



San Bernardino County Employees'
Retirement Association

COVID 19 Presumption

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Overview

1. COVID-19 Presumption.
2. COVID Related Illnesses
3. Standard Service-Connected Disability Retirement.
4. Standard SCDR versus COVID 19 Presumption
5. Which law applies?
6. Board's authority after the law is repealed.
7. Recommendation

COVID 19 Presumption

COVID 19 Presumption

Effective – January 1, 2022

Repealed – January 1, 2023 (Gov. Code section 7523.2)

Applicable to a “public retirement system” subject to PEPRA.

Establishes that a disabling case of COVID 19 is presumed to be service connected.

Members Eligible for the Presumption

A) Job Classification

OR

B) Members who test positive during an outbreak
at the place of employment

Job Classification

Peace Officer

Active Firefighting
Members

Members providing
direct patient care at
a health facility

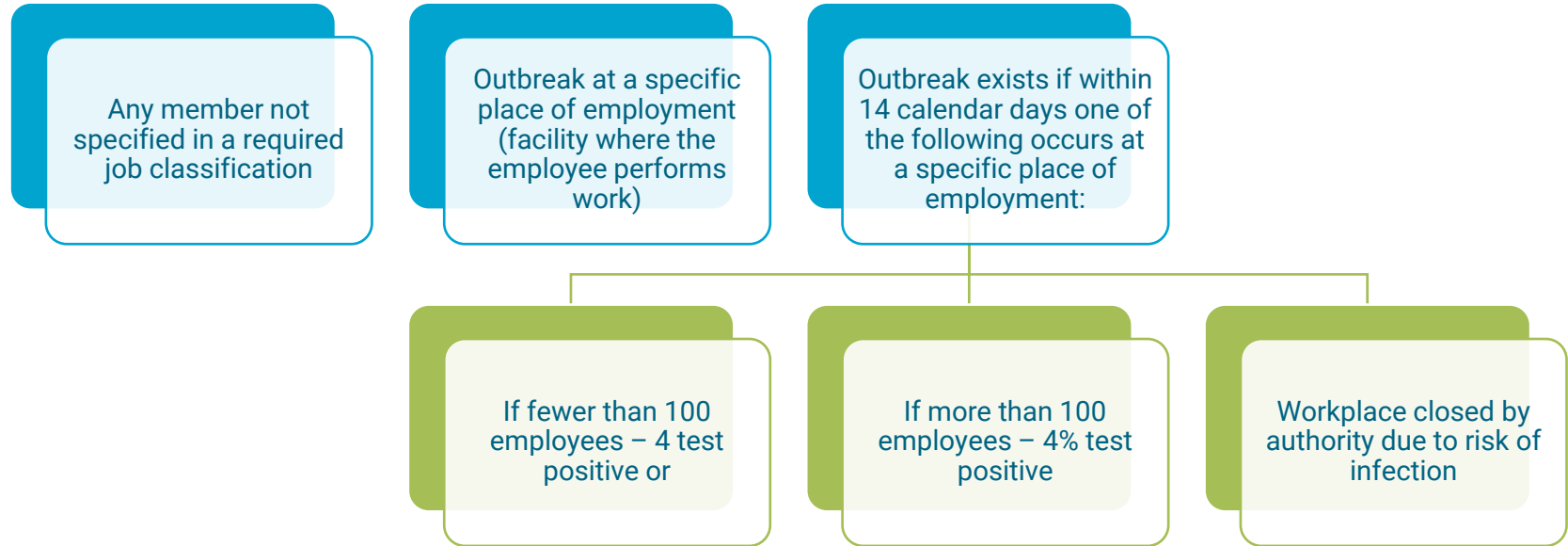
Custodial Employee
in contact with COVID
19 patients working
at a health facility

Registered Nurse

Home Health Care
Employees

In-home Supportive
Services

Test Positive During Outbreak



Requirements

Member must establish that (a) incapacitated for the performance of his or her duties and (b) the incapacity is permanent.

SBCERA may rebut the presumption on the basis that COVID 19 was not contracted at work.

Repealed effective January 1, 2023.

COVID-19 Related Illness

Related Illnesses

Death

Acute COVID 19 Infections (i.e. respiratory)

“Long Haul” COVID – ongoing health problems

- Difficulty breathing
- Tiredness or fatigue
- Difficulty thinking or concentrating (e.g. brain fog)
- Cough
- Stomach pain
- Heart palpitations
- Multiorgan effects (heart, lung, kidney, brain functions, or skin)
- Psychiatric effects (anxiety, depression, PTSD)

Service- Connected Disability Retirement

Standard SCDR

By a preponderance of substantial medical evidence

- a) Burden is on the member to show that it is medically probable that COVID infection occurred in the workplace.
- b) Definite proof of source of infection is likely not possible, and also not necessary under the legal standards for causation.
- c) Obtain Competent and Well Reasoned Medical Opinion Based on Relevant Record
 - i. Look for supporting facts in the medical record if available e.g. date of symptom onset, date of positive test, activities in the days prior to onset of symptoms, notes regarding where applicant thinks they may have been infected or if friends or family have tested positive, etc.
 - ii. Cal/OSHA or Risk Management/Employer Investigations – were there other prior positive cases in the Applicant's work setting? Was the member required to work with the public, among other co-workers, was a mask mandate enforced?

Which Law Applies?

Applicable Law

Standard Service-Connected Disability Retirement

- Any member
- May not have experienced an “outbreak” at their specific place of employment
- Permanent incapacity is due to COVID 19 related illness
- Burden to prove that COVID 19 contracted at work.
- No repeal date (Government Code section 31720)

COVID -19 Presumption

- Specified job classification or
- Test positive and an outbreak at specific place of employment if 4 people test positive if less than 100 employees or 4% if 100 employees
- Permanent incapacity is due to a COVID 19 related illness
- Presumed to have arisen out of or in the course of employment.
- Repeal date –January 1, 2023.

APPLICATION OF COVID 19 PRESUMPTION

A BRIEF OVERVIEW OF THE TIMELINE



Board's Authority

May the Board
apply the COVID 19
Presumption law to
cases decided on or
after January 1,
2023?

Short Answer: No.

When the Legislature repeals a statute, the rights normally end with repeal absent a savings clause.

Government Code section 7523.2 states -- This article shall remain in effect only until January 1, 2023, and as of that date is repealed.

- No savings clause (e.g. "...unless a later enacted statute, that is enacted before January 1, 2023, deletes or extends the date)
- The Legislature did not save or preserve rights past January 1, 2023.

Law in effect at the time of the decision:

- Vested right matures when there is an unconditional right to immediate payment; (*In re Marriage of Mueller* (1977) 70 Cal.App.3d 66, 71)
- Duty to grant disability pension arises upon pension board determination that employee is no longer capable of performing duties; (*Tyra v. Board of Police & Fire Pension Comm'rs.* (1948) 32 Cal.2d 666, 671-672; also see Government Code section 31720.)
- Law applicable to retirement applications is that which is in effect on the date of Board approval. (*Wilmot v. CCCERA* (2021) 60 Cal.App.5th 631, 654)

Law in effect at the time of the decision:

- The unconditional repeal of a special remedial statute without a saving clause stops all pending actions where the repeal finds them. If final relief has not been granted before the repeal goes into effect, such relief cannot be granted afterwards, even if a judgment has been entered and the cause is pending on appeal. The reviewing court must dispose of the case under the law in force when its decision is rendered.”
- “The repeal of such statutory right to *a//* pending cases, at whatever stage the repeal finds them, unless the Legislature has expressed a contrary intent by an express saving clause or by implication from contemporaneous legislation.”

Beverly Hilton Hotel v. Workers’ Comp. Appeals Bd. (2009)
176 Cal.App.4th 1597

Conclusion

1. Presumption applies to Board action taken January 1, 2022, through December 31, 2022.
2. Presumption does not apply to Board action taken on or after January 1, 2023.

Key:

Law applicable to retirement applications is that which is in effect on the date of Board approval. (Wilmot and Government Code section 31720)

Recommendation

**Recommend the Board adopt Benefits Policy
No. 034 – COVID 19 Presumption as revised.**