to go and get a test taken at a facility also?

Again – for purposes of the Covid Supplemental Sick Leave pay, you as an employer may request a second test after 5 days. A home test is sufficient, however, for the first reporting of Covid-19, thus making the employee eligible for the supplemental sick leave pay.

12. If an employee is part-time are they still eligible to be paid 80 hours?

No – not 80 hours. There are two considerations:

- 1) If the employee worked a normal weekly schedule (for example, 28 hours a week), then the employee is entitled to the total number of hours per his or her normal schedule.

- 2) If the employee works a variable number of hours, (say 30 hours one week, 10 hours the next, etc.), then the employee is entitled to 7 times the average number of hours the employee worked each day for the employer in the six months preceding the sick leave.

13. Can employers deduct 80 hours of Covid pay for regular PTO hours?

No – an employer may not require an employee to use any other paid or unpaid leave, paid time off, or vacation pay before the Covid-19 supplemental paid sick leave is paid out.

14. Concerning Outbreaks, If the employee's test is positive using a home test only, do we still have an obligation to report the outbreak?

No – outbreaks for workers' compensation purposes and for reporting to the Health Department (under AB 685) require a lab-confirmed test (i.e., PCR test). However, please note, for purposes of establishing an outbreak that requires reporting to the Health department, a "qualifying individual" is one who:

- 1) Either has a lab-confirmed PCR test, or
- 2) Has received an isolation order from a public health official, or
- 3) Died due to Covid-19

15. What if a group of employees go out for a lunch and one employee has COVID.

Everyone sat at the same table next to one another. Are we required to send close contact notifications to all the employees who attended. Is this considered a workplace case even though it was an offsite work event (that was optional to attend)?

The personal comfort doctrine in workers' compensation presumes employees will either be afforded a place to gather and have lunch, or, perhaps go out to lunch together. Meal breaks are considered "personal comfort" and are compensable if, for instance, an employee suffers an injury while taking a break (unless there is a substantial deviation...i.e, they ate lunch but then went to the mall to go shopping and suffered an injury there). Point being – if the employees went out to lunch together, all should be advised.

16. If we paid for all time lost due to Covid, are we at risk for dispute?

I'm not sure I understand the question....are you saying if you paid for lost time, are you essentially conceding the employee contracted it at work? No – not necessarily. Again, the 80 hours of Supplemental Sick Leave pay have nothing to do with workers' compensation, or an admission of where it was contracted.

If you are asking, well....we paid the employee ongoing pay, we didn't report it to our carrier; we just wanted to keep it amongst ourselves....you could be liable for a compensable workers' compensation claim should the employee retain counsel and seek ongoing benefits. The question will be, did you have a duty to investigate? Did you offer a claim form? Have 90 days passed since your date of knowledge (or, if there is an outbreak of 4 or more employees, have 45 days passed?)

17. Is a positive test defined by a lab test or a rapid test - or both.

For workers' compensation – a lab PCR test.

For supplemental paid sick leave – a rapid test will suffice

18. 3 employees within the facility workstation? How does this work?

This is a fact specific question and case law has not yet been developed.

Generally speaking, though, "within the facility" means employees who were working together during the infectious period. It does not apply to different buildings at the employer's worksite, or even different floors, if the employer can show the employee did not enter the other floors or buildings. Generally speaking, close contact is considered to be working within 6 feet of the infected employee for a period of 15 minutes over a 24-hour period. But that truly has not been tested in the courts for determining a work-related exposure.

19. So employees DO NOT have to take a home test to pay them? Is it our choice?

How do we know if it is theirs?

That's a good question. You really don't – but keep in mind, the first 40 hours of Covid supplemental sick leave do not even require one to provide a positive test. The first track of 40 hours can simply be "I feel like I have covid-related symptoms." Or....I'm taking care of someone (child, parent, spouse) who has covid-related symptoms." Or, "I got the vaccine, and now I feel sick." The second track of 40 hours would require a test.....and after 5 days, the employer can request a second test.

20. At whose expense is the PCR test?

If the employer requires a PCR test, not only must the employer pay for the test itself, but also the time it takes for the testing, including travel.

This also applies if the employer requires its employees to be vaccinated.

This is part of the Covid Supplemental Paid Sick Leave Act.

21. Are you still required to pay exclusion pay? When does an employee's exclusion pay exhaust?

Yes. If an employee is excluded from work because of a workplace Covid-19 exposure, the employer must pay exclusion pay assuming 1) the employee cannot work remotely, and 2) the employee is not receiving disability payments through workers' compensation while being excluded.

22. 3 or more who tested Covid in a workplace within 14 days. What if they all got Covid outside of work, do we have to report the outbreak to the Dept of Health?

Were those three employees working onsite? If they are working onsite and have positive Covid tests, yes, you must report that as an outbreak to the Department of Health. An employer cannot assume that it was contracted off site and, more importantly, cannot assume that no one else onsite has been infected. CA will assume it is quite possible that other employees on site will have contracted it as well.....Cal Osha may impose an exclusion order at the workplace.

23. What if a remote worker contracts Covid at home?

That is not considered to be a compensable workers' compensation claim. The worker must have been onsite, at the workplace. A remote worker would not be considered for reporting requirements to the state of CA either.

24. Is an employee eligible for 80 hours of Covid pay if they test positive for Covid?

Yes. You may request a second test after 5 days.

25. Does the employer need to provide a PCR test during an outbreak even if there is a way for the employee to order a test kit through the medical insurance carrier, free of charge to the employee?

Is the test kit through the medical insurance carrier not a PCR test? PCR tests can be taken at home, but must be mailed to a lab for analysis.

It could be an antigen test (or rapid test) for home use...true. For purposes of establishing a workers' compensation presumptive outbreak, though, PCR tests are required. If you have 4 or more employees suggesting they have contracted Covid (for workers' compensation purposes), I would suggest you as the employer provide the PCR test, or tell the employee that they must go to the Dr. and have a PCR test conducted.

26. Is there a time frame that an employee has to work for a company before they are allowed COVID pay? Example: A new employee that has worked for the company for two days and says they have Covid symptoms and want to use Covid pay?

A full-time covered employee (meaning, entitled to the up to 80 hours provision) must have worked an average of at least 40 hours per week in the two weeks before the leave is taken.

However, they are entitled to part-time consideration. Your employee only worked 2 days during the one-week period. Let's say that employee worked 16 hours. The total number of days in a week is 7. 16 hours divided by 7 = 2.28. $2.28 \times 7 = 16$ hours of pay. (basically, a part-time employee will receive the number of part-time hours worked).

Presenters



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EPIC Upcoming Webinars



Virtual Employment Law & Benefits Update - with 3 HRCI credits (with Berliner Cohen)

December 1st

9am – Noon PST

In Person Employment Law & Benefits Update - with 3 HRCI credits (with Berliner Cohen)

January 11th, 2023

8:30 am check-in, 9am start to Noon PST