

AMENDED IN SENATE JUNE 18, 2020

AMENDED IN SENATE APRIL 22, 2020

AMENDED IN SENATE APRIL 1, 2020

SENATE BILL

No. 1159

Introduced by Senator Hill

(Principal coauthor: Assembly Member Daly)

February 20, 2020

An act to add and repeal Section 3212.86 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1159, as amended, Hill. Workers' compensation: COVID-19: critical workers.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of employment. Existing law creates a disputable presumption that specified injuries sustained in the course of employment of a specified member of law enforcement or a specified first responder arose out of and in the course of the employment.

This bill would, until an unspecified date, define "injury" for a critical worker, as described, to include illness or death that results from exposure to an employee to include illness or death resulting from coronavirus disease 2019 (COVID-19) under specified circumstances. The bill would create a disputable presumption, as specified, that an injury that develops or manifests itself while a critical worker an employee is employed arose out of and in the course of the employment. *The bill would require an employee to exhaust their paid sick leave*

benefits and meet specified certification requirements before receiving any temporary disability benefits or, for police officers, firefighters, and other specified government employees, a leave of absence.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 3212.86 is added to the Labor Code,*
 2 *immediately following Section 3212.85, to read:*

3 *3212.86. (a) This section applies to any employee with a*
 4 *COVID-19-related illness.*

5 *(b) The term “injury,” as used in this division, includes illness*
 6 *or death resulting from COVID-19 if all of the following*
 7 *circumstances apply:*

8 *(1) The employee tested positive for or was diagnosed with*
 9 *COVID-19 within 14 days after a day that the employee performed*
 10 *labor or services at the employee’s place of employment at the*
 11 *employer’s direction. For the purpose of this subdivision, an*
 12 *“employee’s place of employment” does not include an employee’s*
 13 *home or residence.*

14 *(2) The day referenced in paragraph (1) on which the employee*
 15 *performed labor or services at the employee’s place of employment*
 16 *at the employer’s direction was on or after March 19, 2020, and*
 17 *on or before July 5, 2020. The date of injury shall be the last date*
 18 *the employee performed labor or services at the employee’s place*
 19 *of employment at the employer’s direction.*

20 *(3) If subdivision (a) is satisfied through a diagnosis of*
 21 *COVID-19, the diagnosis was done by a physician who holds a*
 22 *physician and surgeon license issued by the California Medical*
 23 *Board and that diagnosis is confirmed by further testing within*
 24 *30 days of the date of the diagnosis.*

25 *(c) (1) The compensation that is awarded for injury pursuant*
 26 *to this section shall include full hospital, surgical, medical*
 27 *treatment, disability indemnity, and death benefits, as provided by*
 28 *this division.*

29 *(2) An accepted claim for a COVID-19-related illness shall be*
 30 *subject to the workers’ compensation laws of this state, including*
 31 *Sections 4663 and 4664, except as otherwise provided in this*
 32 *section.*

1 (d) (1) *If an employee has paid sick leave benefits specifically*
2 *available in response to COVID-19, those benefits shall be used*
3 *and exhausted before any temporary disability benefits or benefits*
4 *under Section 4850 are due and payable. If an employee does not*
5 *have those sick leave benefits, the employee shall be provided*
6 *temporary disability benefits or Section 4850 benefits, if applicable,*
7 *from the date of injury. There shall not be a waiting period for*
8 *temporary disability benefits.*

9 (2) *To qualify for temporary disability or Section 4850 benefits*
10 *under this section, an employee shall satisfy either of the following:*

11 (A) *If the employee tests positive or is diagnosed with COVID-19*
12 *on or after May 6, 2020, the employee shall be certified for*
13 *temporary disability within the first 15 days after the initial*
14 *diagnosis, and shall be recertified for temporary disability every*
15 *15 days thereafter, for the first 45 days following diagnosis.*

16 (B) *If the employee tested positive or was diagnosed with*
17 *COVID-19 before May 6, 2020, the employee shall have obtained*
18 *a certification, no later than May 21, 2020, documenting the period*
19 *for which the employee was temporarily disabled and unable to*
20 *work, and shall be recertified for temporary disability every 15*
21 *days thereafter, for the first 45 days following diagnosis.*

22 (3) *An employee shall be certified for temporary disability by*
23 *a physician holding a physician and surgeon license issued*
24 *pursuant to Chapter 5 (commencing with Section 2000) of Division*
25 *2 of the Business and Professions Code. The certifying physician*
26 *may be a designated workers' compensation physician in an*
27 *applicable Medical Provider Network or Health Care*
28 *Organization, a predesignated workers' compensation physician,*
29 *or a physician in the employee's group health plan. If the employee*
30 *does not have a designated workers' compensation physician or*
31 *group health plan, the employee shall be certified by a physician*
32 *of the employee's choosing who holds a physician and surgeon*
33 *license.*

34 (e) *An injury that develops or manifests itself while an employee*
35 *is employed is presumed to arise out of and in the course of the*
36 *employment. This presumption is disputable and may be*
37 *controverted by other evidence. Unless controverted, the appeals*
38 *board is bound to find in accordance with the presumption.*

39 (f) *Notwithstanding Section 5402, if liability for a claim of a*
40 *COVID-19-related illness is not rejected within 30 days after the*

1 *date the claim form is filed pursuant to Section 5401, the illness*
2 *shall be presumed compensable, unless rebutted by evidence only*
3 *discovered after the 30-day period.*

4 *(g) The Department of Industrial Relations shall waive collection*
5 *on any death benefit payment due pursuant to Section 4706.5*
6 *arising out of claims covered by this section.*

7 *(h) This section applies to all pending matters, unless otherwise*
8 *specified in this section, but shall not be a basis to rescind, alter,*
9 *amend, or reopen any final award of workers' compensation*
10 *benefits.*

11 *(i) For purposes of this section, "COVID-19" means*
12 *coronavirus disease 2019.*

13 *(j) This section shall remain in effect only until January 1, _____,*
14 *and as of that date is repealed.*

15 ~~SECTION 1. Section 3212.86 is added to the Labor Code,~~
16 ~~immediately following Section 3212.85, to read:~~

17 ~~3212.86. (a) This section applies to critical workers who~~
18 ~~directly interact or previously directly interacted with the public~~
19 ~~during the COVID-19 pandemic.~~

20 ~~(b) The term "injury," as used in this division, includes illness~~
21 ~~or death resulting from exposure to COVID-19 if all of the~~
22 ~~following circumstances apply:~~

23 ~~(1) The injury develops or occurs during a period in which a~~
24 ~~critical worker is in the service of an essential critical infrastructure~~
25 ~~employer.~~

26 ~~(2) The injury is confirmed by a positive laboratory test or, if a~~
27 ~~laboratory test was not available, as diagnosed and documented~~
28 ~~by the critical worker's physician based on the employee's~~
29 ~~symptoms.~~

30 ~~(3) The injury results in hospitalization or significant lost time~~
31 ~~beyond the critical worker's work shift at the time of injury of at~~
32 ~~least _____ days due to the illness.~~

33 ~~(e) The compensation that is awarded for injury pursuant to this~~
34 ~~section shall include full hospital, surgical, medical treatment,~~
35 ~~disability indemnity, and death benefits, as provided by this~~
36 ~~division.~~

37 ~~(d) An injury that develops or manifests itself while a critical~~
38 ~~worker is employed is presumed to arise out of and in the course~~
39 ~~of the employment. This presumption is disputable and may be~~

1 ~~controverted by other evidence. Unless controverted, the appeals~~
2 ~~board is bound to find in accordance with the presumption.~~

3 ~~(e) For purposes of this section, the following definitions apply:~~

4 ~~(1) “COVID-19” means coronavirus disease 2019.~~

5 ~~(2) “Critical worker” means a public sector or private sector~~
6 ~~employee who is employed to combat the spread of COVID-19.~~

7 ~~It is the intent of the Legislature that this group of workers be~~
8 ~~explicitly identified in order to ensure that they receive all~~
9 ~~necessary health care through the workers’ compensation system.~~

10 ~~(f) This section shall remain in effect only until January 1, _____,~~
11 ~~and as of that date is repealed.~~

O