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THIRD READING

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Bill No: SB 1159  
Author: Hill (D), et al.  
Amended: 6/18/20  
Vote: 21

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SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 3-1, 5/14/20  
AYES: Hill, Jackson, Mitchell  
NOES: Morrell  
NO VOTE RECORDED: Pan

SENATE APPROPRIATIONS COMMITTEE: 5-2, 6/18/20  
AYES: Portantino, Bradford, Hill, Leyva, Wieckowski  
NOES: Bates, Jones

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**SUBJECT:** Workers' compensation: COVID-19: critical workers

**SOURCE:** Author

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**DIGEST:** This bill creates rebuttable presumption that illness or death related to COVID-19 (novel coronavirus) is an occupational injury and therefore eligible for workers' compensation benefits.

**ANALYSIS:**

Existing law:

- 1) Establishes a workers' compensation system that provides benefits to an employee who suffers from an injury or illness that arises out of and in the course of employment, irrespective of fault. This system requires all employers to secure payment of benefits by either securing the consent of the Department of Industrial Relations to self-insure or by securing insurance against liability from an insurance company duly authorized by the state.

- 2) Creates a series of disputable presumptions of an occupational injury for peace and safety officers for the purposes of the workers' compensation system. These presumptions include:

- Heart disease
- Hernias
- Pneumonia
- Cancer
- Meningitis
- Tuberculosis
- Bio-chemical illness

The compensation awarded for these injuries must include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by workers compensation law. (Labor Code §§3212 to 3213.2)

- 3) Provides, until January 1, 2025, a disputable presumption that a diagnosis of Post-Traumatic Stress Disorder (PTSD) for specified peace officers and firefighters is an occupational injury, running for up to 5 years. The benefit includes full hospital, surgical, medical treatment, disability indemnity, and death benefits, but only applies to peace officers who have served at least 6 months. (Labor Code §3212.15)

This bill codifies a recent executive order (N-62-20) to create a rebuttable presumption that illness or death related to COVID-19 (novel coronavirus) is an occupational injury and therefore eligible for workers' compensation benefits. Specifically, this bill:

- 1) Provides that any worker who suffers an illness or death related to COVID-19 is presumed to have suffered an occupational injury, and is therefore due workers' compensation benefits.
- 2) Provides that, in order for this presumption to be valid, the following must apply:
  - a) The employee tested positive for or was diagnosed with COVID-19 within 14 days after a day that the employee performed labor or services at the employee's place of employment at the employer's direction.

- b) The day on which the employee performed labor or services at the employee's place of employment at the employer's direction was on or after March 19, 2020 and on or before July 5, 2020.
  - c) Where applicable, the diagnosis was done by a physician who holds a physician and surgeon license issued by the California Medical Board and that diagnosis is confirmed by further testing within 30 days of the date of the diagnosis.
- 3) Provides that, where an employee has paid sick leave benefits specifically available in response to COVID-19, those benefits shall be used and exhausted before any temporary disability benefits or similar benefits are due and payable.
  - 4) Specifies a process for certifying temporary disability, including that the certification must be completed by a physician holding a physician and surgeon license issued by the California Medical Board.
  - 5) Provides that, if an employer does not dispute liability for a claim of a COVID-19-related illness within 30 days after the date the claim form is filed, the illness shall be presumed compensable, unless rebutted by evidence only discovered subsequent to the 30-day period.
  - 6) Provides that this bill applies to all pending matters, unless otherwise specified in the bill, but shall not be a basis to rescind, alter, amend, or reopen any final award of workers' compensation benefits.
  - 7) Provides that this bill sunsets on an unspecified date.

## Comments

- 1) The author argues the following:

“In the past 3 months, more Americans have died of COVID-19 than died during the Vietnam War, a war that lasted 20 years. While much media attention has been on the economic challenges of this pandemic, the scale of human suffering is unprecedented and difficult to overstate. This is why I teamed up with my Assembly counterpart, Assembly member Tom Daly, to author a workers' compensation presumption on COVID-19.

“This bill will extend a COVID-19 rebuttable presumption to BOTH public and private sector workers. SB 1159 is very much a work in progress: we have a long way to go to hammer out the technical issues, and that includes working with the Governor and interested stakeholders to codify his recent executive

order. Noting that the Executive Order will only be in place until early July, and COVID-19 will be with us beyond that date, it is urgent that we act now for all Californians.”

- 2) *SB 1159 and COVID-19.* SB 1159 comes before the Committee in a unique moment in California’s history. COVID-19 has severely challenged our State and nation. In the past three months, more than 100,000 people have died – more than all of the Americans who died fighting in the Vietnam War. While COVID-19 is present in all California communities, the burden of fighting the disease has fallen disproportionately to a small group of workers in both the private and public sectors. These workers keep California’s lights on, water running, food stocked, and treat our ill and injured.

As these workers are in our community and interacting with numerous individuals, their exposure and risk for contracting COVID-19 is likely much higher than the average Californian. Therefore, it intuitively makes sense that extending a presumption to these workers would further the cause of justice: by reducing the barriers to accessing the workers’ compensation system, essential workers suffering from COVID-19 will receive the healthcare they need when they need it without delay.

- 3) *SB 1159 and the Search for an Effective Presumption:* Unfortunately, California must place that intuitive truth next to some equally correct and challenging truths. The first is cost – the Workers’ Compensation Insurance Rating Bureau (WCIRB) estimates a conclusive presumption between \$2.2 and \$33.6 billion, with the most likely figure being around \$11.2 billion. As a point of reference, the 2012 workers’ compensation reform increased workers’ compensation benefits across the board for all injured workers by *\$1.24 billion*. While it may appear gauche to bring up cost in the face of a pandemic wreaking havoc on our world, these dollars will need to come from local governments and private employers who are struggling to respond to COVID-19.

Additionally, a COVID-19 presumption has unique challenges that other presumptions will not face. Specifically, unlike hernias, heart disease, and cancer, we will extinguish COVID-19 in our lifetime by an effective vaccine. As such, an endless presumption may not serve the cause of justice. Moreover, COVID-19 has an unusually high number of asymptomatic carriers who do not face disabling symptoms or high medical costs. Therefore, it is important that the presumption is triggered by a specific COVID-19 diagnosis to ensure that

the presumption is targeted at those who have the greatest need for the workers' compensation system.

Finally, a COVID-19 presumption must be simultaneously broad and targeted: broad enough to cover the public-facing workers who are at the highest risk of COVID-19 infection, but targeted enough that the presumption will actually be a viable workers' compensation benefit. Noting the sheer numbers of individuals who may require COVID-19 treatment through the workers' compensation system, we have an obligation to those workers to ensure that our system is not overwhelmed. In the end, an overwhelmed workers' compensation system will fail all stakeholders, including the most vulnerable sick workers among us.

To meet these goals, Senator Hill and Assemblymember Daly have co-authored SB 1159 to serve as a vehicle for discussion with all stakeholders to create a COVID-19 presumption to meet this moment in our state's history.

- 4) *Governor Newsom's Executive Order on Workers' Compensation and COVID-19.* On May 6, 2020, Governor Newsom issued Executive Order N-62-20, which created a rebuttable workers' compensation presumption for all employees in California. The trigger for the presumption is either a positive test for COVID-19 OR a doctor's diagnosis of COVID-19 followed up by a positive COVID-19 test within 30 days of the initial diagnosis. Additionally, the employee must show that they performed labor or services at their place of employment at the employer's direction on or after March 19, 2020.

The workers' compensation presumption created by the EO extends from March 19, 2020 to July 5, 2020. After that, the presumption will cease, and new injury claims will follow the traditional workers' compensation claims path. SB 1159 is an opportunity to both codify and clarify the Governor's executive order and set a path for determining COVID-19 occupational injuries beyond July 2020.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee, the Department of Industrial Relations indicates that the bill would result in annual costs to its Division of Workers Compensation (DWC) of \$10 million minimally (special fund).

**SUPPORT:** (Verified 6/18/20)

None received

**OPPOSITION:** (Verified 6/18/20)

None received

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