



Fire Agencies Self Insurance System FASIS

COVID-19 RESOURCE MANUAL



FASIS

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SB 1159

SB 1159 Overview

On September 17, 2020, Governor Newsom approved Senate Bill (SB) 1159 which establishes certain COVID-19 illnesses/injuries as presumptively compensable for workers' compensation benefits. SB 1159 includes an "urgency" clause in which the bill requirements shall go into effect immediately.

This new law has been broken into three new Labor Code sections:

Labor Code 3212.86 codifies the Executive Order and applies to dates of injury through 7/5/20.

Labor Code 3212.87 is a rebuttable presumption for first responders and certain healthcare workers in direct contact with COVID-19 patients who test positive for COVID-19 within 14 days of performing work for the employer, on or after 7/6/20.

Labor Code 3212.88 covers any other worker diagnosed with COVID-19 during an "outbreak" at their employer's place of employment.

SB 1159 also requires that an employer who knows or reasonably should know that an employee has tested positive for COVID-19, whether or not the employee contracted the virus at work, shall report the positive test to their claims administrator in writing via electronic mail or facsimile within 3 business days. Failure to submit information or intentionally submitting false or misleading information is subject to a civil penalty in the amount of up to \$10,000, to be assessed by the Labor Commissioner.

IF AN EMPLOYEE TESTS POSITIVE AFTER SEPTEMBER 17, 2020

Within three (3) business days of knowledge that an employee has tested positive for COVID-19 (non-work or work-related), employers **must** provide the following information to Athens Administrators:

- Location Name
- Date the employee was tested
- Specific worksite address or addresses the employee was working 14 days preceding the test positive
- Last day of work at each worksite the employee worked during the last 45-day period
- Provide the highest number of employees at the specific worksite(s), preceding the 45 days prior to the employee's last day worked
- *NOTE: SB 1159 positive test reporting to the Athens is separate than the Assembly Bill 685 reporting to local public health officials*

IF AN EMPLOYEE TESTED POSITIVE FROM JULY 6, 2020 TO SEPTEMBER 17, 2020

No later than October 29, 2020, Members **must** provide the following information to Athens for any employee that has tested positive for COVID-19 (non-work or work-related) during this period:

- Location name
- Date the employee was tested

- Specific worksite address or addresses the employee was working 14 days preceding the test positive
- Last day of work at each worksite they worked during the last 45-day period
- Provide the highest number of employees at the specific worksite(s), preceding the 45 days prior to the employee's last day worked

Note: For details regarding the Athens reporting process, please reference page 10 of this manual.

SB 1159 requires that Athens Administrators be responsible for tracking the reported information from each member to determine whether the reported cases meet the “outbreak” requirements outlined in the bill. As the presumption outlined in SB 1159 is rebuttable, each claim will be reviewed with compensability determined by Athens Administrators on an individual basis.

Senate Bill (SB) 1159 FAQs

Employer Responsibilities

1. Does the employer give every employee that they know has a positive test a DWC 1 Claim Form?

No, the employer provides a DWC 1 Claim Form to any employee claiming benefits for workers' compensation, including those relating to a COVID-19 claim. If your employee or volunteer believes they have or may have contracted COVID-19 due to their employment, they should notify the District accordingly, and you should then provide them with the DWC 1 Claim Form and report the claim to Athens Administrators (Athens), the third party claims administrator for FASIS.

2. Should I ask the employees I know have tested positive if they want to file a workers' compensation claim?

No, there is no requirement for an employer to ask an employee if they want to file a claim.

3. Does the employee have to return the DWC 1 Claim Form for a COVID-19 claim to be filed?

- a. No, there is no requirement for an employee to return the DWC 1 Claim Form. If an employee has notified you that they are seeking benefits, you have five (5) calendar days to report the claim to Athens.
- b. However, at this time, SB 1159 does appear to require the DWC 1 Claim Form to be returned by the employee to qualify for the presumptive injury. Due to the short turnaround times for Athens to make initial compensability determinations, employers should not wait for the DWC 1 Claim Form to be returned to them before reporting the claim to Athens.

4. Do I still have to report a workers' compensation claim to Athens if I already reported the positive test in the reporting process?

Yes, any time an employee notifies their employer they are seeking workers' compensation benefits (regardless of presumptive injury) you will need to report the claim to Athens within five (5) calendar days.

5. Does the employee have to use sick leave before receiving temporary disability or Labor Code 4850 benefits?

Yes, if an employee is eligible to receive sick leave benefits specific to COVID-19, they are still required to exhaust this leave prior to receiving temporary disability or 4850 benefits. It is important that you provide information to Athens to include the specific date(s) COVID-19 sick leave benefits were paid to the employee to assure benefits are properly coordinated.

6. What if I cannot determine the highest number of employees onsite in the 45 days preceding the employee or volunteer’s last day of work?

Use the most reasonable estimate you can determine at the time. If you have employees or volunteers onsite with alternating schedules, use the highest number of staff onsite at the time.

7. We have an employee who tested positive. Before testing positive, this employee worked at multiple office locations. Will I need to report all the locations this employee worked at to Athens?

Yes, if an employee worked at multiple locations prior to testing positive, add each location to the form and submit the information to Athens.

8. How do I determine the date of the positive test on the form?

It is the date that the test occurred, not the date the test results were received. You will need to ask the employee when the test or sample was taken.

9. If employees tested positive between July 6, 2020 and September 17, 2020, can I go back to those employees and ask what date they tested positive?

Yes, this information is used to determine what work sites you need to disclose to Athens. It is also a requirement of the legislation that employers must attempt to obtain this information and provide a reasonable estimate of the date.

10. What is a “Rebuttable Presumption” for COVID-19.

- a. SB 1159 determines a claim for COVID-19 under specific circumstances is presumed to be a compensable injury/illness for workers’ compensation benefits unless the employer or Athens can provide evidence the positive test or diagnosis for COVID-19 was the result of some exposure other than what the employee may have encountered in the work place.
- b. For the purposes of SB 1159, evidence of other exposure may include:
 - i. Employee’s lack of onsite attendance at work within 14 days preceding the positive test;
 - ii. Diagnosis of COVID-19 with no corresponding positive test;
 - iii. No known COVID-19 exposure (no outbreak, no direct community contact at work); or
 - iv. Known non-industrial COVID-19 exposure (family, community events, etc.).

11. Are all COVID-19 claims now considered presumptive injuries? a. No, Athens will consider all COVID-19 claims for potential coverage regardless of the presumptions outlined in SB 1159. For non-safety employee classifications, the presumption does not apply unless Athens has determined there has been an “outbreak” applicable to the *employee claiming an industrial injury*.

- b. The following number of employees at the specific worksite(s) who received a positive test that was taken within 14 days of the original positive test constitutes an “outbreak”:
 - i. For employers with 1 – 100 employees, four (4) or more employees; or
 - ii. More than 100 employees, 4% or more of the employees.
- c. Claims that were previously denied with positive COVID-19 tests will be evaluated to determine if the denial was impacted by SB 1159.
- d. Note that a claim may be considered compensable for COVID-19 and not be associated with an outbreak.

12. What happens if Cal/OSHA issues an Order Prohibiting Use due to an imminent hazard related to COVID-19?

Assembly Bill (AB) 685 passed on September 17, 2020, allowing Cal/OSHA to issue an Order Prohibiting Use (OPU) from January 1, 2021 to January 1, 2023, can shut down an entire worksite area that exposes employees to an imminent hazard related to COVID-19. If this occurs, you should notify Athens immediately.

Athens’ Responsibilities

13. Does the employer determine if there has been an outbreak as defined by SB 1159?

No, you are responsible for notifying Athens of any known positive tests, either work-related or not. Athens will then reference the reported information to determine if any outbreak exists for claims reported.

14. What happens if Athens determines there is an outbreak at the worksite? Do they need to report it to any other agencies?

There are no additional reporting responsibilities mandated by SB 1159. If an employee claims an industrial exposure, Athens will evaluate whether there is an outbreak that would trigger the presumption and will notify the involved member accordingly.

15. What happens if Athens determines there is no outbreak and a new claim is submitted? How is that claim treated?

There is no difference from the standard procedure. The claim is administered like any other claim with no presumption in place. If the number of reports reaches outbreak levels, then the presumption applies.

16. If a claim has already been denied, does it have to be reopened and evaluated under SB 1159?

Yes, to be determined if the claim is now compensable.

17. Does the employer have to maintain the positive test information supplied to Athens for a specific period of time?

At this time, there is no specific requirement for the length of time an employer must maintain COVID-19 reporting information. You should follow your current protocols on record retention.

18. If the employer receives a request from an attorney or employee for a copy of the COVID-19 Outbreak reporting data, should this be supplied?

You should coordinate with Athens and FASIS to ensure no confidential information is inadvertently provided.

Senate Bill (SB) 1159 Employer Reporting for Positive COVID-19 Tests

EMPLOYER KNOWLEDGE OF POSITIVE COVID-19 TEST 07/06/20 TO 09/17/20

Employer Has Knowledge of Positive Employee COVID-19 Test

Employer gathers information:

- Date of Test
- On site locations the employee worked at the 14 days preceding the positive test date.
- Highest number of employees at each work site within 45 days of the employee's last day worked on site.

INFORMATION MUST BE SUBMITTED TO ATHENS ADMINISTRATORS WITHIN 30 BUSINESS DAYS OF SB 1125 APPROVAL ON 9/17/20, OR 10/29/20.

Employer submits information to Athens:

- DO NOT SUPPLY ANY EMPLOYEE IDENTIFIABLE INFORMATION
- Submission via email is recommended.
- Recommend utilizing a standard Reporting Worksheet
- Maintain data submitted as confidential information.

EMPLOYER KNOWLEDGE OF POSITIVE COVID-19 TEST AFTER SB 1159 APPROVAL ON 09/17/20

Employer has knowledge of positive Employee COVID-19 test

Employer gathers information:

- Date of test
- On site locations the employee worked at the 14 days preceding the test date
- Highest number of employees at each work site within 45 days of the employee's last day worked on site

INFORMATION MUST BE SUBMITTED TO ATHENS ADMINISTRATORS WITHIN 3 BUSINESS DAYS OF NOTICE.

Employer submits information to Claims Athens:

- DO NOT SUPPLY ANY EMPLOYEE IDENTIFIABLE INFORMATION
- Submission via email is recommended
- Recommend utilizing a standard Reporting Worksheet
- Maintain data submitted as confidential information

SB 1159 TRACKING TEMPLATE

To access the SB 1159 Sample Case Tracking
Template, please click [here](#).

Reporting Positive Cases to Athens Administrators

Athens Administrators has developed two ways to receive the mandatory data and assist employers with this process.

A special COVID-19 reporting portal has been developed for clients to enter this information. This new portal will capture all of the required data elements to comply with the legislation, and will provide electronic confirmation of the reporting once the information has been entered. The portal can also generate a report of the data that has been provided.

The link to the portal can be found here:

<https://covid.athensadmin.com>

An instructional video on how to use the portal can be found here:

<https://covid.athensadmin.com/video/>

If you would like to be set up to use this portal, please contact Constantin Rosenbauer, Account Manager at covid@athensadmin.com.

Athens can also accept the mandatory reporting in a spreadsheet sent to a unique email address that has been created to receive and track this data. This reporting information can be sent to covid@athensadmin.com as another way to satisfy the reporting requirements.

The law requires that all positive COVID-19 test results since July 6, 2020 be provided retroactively within 30 business days of the effective date of this section, or by October 29, 2020. This information can also be reported through the portal or to the email address provided above.



New COVID-19 Positive Test Report

Reporting Period: September 17, 2020, to January 1, 2023 – must be reported within 3 business days.

If you are aware of an employee testing positive for COVID-19 on or after July 6, 2020, you must report it to your claims administrator (California Labor Code Section 3212.88).

To report retroactively for the period July 6, 2020, through September 16, 2020, use the *Retroactive COVID-19 Positive Test Report*, which must be reported by October 29, 2020.

This form must be completed if the illness is work related or not. If the employee indicates the illness is work related, a separate workers' compensation form must also be provided and reported per normal claim reporting protocols. This report does not generate a claim, nor does a claim qualify as a report.

1. **Employer Name:**
2. **Employer Internal Tracking Number:**
(Optional: Employer-assigned ID number that does not convey the employee's personally identifiable information.)
3. **Date the employee tested positive for COVID-19 (this is the date specimen is collected for testing):**
4. **Specific address or addresses of employee's place of employment during the 14-day period preceding the date of the employee's positive test.**

	Preceding 14 Days: Location	Preceding 45 days: Highest Number of Employees
1		
2		
3		
4		
5		

If any 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 due to a risk of infection with COVID-19 that information needs to be reported to us.

*You must complete a separate reporting form for each employee that has tested positive for COVID-19

Submit completed report via email: COVID@athensadmin.com

AB 685

AB 685 Enacts New COVID-19 Employer Reporting Requirements & Enhanced Cal/OSHA Enforcement

On Thursday, September 17, 2020, Governor Newsom signed AB 685 into law. This law adds COVID-19 employer notification requirements for worksite exposures and outbreaks. It also enhances Cal/OSHA's enforcement of COVID-19 infection prevention requirements. Cal/OSHA has published an [AB 685 information page](#) to help employers understand and implement the requirements. The complete legislation is available at [AB 685](#). Please note the changes will be in effect from **January 1, 2021, until January 1, 2023**.

A brief overview of the requirements includes:

Employer Reporting Requirements:

1. Employers will be required to notify employees after becoming aware a person with a confirmed COVID-19 case has been on the employer's worksite. The written notice will be sent to employees who were on the same premises/worksite as the person with the confirmed case. The written notice must be sent immediately *within one business day*. The Cal/OSHA information page and the legislation link provide details on what the notice must include and who should receive it.
2. Employers will also be required to notify their local public health agency of all workplace outbreaks, which is defined as three or more laboratory-confirmed cases of COVID-19 among employees, who live in different households, within a two-week period. Employers are required to notify the agency *within 48 hours* of becoming aware of the number of cases that meets the definition of a workplace outbreak. Here is a [directory](#) of the California public health agencies to assist with the outbreak reporting requirements.

Enhanced Cal/OSHA Enforcement:

1. This law will allow Cal/OSHA to 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.
2. This law will also allow Cal/OSHA to issue citations for serious violations related to COVID-19 without giving employers 15-day notice before issuance.

Please feel free contact Lee Sorenson, Risk Control Manager, at (916) 244-1168 or lee.sorenson@sedgwick.com if you have any questions or need additional guidance.