COVID-19 California Presumption Flowchart
CA LABOR CODE SECTIONS 3212.86, 3212.87, 3212.88 (effective September 17, 2020)

Did the employee work outside the employee’s home at the employer’s direction?

NO ▶

Was the date worked on or after 3/19/2020 and before 1/1/2023?

NO ▶

NO ▶

NO ▶

YES ▼

NO ▶

YES ▼

Is the employee a firefighter, peace officer, RN, EMT, health facility worker or home healthcare worker (home healthcare must be performed outside employee’s home)?

NO ▶

YES ▼

Use EXECUTIVE ORDER
(CA Labor Code Section 3212.86)
(click here)

NO ▶

YES ▼

Use FRONTLINE/HEALTHCARE WORKERS
(CA Labor Code Section 3212.87)
(click here)

NO ▶

YES ▼

Use OUTBREAK
(CA Labor Code Section 3212.88)
(click here)

Evidence relevant to rebutting the presumption includes evidence of measures in place to reduce potential transmission of COVID-19 in the workplace and employee’s non-occupational risks of COVID-19.
COVID-19 California Presumption Flowchart

EXECUTIVE ORDER (CA Labor Code Section 3212.86)

Did the employee receive a positive test for COVID-19 that was taken within 14 days of working for employer?

- **NO**
  - Did the employee receive a diagnosis from a California-licensed physician or physician assistant or nurse practitioner?
    - **NO**
      - No presumption
    - **YES**
      - Was the diagnosis confirmed with a positive virus test or antibody test within 30 days?
        - **NO**
          - No presumption
        - **YES**
          - COVID-19 presumed industrial

Was the claim denied or accepted within 30 days of filing of claim form?

- **DENIED**
  - Present evidence of alternative causation.
- **NO**
  - The claim is presumed accepted and can only be denied thereafter on the basis of rebuttal evidence not available within the first 30 days of notice of the claim.
- **ACCEPTED**
  - Benefits are owed.
  - Use BENEFITS (click here)

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FRONTLINE/HEALTHCARE WORKERS (CA Labor Code Section 3212.87)

Is the employee a healthcare facility worker with direct patient care or performing custodial work in contact with COVID-19 patients on or after 7/6/20?

NO

Did the healthcare facility employee not provide direct patient care or perform custodial work but otherwise have contact with a patient who tested positive in the past 14 days? (Test must be FDA approved and not serologic or antibody test.)

NO

NO

YES

NO

YES

Did the employee receive a positive test for COVID-19 that was taken within 14 days of working for employer? (Test must be FDA approved and not serologic or antibody test.)

COVID-19 presumed industrial

Was the claim denied or accepted within 30 days of filing of claim form?

DENIED

Present evidence of alternative causation.

NO

The claim is presumed accepted and can only be denied thereafter on the basis of rebuttal evidence not available within the first 30 days of notice of the claim.

ACCEPTED

Benefits are owed.

Use BENEFITS (click here)

No presumption
COVID-19 California Presumption Flowchart

**OUTBREAK** (CA Labor Code Section 3212.88)

- **Does the employer have 5 or more employees?**
  - **YES**
  - **NO**

  - **Was there an “outbreak” at the employee’s specific place of employment?**
    - **A)** Number of employees at the workplace who received a positive test taken within 14 days of the employee’s positive test to be considered an outbreak: (Test must be FDA approved and not serologic or antibody test.)
      - 100 or less employees
        - 4 or more employees = outbreak.
      - More than 100 employees
        - 4% or more of employees = outbreak.
    - **B)** Employee’s specific place of employment ordered closed by local or state health department, Division of Occupational Safety and Health, or school superintendent due to risk of COVID-19.

  - **YES**
  - **NO**

  **COVID-19 presumed industrial and presumption extends for 14 days after last date worked.**

- **Was the claim denied or accepted within 45 days of filing of claim form?**
  - **DENIED**
  - **NO**
  - **ACCEPTED**

  - **Present evidence of alternative causation.**
  - The claim is presumed accepted and can only be denied thereafter on the basis of rebuttal evidence not available within the first 45 days of notice of claim.
  - Benefits are owed. Use **BENEFITS** (click here)

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**Benefits** (CA Labor Code Sections 3212.86, 3212.87, 3212.88)

**Apportionment**
- Is there permanent disability?
  - **YES ▼**
  - Apportionment to non-industrial causes of disability such as comorbidities is still available under Labor Code 4663, and Labor Code 4664 still applies if there was any prior award of disability as to the body part or organ affected.

**Compensable Consequences**
- Are there possible compensable consequences?
  - **YES ▼**
  - Substantial medical evidence must establish COVID-19 caused the alleged compensable consequences.

**Death Benefits**
- Did the employee die?
  - **YES ▼**
  - Is the death industrial?
    - **YES ▼**
      - Did the employee have dependents?
        - **YES ▼**
          - Death benefits are owed.
        - **NO ▼**
          - No benefits are owed to the DIR.
    - **NO ▼**
      - Did the employee have dependents?
        - **YES ▼**
          - Death benefits are owed.
        - **NO ▼**
          - No benefits are owed to the DIR.

**TTD Benefits**
- Did the employee miss time from work due to COVID-19 or compensable consequences of COVID-19?
  - **YES ▼**
    - Did the employer provide leave specifically in response to the COVID-19 crisis?
      - **YES ▼**
        - Does 3212.86 apply?
          - **YES ▼**
            - Did the employee miss work due to COVID-19 prior to 5/6/2020?
              - **YES ▼**
                - For ongoing claims of TTD entitlement, employee must have a California-licensed physician certify that the employee is TTD every 15 days within the first 45 days of diagnosis.
              - **NO ▼**
                - TTD benefits owed as usual except no waiting period applies.
          - **NO ▼**
            - The employee must have obtained a certification no later than 5/21/2020 documenting the period of temporarily total disability and must then recertify TTD every 15 days thereafter for the first 45 days following diagnosis.
      - **NO ▼**
        - Employee must exhaust leave benefits set aside for COVID-19 prior to obtaining any TTD or 4850 benefits.