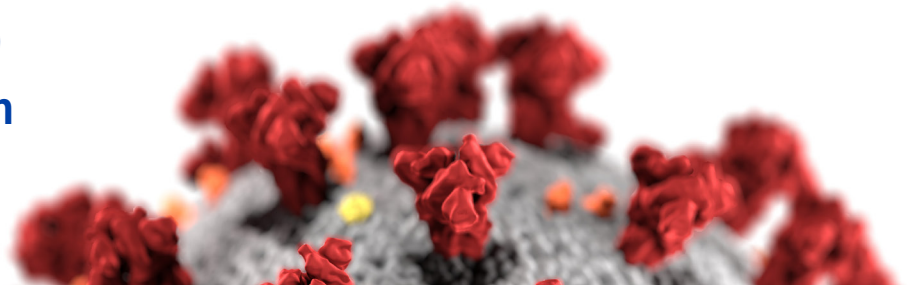


WORKERS' COMPENSATION

State law deems COVID-19 related employee illness an occupational injury



On September 17, 2020, Governor Newsom signed legislation directing the Workers' Compensation system to presume that an employee's illness related to COVID-19 is an occupational injury and therefore eligible for Workers' Compensation benefits if specified criteria are met.

SB 1159 (Hill, D-San Mateo), creates a "rebuttable presumption" for healthcare workers, first responders, or workers on any worksite that has an outbreak of COVID-19.

The law specifically allows school employees to automatically qualify for the Workers' Compensation presumption if their school is closed for COVID-related issues. 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.

How is outbreak defined?

If you are not a healthcare worker or first responder, eligibility for this presumption is triggered if there is an outbreak at your workplace. An outbreak exists if, within a timeframe of 14 days, one of the following occurs at a worksite:

- If the employer has 100 employees or fewer, and four employees test positive;
- If the employer has more than 100 employees, and 4 percent of the number of employees who reported to the specific place of employment test positive; or
- A specific place of employment is ordered to close by a local public health department, the California Department of Public Health, the Division of Occu-

pational Safety and Health, or a school superintendent due to risk of infection from COVID-19.

If my job requires me to travel to multiple worksites, do I qualify for the presumption?

If you are required to travel to multiple worksites and an outbreak exists at any of them, you are eligible for the presumption. Similarly, if a worker who travels to multiple worksites tests positive, the worker's positive test must be counted for the purpose of determining the existence of an outbreak at each of those various places of employment.

Can employers dispute the presumption?

Yes, the employer can dispute this, hence the term "rebuttable Workers Compensation presumption."

However the new law presumes that if a worker tests positive when a worksite outbreak exists, then the injury is work-related and the worker is eligible for Workers' Compensation benefits. This law shifts the burden of proof from the worker to the employer.

To rebut or dispute this presumption the employer bears the burden of proving that the injury or illness did not occur at work. Even if the employer rebuts or disputes your claim, you still have the right to have your claim be heard and be decided by a Workers' Compensation judge.

What benefits are available under Workers' Compensation?

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.

If I am eligible for the presumption, can my employer require me to use my leave?

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 federal Families First Coronavirus Response Act or California 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) through your employer's plan, that leave should be restored back to you.

If I do not qualify for the presumption, can I still file a Workers' Compensation claim?

Yes. If you are an employee and suffer a job-related injury or illness, you are entitled to file for Workers' Compensation benefits. 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 the standard threshold requirements, including proving that your injury or illness arose out of your employment.

COVID-19 TOOLKIT

Find more pandemic support resources in our online toolkit.
www.cft.org/covid-19