

# Policy At A Glance:

## Workers' Compensation: COVID-19: Critical Workers (SB 1159)

*Senate Bill (SB) 1159 expands access to workers' compensation and makes it easier for first responders, health care workers and people who test positive due to an outbreak at work to get the support they need, including necessary medical care and wage replacement benefits.*

## What is Senate Bill 1159?

Senate Bill (SB) 1159 was crafted to reduce the barriers essential workers suffering from COVID-19 face when trying to navigate the workers' compensation system.<sup>1</sup> As a part of Governor Newsom's worker protection package, SB 1159 was signed into law on September 17, 2020, to take effect immediately and will end on January 1, 2023. This bill provides the following key provisions for peace officers, firefighters, specified frontline employees, and certain healthcare employees:<sup>2</sup>

- Reinstates a recent executive order (N-62-20) to create a rule that presumes an illness or death related to COVID-19 is an occupational injury for essential workers and therefore eligible for workers' compensation benefits.
- Provides that the presumptions established by the bill continue for 14 days after the last day of employment with an employer.
- Provides that all the normal workers' compensation benefits are available to these employees who become presumptively eligible for workers' compensation benefits.
- Establishes a rule that employees who contract COVID-19 from any employer that experiences an "outbreak" of COVID-19 cases at a particular work location is presumed to have contracted the virus at work and is eligible to receive compensation.

## *SB 1159's Exception*

SB 1159 establishes that an essential worker who contracts COVID-19 is presumed to have contracted it from work. However, an employer can challenge this presumption by providing evidence that the employee's exposure is not work-related and that measures were taken by the employer to prevent the transmission of COVID-19. Thus, the burden is placed on the employer to prove that the employee's exposure to COVID-19 is nonoccupational.



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# What is Workers' Compensation?

Workers' compensation is the oldest social insurance program in the United States. With the rise of the trade union movement at the beginning of the 20th century, the concept of protection and compensation for work-related injury and illness came about. People were outraged by the poor and dangerous working conditions some individuals faced and the devastating financial burden work-related injury or illness placed on the worker and the worker's dependents.<sup>3</sup> California adopted workers' compensation laws in the 1910s along with most other states.

Workers' compensation is a form of insurance that compensates workers who become injured or disabled as a result of their job. A caveat to this system is that if an employee opts in to get worker's compensation for an injury, they forgo their right to sue their employer for negligence.<sup>4</sup> Therefore, it also provides legal protection for the employer.



Workers' compensation is based on a no-fault system, which means that an injured employee does not need to prove that the injury or illness was someone else's fault to receive workers' compensation benefits for an on-the-job injury or illness.<sup>3</sup>

The following are five basic types of workers' compensation benefits:<sup>3</sup>

1. Medical care
2. Temporary disability benefits
3. Permanent disability benefits
4. Supplemental job displacement benefits
5. Death benefits

Injured workers may be entitled to one or more of these benefits.

## Executive Order N-62-20



On March 4, 2020, Governor Gavin Newsom proclaimed a State of Emergency for California as a result of the threat of the COVID-19 pandemic. The aim of this executive order was to reduce the spread of COVID-19 and mitigate the effects of COVID-19 among all Californians. A key provision from this order was that any COVID-19-related illness of an essential employee shall be presumed to arise of and in the course of the employment for purposes of awarding workers' compensation benefits if they satisfy the specified requirements. The provisions listed out in the order expired in July. Thus, SB 1159 was passed to extend coverage for these provisions.<sup>5</sup>

## What is the Impetus for SB 1159?

March 2020 marked the beginning of uncertain times for the entire globe as the World Health Organization declared COVID-19 a pandemic. COVID-19 began to spread like wildfire and claimed the lives of millions around the world. On March 4, 2020, Governor Gavin Newsom proclaimed a State of Emergency for California because of the pandemic. Although there was a stay at home order, essential workers were permitted to work. As such, these workers were putting themselves at risk of being exposed to contracting the novel virus. Due to this potential risk, Governor Newsom signed SB 1159 on the 17<sup>th</sup> of September to provide some protection and compensation in case the risk became a reality. Such measures could also have the secondary effect of slowing the spread of the virus since affected workers would not be tempted to continue working out of concern for economic losses. Most importantly, this law promotes the safety and wellness of workers in the state of California during these unprecedented times.



## Who Supports SB 1159?

Proponents of the law include but are not limited to the California State Council of Service Employees International Union, the Orange County Employees Association, and the United Domestic Workers of America. This group argues that the number of people who tested positive for COVID-19 and the number of lives that have been lost to the disease establish the dire need for protection and safety of workers who are at risk of contracting the virus from work.<sup>2</sup>

## Who Opposes SB 1159?

Opponents of SB 1159 consist of a vast coalition of employers, including the California Coalition on Workers' Compensation. This group of opponents argues that the law will cause many employees who are not infected at work to be covered by workers' compensation benefits paid by employers and that there is scant evidence that employees who truly are infected at work are being denied benefits. Also, they view this law as administratively burdensome and unworkable for employers.<sup>2</sup> Of note, employers are mandated to report if an employee tests positive for COVID-19. Failure to report as required or intentionally reporting falsified or misleading information would result in a civil penalty of up to \$10,000.<sup>2</sup>

## Conclusion

In light of the COVID-19 pandemic and the staggering number of lives it has claimed and affected, reducing the spread of this novel virus is paramount. On September 17, 2020, the California legislature made strides to protect workers who are at risk of contracting this virus. SB 1159 expands access to workers' compensation and makes it easier for first responders, healthcare workers, and people who test positive due to an outbreak at work to get the support they need, including necessary medical care and wage replacement benefits.<sup>1</sup> However, it also places greater economic burden on employers given that COVID-19 is still very prevalent in the community and the burden of proof now falls on the employer to prove that a COVID-19 infection did not occur at work. Although this law is effective through January 1, 2023, the hope is that the COVID-19 pandemic will improve well before then for the sake of everyone's mental, physical, social and economic wellbeing.

## References

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## Did you know?

“If a person collects workers' compensation benefits, he or she gives up the right to file a lawsuit.”<sup>6</sup>



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Institute for Health Policy and Leadership

11209 Anderson Street  
Loma Linda, CA 92354  
Phone: 909-558-7022  
Fax: 909-558-5638  
[www.IHPL.llu.edu](http://www.IHPL.llu.edu)

Special guest contributor:  
Queen-Ivive Egiebor, MPH, IHPL Intern

Questions?  
Please contact the Institute for Health  
Policy & Leadership ([ihpl@llu.edu](mailto:ihpl@llu.edu))