EMPLOYERS' TRAINING RESOURCE

**TO:** Subrecipients of Employers' Training Resource (ETR) Who Provide Work Experience to Participants Under the Workforce Innovation and Opportunity Act (WIOA)

**FROM:** Teresa Hitchcock, Assistant County Administrative Officer
Employers' Training Resource

**DATE:** July 15, 2021

**SUBJECT:** Participant Safety at Work Experience Sites During COVID-19 Pandemic

This Policy Memorandum replaces Participant Safety at Work Experience Sites During COVID-19 Pandemic ETR Policy Memorandum dated June 15, 2020.

## PURPOSE:

The United States Department of Labor recognizes that the COVID-19 pandemic presents unique challenges for WIOA grantees and participants and encourages programs to review local, state, and federal health and safety guidance regarding COVID-19, and adjust program operations and services as needed.

ETR has developed this guidance to assist subrecipients ensure participant safety in work experience during the COVID-19 pandemic. This guidance applies to ETR and all subrecipients of ETR who provide work experience under WIOA.

## BACKGROUND:

On March 19, 2020, Governor Gavin Newsom issued a stay-at-home order to protect the health and well-being of all Californians and to establish consistency across the state in order to slow the spread of COVID-19. Most WIOA work experience in Kern County was halted on or about March 18, 2020, and on March 20, 2020, ETR instructed youth subrecipients to suspend all youth work experience immediately.

On May 20, 2020, Governor Newsom allowed Kern County to ease restrictions, and stores and restaurants in Kern County began to reopen with modifications.

On September 17, 2020, California Senate Bill No. 1159 (SB 1159) codified the COVID-19 presumption created earlier by Executive Order N-62-20 and provided two new rebuttable presumptions that an employee's illness related to coronavirus is an occupational injury and therefore eligible for workers' compensation benefits if specified criteria are met. SB 1159 remains in effect until January 1, 2023. Subrecipients serve as the employer of record when conducting work experience. Subrecipients should be aware that a participant who is participating in work experience and who tests positive for COVID-19 may seek workers' compensation benefits, which may have an effect on the subrecipient's premium in the future.

On June 17, 2021, the Occupational Safety and Health Standards Board readopted revised Cal/OSHA COVID-19 Prevention Emergency Temporary Standards. These standards incorporate the latest California Department of Public Health guidance on face coverings and eliminate physical distancing requirements except for certain employees during outbreaks. Following the vote, Governor Gavin Newsom signed an executive order to allow the revisions to immediately take effect on June 17. The emergency standards apply to most workers in California not covered by the Aerosol Transmissible Diseases standard.

**PROCEDURE:**

Before placing a participant at a worksite, a WIOA staff person must familiarize themselves with the state-issued COVID-19-related guidance applicable to that worksite and physically visit the worksite to determine if the recommended health and safety actions are in place. If the recommended health and safety actions are not in place, the participant must not be placed at the worksite.

If the worksite is deemed safe, a participant may be placed at the worksite for work experience. A WIOA staff person must then physically monitor the worksite after the participant has worked there for between two and four weeks to ensure the recommended health and safety actions are still in place. This monitoring is in addition to the worksite monitoring required in Exhibit A of the subrecipient contract but may be done at the same time. All worksite monitoring visits must be documented in writing and maintained by the subrecipient for review by ETR.

In addition, the worksite should be notified that they are required to immediately report to the subrecipient a participant's potential COVID-19 exposure as well as the disinfection and safety measures that will be taken at the worksite so that the subrecipient can take appropriate action.

Conditions may continue to arise that will require adaptation, and agencies will need to respond as the situation changes. Subrecipients should be prepared to alter and adapt as needed. If federal, state, or local authorities recommend a new health and safety action, a WIOA staff person must physically monitor the worksite to ensure that the recommended health and safety action is in place.

If, at any time, a worksite does not comply with the recommended health and safety actions, the participant must be removed from the worksite until the worksite is in compliance.

**ACTIONS REQUIRED:**

Subrecipients should:

1. Share this guidance with all relevant parties including directors, human resource officers, and all WIOA staff.
2. Continually monitor developing federal, state, and local government health and safety recommendations.
3. Monitor worksites prior to placing the participant at the worksite, after the participant has worked between two and four weeks, and at any time federal, state, or local authorities recommend a new health and safety action.
4. Remove participants from worksites where recommended health and safety actions are not being followed.

**INQUIRIES:**

Questions regarding this guidance should be sent to Sarah Woodman at woodmans@kerncounty.com.

**ATTACHMENTS:**

Workers' Compensation Presumption (SB 1159) Frequently Asked Questions

COVID-19 Infection Prevention Requirements (AB 685): Enhanced Enforcements and Employer Reporting Requirements

COVID-19 Prevention Emergency Temporary Standards: What Employers Need to Know About the June 18 Standards

State of California
Department of
Industrial Relations

# Workers' Compensation Presumption (SB 1159) Frequently Asked Questions

SB 1159 (Hill), enacted on September 17, 2020, added Sections 3212.86, 3212.87, and 3212.88 to the Labor Code. The bill protects the health and safety of all employees and the public by facilitating the provision of workers' compensation benefits. The statutes take effect immediately and remain in effect through January 1, 2023.

**1. What does SB 1159 do?**

SB 1159 codifies the COVID-19 presumption created by Executive Order N-62-20 and provides two new rebuttable presumptions that an employee's illness related to coronavirus is an occupational injury and therefore eligible for workers' compensation benefits if specified criteria are met. Employees who are sick can stay home and be provided workers' compensation benefits, thereby reducing the spread of the virus to others at work and in the community. The new law encourages employers to comply with all local health directives and guidance concerning safely reopening businesses to reduce risk of exposure and mitigate outbreaks in the workplace.

**2. Who is helped by SB 1159?**

SB 1159 codifies and supersedes Governor Newsom's Executive Order N-62-20, which had covered all California employees who worked at a jobsite outside their home at the direction of their employer between March 19 and July 5, 2020, including first responders, farmworkers, grocery store workers, warehouse workers and others.
It additionally helps the following categories of employees who get sick or injured due to COVID-19 on or after July 6, 2020, by creating a rebuttable presumption of eligibility for workers' compensation benefits if specified criteria are met.

- First Responders and Health Care Workers, including active firefighting members of specified fire departments or units; certain peace officers; fire and rescue services coordinators who work for the Office of Emergency Services; employees who provide direct patient care or custodial employees in contact with COVID-19 patients who work for designated health facilities; paramedics and emergency medical technicians; employees providing direct patient care for a home health agency; providers of in-home supportive services; and other employees of designated health facilities.
- Employees whose employers have five or more employees, and who test positive for COVID-19 during an outbreak at their specific workplace.
    - An outbreak exists if within 14 days *one* of the following occurs at a specific place of employment: (1) four employees test positive if the employer has 100 employees or fewer; (2) four percent (4%) of the number of employees who reported to the specific place of employment test positive if the employer has more than 100 employees; or (3) 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 of COVID-19.

**3. How are employers affected?**

This law creates a rebuttable presumption of an industrial injury or illness for the above-described categories of workers. It encourages employers to comply with local health orders and industry-specific guidance for safely reopening by allowing employers to introduce evidence regarding measures they have taken to reduce potential transmission of COVID-19 in the workplace, in addition to other relevant evidence, to rebut the presumption.
This bill limits the risk of employers being liable for claims where the infection did not occur at work by tailoring the presumptions to those first responders and frontline health care workers whose work puts them at the greatest risk of exposure and other employees where there is a demonstrated and verifiable COVID-19 outbreak at their worksite.

Reporting Requirements

This bill imposes reporting requirements on employers for purposes of the outbreak presumption. Specifically, when an employer knows or reasonably should know that an employee has tested positive for COVID-19, the employer must report certain information to its claims administrator.
Employers may be subject to civil penalties of up to $10,000 for intentionally submitting false or misleading information, or for failing to report required information.

**4. How will DIR implement this bill?**

- Disputes over whether an injured worker is covered under a presumption will be decided by the Workers' Compensation Appeals Board. The Division of Workers' Compensation is currently hearing all cases via telephone or video during the COVID-19 crisis.
- The Division of Workers' Compensation's Audit Unit may review workers' compensation claim files to see if cases that were eligible for the presumption were improperly denied.
- The Labor Commissioner's Office can investigate failure to comply with reporting requirements and assess related penalties.

**5. SB 1159 provides that the presumption of a work-related illness "is disputable and may be controverted by other evidence." What does that mean?**

This means that even when an employee is presumed to have become ill from COVID-19 at work, an employer may dispute that conclusion. In such a case, however, the employer bears the burden of proving that the injury or illness did not occur at work.

**6. SB 1159 requires that my doctor's diagnosis be confirmed by a test. What kind of test is acceptable?**

The Centers for Disease Control and Prevention (CDC) advise that there are generally two kinds of tests available for COVID-19: viral tests and antibody tests.

- A viral test tells you if you have a current infection.
- An antibody test tells you if you had a previous infection.

For injuries that occurred between March 19 and July 5, 2020, under the presumption the employee may utilize either a viral test or serologic antibody test.

For injuries that occurred on or after July 6, 2020, the employee must test positive utilizing a PCR (Polymerase Chain Reaction) test approved for use or approved for emergency use by the United States Food and Drug Administration (U.S. FDA) to detect the presence of viral RNA. The employee may also utilize any other viral culture test approved for use or approved for emergency use by the U.S. FDA to detect the presence of viral RNA which has the same or higher sensitivity and specificity as the PCR Test. The employee may not rely on serologic testing, also known as antibody testing.
Additional tests are in development. For your records, you will want to keep copies of all medical records, including records related to your test.

**7. I filed a workers' compensation claim for a COVID-19-related illness that my employer denied before SB 1159 became law. Does the new law automatically reverse my employer's decision?**

No. Where the denial occurred before SB 1159 became law, the employer may reconsider and accept the claim based upon the new law or stand by the denial. However, if your employer does not reverse its decision and you believe that you are entitled to benefits under this law, you may file for a hearing at your closest DWC district office. You may seek assistance from an attorney or speak with one of the division's information and assistance officers to help you.

**8. If a presumption is not applicable to me, does that mean I'm unable to file a workers' compensation claim for a COVID-19-related illness?**

No. If you are an employee and suffer a job-related injury or illness, you are entitled to file for workers' compensation benefits. You should tell your employer that you would like to file a workers' compensation claim. They are then required to provide you with a claim form. DWC's website has detailed information on how to file a claim. If you don't qualify for a presumption under the new law, you may still be eligible to receive workers' compensation benefits if you contracted COVID-19 at work. You will need to meet certain threshold requirements, including proving that your injury or illness arose out of your employment.

**9. I was diagnosed with COVID-19 and have been using my own sick leave while I have been unable to work. Under SB 1159, if my illness is deemed related to my work, is my employer required to give me my sick leave back?**

As explained below, it depends upon the type of sick leave benefits you are using.

- If your employer is providing you paid sick leave specifically available in response to COVID-19 (such as under the Families First Coronavirus Response Act or Executive Order N-51-20), then you must use that sick leave before you receive temporary disability benefits.

- If you do not have any supplemental paid sick leave specifically available in response to COVID-19, temporary disability benefits should be paid by your employer from the time you became disabled. This means that, if you took paid leave (sick leave, vacation time, personal time off) through your employer's plan, that leave should be restored back to you. If you have any questions about this or to address your specific situation, please speak with your employer.

**10. I was working and then got sick and tested positive for COVID-19. Do I qualify for benefits under the presumption?**

Maybe. If you are eligible under SB 1159's criteria, you will be presumed eligible for workers' compensation benefits. However, that presumption is rebuttable, which means that your employer can dispute your claim and present evidence that you did not contract COVID-19 at work or are otherwise ineligible for the presumption. If your employer disputes your claim, you have the right to have the issue heard and decided by a workers' compensation judge.

**11. How long does my employer have to decide whether it will accept or deny my claim?**

If you meet the criteria for the presumption under Section 3212.87 (i.e., the First Responders and Health Care Workers presumption), your employer will have up to 30 days to investigate and make a decision whether to accept or deny your claim. If your employer fails to reject your claim within 30 days, your injury or illness is presumed compensable, and your employer can then rebut that presumption only with evidence it discovered after the 30-day period.

If you meet the criteria for the presumption under Section 3212.88 (i.e., the Outbreak presumption), your employer will have up to 45 days to investigate and make a decision whether to accept or deny your claim. If your employer fails to reject your claim within 45 days, your injury or illness is presumed compensable, and your employer can then rebut that presumption only with evidence it discovered after the 45-day period.

Until your employer makes that decision, you will be eligible for up to $10,000 in medical treatment for your COVID-19-related illness. During that time, you may be eligible to receive federal, state, or local COVID-19-specific paid sick leave benefits, so you should speak to your employer about those benefits. If such benefits are not available, you may be eligible for benefits from the Employment Development Department.

**12. What benefits may I be entitled to as a result of the workers' compensation presumption?**

Workers' compensation insurance provides five basic benefits:

- Medical care: Reasonable and necessary medical treatment paid for by your employer to help you recover from an injury or illness caused by work.
- Temporary disability benefits: Payments if you lose wages because your injury prevents you from doing your usual job while recovering.
- Permanent disability benefits: Payments if you don't recover completely.
- Supplemental job displacement benefits: Vouchers to help pay for retraining or skill enhancement if you don't recover completely and don't return to work for your employer.
- Death benefits: Payments to your spouse, children, or other dependents if you die from a job injury or illness.

**13. I filed a claim for a COVID-19-related illness. What notification is my employer required to give advising me of the status of my claim?**

Regardless of whether an employee files a claim before or after September 17, 2020, the employer is required to notify you of acceptance or denial of your claim by letter, as they must do under current law.

September 2020

State of California
Department of
Industrial Relations

# COVID-19 Infection Prevention Requirements (AB 685)

## Enhanced Enforcement and Employer Reporting Requirements

**Updated 11/13/2020**

Assembly Bill 685 (Reyes) enhances Cal/OSHA's enforcement of COVID-19 infection prevention requirements by allowing for Orders Prohibiting Use and citations for serious violations related to COVID-19 to be issued more quickly. The law also requires employers to notify all employees who were at a worksite of all potential exposures to COVID-19 and notify the local public health agency of outbreaks.

1. **What did Assembly Bill 685 change?**

   Assembly Bill 685 made permanent and temporary changes, that include:

   - Employers are required to notify all employees at a worksite of potential exposures, COVID-19-related benefits and protections, and disinfection and safety measures that will be taken at the worksite in response to the potential exposure.
   - Employers are required to notify local public health agencies of all workplace outbreaks, which are defined as three or more laboratory-confirmed cases of COVID-19 among employees who live in different households within a two-week period.
   - From January 1, 2021 until January 1, 2023, Cal/OSHA can issue an Order Prohibiting Use (OPU) to shut down an entire worksite or a specific worksite area that exposes employees to an imminent hazard related to COVID-19.
   - From January 1, 2021 until January 1, 2023, Cal/OSHA can issue citations for serious violations related to COVID-19 without giving employers 15-day notice before issuance.

2. **What is an Order Prohibiting Use (OPU)?**

   An OPU allows Cal/OSHA to protect workers from an imminent hazard by prohibiting entry into a place of employment or prohibiting the use of something in a place of employment which constitutes an imminent hazard.

   An imminent hazard is defined as any condition or practice which poses a hazard to employees, which could reasonably be expected to cause death or serious physical harm immediately, or before the imminence of such hazard can be eliminated through normal enforcement procedures.

3. **What changed about Cal/OSHA's authority to issue OPUs related to COVID-19?**

   From January 1, 2021 until January 1, 2023, Cal/OSHA can shut down an entire worksite or specific worksite area that exposes employees to an imminent hazard related to COVID-19 infection. Cal/OSHA can exercise its authority at any place of employment where risk of exposure to COVID-19 constitutes an imminent hazard, and would remove employees from the risk of harm until the employer can effectively address the hazard.

4. **What is a citation for a serious violation and why does it take longer to issue?**

   Cal/OSHA's inspections may result in citations with monetary penalties. The citations classify each violation based on the severity of the hazard. Citations are classified as serious when Cal/OSHA demonstrates there is a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation.

   Prior to AB 685, when Cal/OSHA planned to issue citations for a serious violation, it would first provide a form to the employer with at least 15 days of notice prior to issuing a citation with a serious violation.

5. **What changed about how Cal/OSHA can issue citations for a serious violation related to COVID-19?**

   From January 1, 2021 until January 1, 2023, Cal/OSHA can more quickly issue citations for serious violations related to COVID-19. AB 685 removed the possibility of a negative inference being drawn if Cal/OSHA does not send a pre-citation notice to the employer at least 15 days prior to issuing a citation for a serious violation related to COVID-19.

6. **Whom must employers now notify of their potential exposure to COVID-19?**

   The law now clearly states that employers must provide a written notice to all employees, and the employers of subcontracted employees, who were on the premises at the same worksite as the person who was infectious with COVID-19 or who was subject to a COVID-19-related quarantine order.

   After becoming aware of a potential exposure because someone at the worksite was infectious with COVID-19 or is ordered by a public health official to isolate due to COVID-19 concerns, employers must immediately (within one business day) provide the written notice to the employees and the employers of subcontracted employees.

7. **What must employers notify workers of when informing them of their potential exposure?**

   The law requires an employer to notify employees, and employers of subcontracted employees, of their potential exposure and provide them with certain information regarding COVID-19-related benefits and options. Employers must also notify employees and employers of subcontracted employees of the disinfection and safety plan that the employer plans to implement and complete per the guidelines of the federal Centers for Disease Control and Prevention.

8. **What is a workplace outbreak of COVID-19?**

   The California Department of Public Health defines an outbreak in non-healthcare or non-residential congregate setting workplaces as three or more laboratory-confirmed cases of COVID-19 among employees who live in different households within a two-week period.

9. **How do employers have to report outbreaks?**

   Employers must notify local public health agencies of outbreaks within 48 hours of becoming aware of the number of cases that meets the definition of an outbreak. The employer must notify the local public health agency in the jurisdiction of the worksite of the names, phone number, occupation, and worksite of employees who may have COVID-19 or who are under a COVID-19 isolation order from a public health official. Employers must also report the business address and NAICS industry code of the worksite where the infected or quarantined individuals work. An employer that has an outbreak subject to these provisions must continue to give notice to the local health department of any subsequent laboratory-confirmed cases of COVID-19 at the worksite.

November 2020

# COVID-19 Prevention Emergency Temporary Standards
# What Employers Need to Know About the June 18 Standards

June 21, 2021

On June 17, the Occupational Safety and Health Standards Board readopted the revised Cal/OSHA COVID-19 Prevention emergency temporary standards. These standards incorporate the latest CDPH guidance on face coverings and eliminate physical distancing requirements except for certain employees during outbreaks. Following the vote, Governor Gavin Newsom signed an executive order to allow the revisions to immediately take effect on June 17. The emergency standards apply to most workers in California not covered by the Aerosol Transmissible Diseases standard.

**Important changes to the COVID-19 Emergency Temporary Standards effective June 18 include:**

- Fully vaccinated employees do not need to be offered testing or excluded from work after close contact unless they have COVID-19 symptoms.
- Fully vaccinated employees do not need to wear face coverings except for certain situations during outbreaks and in settings where CDPH requires all persons to wear them. Employers must document the vaccination status of fully vaccinated employees if they do not wear face coverings indoors.
- Employees are not required to wear face coverings when outdoors regardless of vaccination status except for certain employees during outbreaks.
- Employees are explicitly allowed to wear a face covering without fear of retaliation from employers.
- Physical distancing requirements have been eliminated except where an employer determines there is a hazard and for certain employees during major outbreaks.
- Employees who are not fully vaccinated may request respirators for voluntary use from their employers at no cost and without fear of retaliation from their employers.
- Employees who are not fully vaccinated and exhibit COVID-19 symptoms must be offered testing by their employer.
- Employer-provided housing and transportation are exempt from the regulations where all employees are fully vaccinated.
- Employers must review the Interim guidance for Ventilation, Filtration, and Air Quality in Indoor Environments.
- Employers must evaluate ventilation systems to maximize outdoor air and increase filtration efficiency, and evaluate the use of additional air cleaning systems.

**Some important requirements from the November 2020 COVID-19 Emergency Temporary Standards that remain in the June 18 standards:**

- Employers must establish, implement, and maintain an effective written COVID-19

*(continued on next page)*

Prevention Program that includes:

- Identifying and evaluating employee exposures to COVID-19 health hazards.
- Implementing effective policies and procedures to correct unsafe and unhealthy conditions.
- Allowing adequate time for handwashing and cleaning frequently touched surfaces and objects.

- Employers must provide effective training and instruction to employees on how COVID-19 is spread, infection prevention techniques, and information regarding COVID-19-related benefits that affected employees may be entitled to under applicable federal, state, or local laws.
- Employers must exclude employees who have COVID-19 symptoms and/or are not fully vaccinated and have had a close contact from the workplace and, if that close contact is work related, ensure continued wages.

**Cal/OSHA has developed a COVID-19 Model Prevention Program**
to assist employers with developing their own written program

**When there are multiple COVID-19 infections and COVID-19 outbreaks**

Employers must follow the requirements for testing and notifying public health departments of workplace outbreaks (three or more cases in an exposed workgroup in a 14-day period) and major outbreaks (20 or more cases within a 30-day period). During any outbreak, face coverings are required regardless of employee vaccination status: 1) indoors and 2) outdoors when employees are less than six feet from another person. During major outbreaks, six-feet physical distancing is required where feasible, both indoors and outdoors.

**COVID-19 testing for employees who are not fully vaccinated and might have been exposed**

Requires employers to offer COVID-19 testing at no cost during paid time to their employees who are not fully vaccinated and had potential exposure to COVID-19 in the workplace, and provide them with information on benefits.

**Notification requirements to the local health department**

Employers must contact the local health department immediately but no longer than 48 hours after learning of three or more COVID-19 cases to obtain guidance on preventing the further spread of COVID-19 within their workplace.

**Recordkeeping and reporting COVID-19 cases**

Employers must maintain accurate records and track all COVID-19 cases, while ensuring medical information remains confidential. These records must be made available to employees, authorized employee representatives, or as otherwise required by law, with personal identifying information removed. When a COVID-19-related serious illness or death occurs, the employer must report this immediately to the nearest Cal/OSHA enforcement district office.

This guidance document is an overview. For the full requirements,
see title 8 sections 3205, 3205.1, 3205.2, 3205.3, 3205.4