



COVID-19 PRACTICE POINTERS

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SB 1159 has three rebuttable presumptions:

- The Executive Order presumption for DOIs 3/19/20-7/5/20.
- First responders: A presumption for police, fire, and many health care workers for DOIs 7/6/20-1/1/23.
- Outbreak: A presumption for “everybody else” for DOIs 7/6/20-1/1/23.

Great! Which one applies to my claim?

- Determine it by DOI. DOI = last day worked by the applicant.
- It could be possible for some first responders to qualify under both the first responders and the outbreak presumption.

Employee gets sick with coughing, body aches, respiratory problems, fever, etc.?

Send them home, tell them to contact their doctor. No RTW without a doctor’s note.

Employee tells ER/claims it’s COVID? Ask them to email/text/fax a positive test.

The employee sent me the positive test.

- If you’re the ER, report the positive test to your TPA without identifying information within 3 business days. Include identifying information if the EE is alleging it’s work-related.
- Confirm that it’s the employee’s positive test. Confirm that it’s for COVID-19. Take a look at what type of test it is. What’s the date of the test?
- Was the date the test was administered within 14 days of the last day of work? If so, then you may have a presumption claim.

I am an employer. What else do I send to the claims department? If positive test is between 7/6/20-9/17/20, ER has until 10/29/20 to send to claims the following information. If positive test is after 9/17/20, ER should send claims dept the following info within 3 business days of positive test:

- That an employee has tested positive.



- Don't provide name/DOB/SSN/specifics unless the employee is asserting it is work-related or has filed a DWC-1 claim form. If EE says it's work-related, then ER must provide name/DOB/SSN/specifics to claims.
- The date of the positive test. This is the date that the sample was taken, not the date of the test result.
- The specific address of the place of employment.
- The highest number of employees who worked at that same place of employment in the last 45 days. (ie the 45 days prior to the last day the sick EE worked.)

I am a claims administrator, what do I do with all of this information from the employer?

- If the employee is not a first responder (police/fire/health), then determine if there is an outbreak within 14 days of date of positive test. (Date test taken.)

What constitutes an "outbreak"?

- First, in order to have an "outbreak," the employer must have 5 or more employees.
- Next, an "outbreak" is best defined by the "Four or Four" Rule, which says:
 - o If the employer has less than 100 or fewer people at a location, four (4) employees must test positive for COVID-19 in a 14-day period, OR
 - o If the employer has more than 100 employees at a specific place of employment, 4% of the employees at a particular facility testing positive for COVID-19 in a 14-day period.
- That outbreak must occur within 14 days of the applicant's positive test. Please note that the date the employee got the test may be different than their last day of work.

What do I do with the DWC1 form?

- If the employee thinks they got COVID-19 from work, give them a claim form.
- If you or the employer knows they got COVID-19 from work, give them a claim form.
- If the EE doesn't know where they got it but asks for a claim form, give them a claim form.
- Unless they told the ER they didn't get it from work and/or that they are not pursuing a claim, you probably should give them a claim form.
- When giving a claim form, have some documentation memorializing the date/time you gave a claim form, with supervisor signing it and EE signing it if possible.



They've returned the DWC-1 form. Filing the DWC-1 claim form starts the decision period.

The decision period is:

- 30 days if DOI is between 3/19/20-7/6/20
- 30 days if police/fire or a health care worker (RN, EMT, or a health care worker who provides direct patient care with COVID-19 patients).
- 45 days if not police/fire/health, and if there's an outbreak.
- 90-day decision period if none of the above apply.

OMG, the decision timeframe has passed! Don't panic.

- If you did not issue a denial after the 30 or 45 day decision timeframe, don't worry – you can use any evidence discovered after the decision period (that's day 30 or day 45) to rebut the claim.
- Ex: On a first responder claim, with a 30 day decision timeframe, the TPA did not issue a denial within the 30-day decision period. Thus, the claim is presumed compensable on Day 30. If you get a new medical report after Day 30 saying that the applicant got the virus from a family member at a holiday weekend barbecue, you may use this to rebut the claim.
- Reminder: Keep on doing discovery, just because the case has been presumed compensable does not stop your ability from being able to continue discovery.

So what discovery should I do?

- Build a timeline! Include last day worked, date applicant got test, date of test results, dates of other sources of exposure.
- Do a thorough claims interview with the applicant. Who/what/when/where/why and how regarding: symptoms, medical treatment, personal doc, doctor/clinic/ER locations, sources of infection such as work/shopping/family/friends/social.
- Ask ER about: use of PPE, and name of supervisor/manager who oversaw.
- Subpoena early and often! Personal doc, clinics, hospitals.
- Set deposition early via Zoom.
- Missing medicals? Medical canvass.
- QME: Internal-Pulmonary (MMP), Internal Medicine (MMM), Internal Medicine – Infectious Disease (MMI).



Sick leave and TD:

- In most cases, the employer should pay the first 80 hours of sick leave per FFCRA and AB 1867. Once any Covid-19 sick leave has expired, TD may begin.
- If Exec Order claim (DOI between 3/19/20-7/6/20), then applicant:
 - o Must be certified TD within 15 days of initial diagnosis
 - o Must be recertified for TD every 15 days thereafter
 - o “Certify every 15 days” during first 45 days of claim
 - o OR
 - o If tested positive or positive diagnosis between 3/19/20-5/5/20, must obtain TD certification by May 21.
 - o Only a state-licensed MD or DO can certify TD for Exec Order claims.
- If DOI on/after 7/6/20, regular TD rules apply.

Questions? Call or email your favorite B&B attorney and ask them, or ask the Covid-19 team at covid@bradfordbarthel.com

More information is also available at the <https://bradfordbarthel.blogspot.com/>.

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