



Understanding New California Law Pertaining to the Presumption and Reporting of COVID-19



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Healthcare

Would pharmaceutical sales reps who are visiting doctor's offices fall in the healthcare category even though their roles are actually sales?

Under the strict reading of Labor Code Section 3212.87, pharmaceutical sales representatives *would not* fall with the statutory presumption, as these individuals are not involved with direct patient care, such as a physician, nurse, first responder, etc. In the event a sales representative files a WC claim, alleging industrial COVID-19 exposure, it would fall with the standard protocol set forth in Labor Code Section 5402 (90-day investigation time frame).

Place of Employment

We have heard that truck drivers do not have to consider the individual locations they drop off to as a specific place of employment --- 1. Because the other individuals at those sights are not employees of the truck drivers' company and 2. The driver/ deliverer place of deliver is not considered their specific place of employment. Would the same go for individuals who deliver items to multiple locations that is considered a job site for the employer even if the employee is not "based" in that specific place of employment --- Ex: An individual who couriers between different agricultural fields that a vineyard management company is working. Loads and unloads stuff then goes to another location to do the same.

This is a multifaceted question that falls into the "it depends" category of answer, as additional facts/info would be requested to assist with a response.

In first scenario, if employee driver is making deliveries to customer locations, and he/she does not perform loading or unloading duties, then from my standpoint, there is a colorable argument that this is not a specific place of employment for Labor Code Section 3212.88 presumption purposes.

It gets a little murkier if employee is actually engaged in loading/unloading process. If it is a quick drop shipment of a parcel or two, the rebuttal presumption may not apply. Conversely, if there is significant amount of time, spent at a regular customer location, I can easily envision this issue being subject to litigation down the line.

I would also add, that from a pure public health policy standpoint, with regards to visiting contractors (couriers, delivery drivers, etc.) it would seem likely that there would be some communication with customer location if a positive COVID-19 test and diagnosis is reported.

As far as example number 2 is concerned, if delivery driver/courier is making stops at various *employer* locations, I would err on the side of caution and have a report generated for each employer location visited. This of course is contingent upon all elements of Labor Code Section 3212.88 being satisfied (e.g. number of employees; positive testing/diagnosis; and outbreak criteria).

Carrier Reporting

On Berkshire's reporting tool, there is a tab for Executive Order cases (prior to 7/5). Do we need to report these?

A claim needs to be reported if the answer is YES to ALL the following questions below:

- 1) Did the employee work on-site at one of your locations from 3/19/20-7/5/20?
- 2) Did the employee test positive for COVID-19 or were they diagnosed with COVID-19 in the date range noted above?
- 3) If yes to answer '2', did the employee work on-site at one of your locations within 14 days before the test was done?
- 4) Does the employee believe that COVID-19 is work related or contracted at work?

Please follow up with your carrier for their reporting forms and reporting instructions.

If we have measures in place in our workplace, including investigation reports when and how would they recommend that be provided for retroactive reporting which is due on Friday.

If this is in regard to retroactive reporting for tracking purposes, we wouldn't need the investigation reports until a claim is filed with us. If it is for retroactive claims reporting where a claim is filed, then the investigation reports can be provided to the assigned claims professional at the time of the initial three-point contact.

A slide stated positive tests must be reported to carrier from 7/16/2020-9/16/2020. Is this the retro period requirement?

YES. All positive COVID test from 7/6/2020 through 9/16/2020 must be report to the carrier/administrator no later than 10/29/2020.

Do we keep reporting to workers comp?

YES. On 9/17/2020 and after, All Positive COVID test must be reported to the carrier/administrator within 3 business days.

Please follow up with your carrier for their reporting forms and reporting instructions.

DWC-1 Form

What if an employee does not send back the DWC form?

The clock does not start clicking until the claim form is signed and returned by the employee.

Do we need to give a worker the DWC-1 form only if there is an outbreak?

DWC-1 form should be issued to any employee that gives notice of potential industrial injury claim, whether it be COVID-19 related or not.

Labor Code 3212.88

Does it end on 7/5/2020?

No.

AB 685

Letter and policies to all employee when someone tests positive?

Under AB 685, employers must provide written notice of potential COVID-19 exposure within one day of knowledge of exposure by an “qualifying individual”.

Employees Working from Home

If an employee works from home and test positive for COVID-19

The Employer does not need to report the positive test to the workers compensation carrier.

If employees have been working exclusively from home and have not been in the workplace at all and they contract COVID-19 – does the presumption apply and do they need to be reported?

SB 1159 presumptions do not apply to employees that are working from home. If COVID-19 claim is filed by remote worker, it would fall under “regular” 90 day investigation timeframe.

Employees working in other states or countries

Is an employer located in California required to report on positive Covid-19 diagnosis for employees who are working in other states? How about other countries?

Reporting requirements pertain to California locations only.

Outbreak

If you have multiple buildings, is it 4% of the total population or 4% of the office locations?

If buildings are separate work areas, I would calculate 4% from specific location (there are a lot of factual variables that may come into play, e.g. common areas, etc.)

What is the difference between one person testing positive vs an outbreak? I imagine we have to report any and all positive tests? But do we need to do something different if there are at least 4 positive Covid-19 cases in 14 days?

Outbreak calculation for the purposes of SB1159 will determine if presumption (with shortened investigation period) applies. A single employee with positive COVID-19 test result will still have to be addressed under established WC and employee health procedures.

Positive test waiting period

I was asked if after a positive test, we must wait 10 days + 24 hours with no symptoms until new negative test is received – is this accurate?

Generally speaking, 10 days of being asymptomatic after a positive COVID-19 test, should allow an employee to RTW. Whether a repeat test is required, is a question I would defer to Alka to address from an employment law standpoint.