

AMENDED IN SENATE MARCH 4, 2021

SENATE BILL

No. 213

Introduced by Senator Cortese
(Coauthor: Senator Caballero)
(Coauthor: Assembly Member Kalra)

January 12, 2021

An act to add Sections ~~3212.21, 3212.22, 3212.24, 3212.26, and 3212.28 to~~ 3212.22, 3212.24, and 3212.26 to, and to add and repeal Sections 3212.21 and 3212.28 of, the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 213, as amended, Cortese. Workers' compensation: hospital employees.

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 rebuttable 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 employment. *Existing law, until January 1, 2023, creates a rebuttable presumption of injury for various employees, including an employee who works at a health facility, as defined, to include an illness or death resulting from COVID-19, if specified circumstances apply.*

This bill would define "injury," for a hospital employee who provides direct patient care in an acute care hospital, to include infectious diseases, cancer, musculoskeletal injuries, post-traumatic stress disorder, and respiratory diseases. The bill would create rebuttable presumptions

that these injuries that develop or manifest in a hospital employee who provides direct patient care in an acute care hospital arose out of and in the course of the employment. The bill would extend these presumptions for specified time periods after the hospital employee's termination of employment. ~~The bill would also make related findings and declarations.~~ *Beginning January 1, 2023, the bill would include COVID-19 in the definitions of infectious and respiratory diseases.*

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. The Legislature finds and declares the following:
2 (a) *As of February 9, 2021, local health departments in*
3 *California have reported 89,841 confirmed positive novel*
4 *coronavirus 2019 (COVID-19) cases in nurses and health care*
5 *workers. This data is collected daily and the number of infected*
6 *nurses and health care workers continues to climb exponentially.*
7 *This figure includes on-the-job exposures. However, this figure*
8 *does not include the immeasurable number of asymptomatic nurses*
9 *and health care workers who are currently working every day,*
10 *lack personal protective equipment, and also lack the priority*
11 *testing that should be conducted for health care workers, given*
12 *they are essential workers.*
13 (b) *Frontline nurses treating patients with COVID-19 are likely*
14 *exposed to the highest risk of infection because of their close,*
15 *frequent contact with patients and longer-than-usual working*
16 *hours. By the nature of their profession, health care workers in*
17 *California are in daily danger of direct exposure to all infectious*
18 *diseases, including COVID-19.*
19 ~~(a)~~
20 (c) According to the United States Department of Labor, health
21 care is one of the fastest growing sectors, currently employing 20
22 million people, and is expected to add more jobs than any other
23 occupational group. Women represent nearly 80 percent of the
24 health care workforce.
25 ~~(b)~~
26 (d) Registered nurses constitute the largest occupation within
27 the health care sector and number over 2,500,000, of which 70

1 percent are employed in hospitals. Nearly 90 percent of registered
2 nurses are women.

3 ~~(e)~~

4 (e) Workers' compensation was created to ensure that workers
5 who are injured or become ill due to work are promptly and fully
6 cared for and that employers are held responsible for maintaining
7 a safe and healthy work environment. Certain occupations have
8 significantly increased exposure or susceptibility to particular
9 work-related injuries or illnesses that can be recognized, and at
10 least partially remedied, through guaranteed access to the workers'
11 compensation system.

12 ~~(d)~~

13 (f) In California and many other states, a number of injuries and
14 illnesses are already presumed work-related, and therefore eligible
15 for workers' compensation benefits, for firefighters, police officers,
16 first responders, and other categories of workers. These professions
17 predominantly employ men. According to the United States
18 Department of Labor, 3 out of 4 Emergency Medical Technicians
19 (EMTs) and paramedics are men, 7 out of 8 police officers are
20 men, and 19 out of 20 firefighters are men.

21 ~~(e)~~

22 (g) According to the United States Department of Labor, 9 out
23 of 10 registered nurses are women. Registered nurses working in
24 a hospital treat the same patients that first responders, firefighters,
25 and police officers treat.

26 ~~(f)~~

27 (h) In California, women earn 89 cents for every dollar earned
28 by a man, according to the United States Census Bureau. Given
29 this persistent wage gap and the additional caregiving burden that
30 women often bear, guaranteeing access to workers' compensation
31 for nurses, of whom nearly 90 percent are women, will aid in
32 addressing economic and social gender inequality.

33 ~~(g)~~

34 (i) By the nature of their profession, health care workers are in
35 constant danger of being directly exposed to many hazards,
36 including infectious diseases, carcinogens, ergonomic hazards,
37 and traumatic events, and indirectly exposed through contact with
38 various pieces of equipment, chemicals, and clothing.

39 ~~(h)~~

(j) Registered nurses have significantly more exposure to infectious diseases, including bloodborne pathogens, methicillin-resistant *Staphylococcus aureus* (MRSA), tuberculosis, and meningitis, than other workers. According to the Healthcare Cost and Utilization Project, 1 out of every 100 inpatient stays in California involved MRSA. In addition, the incidence of tuberculosis in California was significantly higher than the national average, according to the federal Centers for Disease Control and Prevention.

(i)

(k) Registered nurses experience more work-related injuries and illnesses than workers overall in the United States, including 43 percent more musculoskeletal disorders, over 10 percent more injuries and illnesses of all kinds, and 131 percent more injuries from workplace violence.

(j)

(l) Registered nurses encounter a variety of carcinogenic exposures in the course of doing their jobs. Antineoplastic and other hazardous drugs are administered by registered nurses. While these drugs are life-saving treatments for patients, they are hazardous and can cause cancer. Studies have documented the wide-ranging contamination of the workplace that occurs when antineoplastic drugs and other hazardous drugs are handled and administered. Registered nurses are exposed in the course of doing their jobs to these cancer-causing chemicals. Additionally, the National Institute for Occupational Safety and Health has determined that some anesthetic gases are carcinogenic hazards to registered nurses and other health care workers. Furthermore, the International Agency for Research on Cancer (IARC) recently determined that night shift work is “probably carcinogenic to humans,” the second highest level of evidence of carcinogenicity.

(k)

(m) Registered nurses provide hands-on, direct patient care, which often requires physically assisting, moving, and repositioning patients. Many studies have documented the high rates of musculoskeletal disorders that occur among nurses. In crafting a regulation, the Division of Occupational Safety and Health has deemed musculoskeletal disorders and related injuries a significant hazard specifically encountered by health care workers.

1 ~~(t)~~

2 (n) Registered nurses encounter many traumatic events in the
3 course of providing care to patients, including workplace violence
4 and threats, active shooter incidents, traumatic patient deaths,
5 repeated exposure to patients' trauma, and other events. A landmark
6 study found that 22 percent of nurses had symptoms of
7 post-traumatic stress disorder. This excess stress and trauma must
8 be recognized and addressed as an occupational hazard in nursing.

9 ~~(m)~~

10 (o) The Nurses' Health Study found that frequent use of
11 disinfectants is associated with a significantly increased risk for
12 chronic obstructive pulmonary disease and for poor asthma control.

13 ~~(n)~~

14 (p) Because health care workers have significantly increased
15 exposure or susceptibility to particular work-related injuries or
16 illnesses, it is appropriate to protect them by guaranteeing access
17 to the workers' compensation system.

18 SEC. 2. Section 3212.21 is added to the Labor Code, to read:

19 3212.21. (a) In the case of a hospital employee who provides
20 direct patient care in an acute care hospital, the term "injury" as
21 used in this division includes an infectious disease when a part of
22 the disease or infection develops or manifests itself during a period
23 of the person's employment with the hospital.

24 (b) The compensation that is awarded for an infectious disease
25 shall include, but not be limited to, full hospital, surgical, medical
26 treatment, disability indemnity, and death benefits, as provided by
27 the workers' compensation laws of this state.

28 (c) (1) An infectious disease that develops or manifests in a
29 hospital employee who provides direct patient care in an acute
30 care hospital shall be presumed to arise out of and in the course
31 of the employment. This presumption is rebuttable by other
32 evidence, but, unless rebutted, the appeals board shall presume the
33 infectious disease arose out of and in the course of the employment.
34 Except if the infectious disease is attributed to a
35 ~~Methicillin-resistant~~ *methicillin-resistant* *Staphylococcus aureus*
36 skin infection, this presumption shall be extended to a hospital
37 employee following termination of employment for a period of 3
38 calendar months for each full year of employment, but not to
39 exceed 60 months, beginning with the last date actually worked
40 in the specified capacity.

(2) If an infectious disease is attributed to a methicillin-resistant *Staphylococcus aureus* skin infection, the presumption in paragraph (1) shall be extended to a hospital employee following termination of employment for a period of 90 days, beginning with the last day actually worked in the specified capacity.

(d) An infectious disease that develops or manifests in a hospital employee who provides direct patient care in an acute care hospital shall not be attributed to a disease existing prior to that development or manifestation.

(e) For purposes of this section:

(1) “Acute care hospital” means a health facility as defined in subdivision (a) or (b) of Section 1250 of the Health and Safety Code.

(2) “Bloodborne infectious disease” means a disease caused by exposure to pathogenic microorganisms that are present in human blood that can cause disease in humans, including those pathogenic microorganisms defined as bloodborne pathogens by the Department of Industrial Relations.

(3) “Infectious disease” means any of the following:

(A) Methicillin-resistant *Staphylococcus aureus* skin infection.

(B) Bloodborne infectious diseases.

(C) Tuberculosis.

(D) Meningitis.

(f) *This section shall remain in effect only until January 1, 2023, and as of that date is repealed.*

SEC. 3. Section 3212.21 is added to the Labor Code, to read:

3212.21. (a) *In the case of a hospital employee who provides direct patient care in an acute care hospital, the term “injury” as used in this division includes an infectious disease when a part of the disease or infection develops or manifests itself during a period of the person’s employment with the hospital.*

(b) *The compensation that is awarded for an infectious disease shall include, but not be limited to, full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by the workers’ compensation laws of this state.*

(c) (1) *An infectious disease that develops or manifests in a hospital employee who provides direct patient care in an acute care hospital shall be presumed to arise out of and in the course of the employment. This presumption is rebuttable by other evidence, but, unless rebutted, the appeals board shall presume*

1 *the infectious disease arose out of and in the course of the*
2 *employment. Except if the infectious disease is attributed to a*
3 *methicillin-resistant Staphylococcus aureus skin infection, this*
4 *presumption shall be extended to a hospital employee following*
5 *termination of employment for a period of 3 calendar months for*
6 *each full year of employment, but not to exceed 60 months,*
7 *beginning with the last date actually worked in the specified*
8 *capacity.*

9 *(2) If an infectious disease is attributed to a methicillin-resistant*
10 *Staphylococcus aureus skin infection, the presumption in*
11 *paragraph (1) shall be extended to a hospital employee following*
12 *termination of employment for a period of 90 days, beginning with*
13 *the last day actually worked in the specified capacity.*

14 *(d) An infectious disease that develops or manifests in a hospital*
15 *employee who provides direct patient care in an acute care hospital*
16 *shall not be attributed to a disease existing prior to that*
17 *development or manifestation.*

18 *(e) For purposes of this section:*

19 *(1) "Acute care hospital" means a health facility as defined in*
20 *subdivision (a) or (b) of Section 1250 of the Health and Safety*
21 *Code.*

22 *(2) "Bloodborne infectious disease" means a disease caused*
23 *by exposure to pathogenic microorganisms that are present in*
24 *human blood that can cause disease in humans, including those*
25 *pathogenic microorganisms defined as bloodborne pathogens by*
26 *the Department of Industrial Relations.*

27 *(3) "Infectious disease" means any of the following:*

28 *(A) Methicillin-resistant Staphylococcus aureus skin infection.*

29 *(B) Bloodborne infectious diseases.*

30 *(C) Tuberculosis.*

31 *(D) Meningitis.*

32 *(E) The novel coronavirus 2019 (COVID-19).*

33 *(f) This section shall become operative on January 1, 2023.*

34 ~~SEC. 3.~~

35 *SEC. 4. Section 3212.22 is added to the Labor Code, to read:*

36 *3212.22. (a) In the case of a hospital employee who provides*
37 *direct patient care in an acute care hospital, the term "injury" as*
38 *used in this division includes cancer that develops or manifests*
39 *itself during a period of the person's employment with the hospital*
40 *if the employee demonstrates exposure, while employed with the*

1 hospital, to a known or suspected carcinogen as defined by the
2 International Agency for Research on Cancer or by the director.

3 (b) The compensation that is awarded for cancer shall include,
4 but not be limited to, full hospital, surgical, medical treatment,
5 disability indemnity, and death benefits, as provided by this
6 division.

7 (c) Cancer that develops or manifests in a hospital employee
8 who provides direct patient care in an acute care hospital shall be
9 presumed to arise out of and in the course of the employment. This
10 presumption is rebuttable by evidence that the primary site of the
11 cancer has been established and that the carcinogen to which the
12 member has demonstrated exposure is not reasonably linked to
13 the disabling cancer. Unless rebutted, the appeals board shall
14 presume the cancer arose out of and in the course of the
15 employment. This presumption shall be extended to a hospital
16 employee following termination of employment for a period of
17 ~~three~~ 3 calendar months for each full year of employment, but not
18 to exceed 120 months, beginning with the last date actually worked
19 in the specified capacity.

20 (d) As used in this section, “acute care hospital” means a health
21 facility as defined in subdivision (a) or (b) of Section 1250 of the
22 Health and Safety Code.

23 ~~SEC. 4.~~

24 *SEC. 5.* Section 3212.24 is added to the Labor Code, to read:

25 3212.24. (a) In the case of a hospital employee who provides
26 direct patient care in an acute care hospital, the term “injury” as
27 used in this division includes a musculoskeletal injury that develops
28 or manifests itself during a period of the person’s employment
29 with the hospital.

30 (b) The compensation that is awarded for a musculoskeletal
31 injury shall include, but not be limited to, full hospital, surgical,
32 medical treatment, disability indemnity, and death benefits, as
33 provided by this division.

34 (c) The musculoskeletal injury that develops or manifests in a
35 hospital employee who provides direct patient care in an acute
36 care hospital shall be presumed to arise out of and in the course
37 of the employment. This presumption is rebuttable by other
38 evidence, but, unless rebutted, the appeals board shall presume the
39 musculoskeletal injury arose out of and in the course of the
40 employment. This presumption shall be extended to a hospital

1 employee following termination of employment for a period of
2 ~~three~~ 3 calendar months for each full year of employment, but not
3 to exceed 60 months, beginning with the last date actually worked
4 in the specified capacity. A musculoskeletal injury that develops
5 or manifests in a hospital employee who provides direct patient
6 care in an acute care hospital shall not be attributed to a disease
7 existing prior to that development or manifestation.

8 (d) As used in this section:

9 (1) “Acute care hospital” means a health facility as defined in
10 subdivision (a) or (b) of Section 1250 of the Health and Safety
11 Code.

12 (2) “Musculoskeletal injury” means injury to the muscles,
13 tendons, ligaments, bursas, peripheral nerves, joints, bones, or
14 blood vessels.

15 ~~SEC. 5.~~

16 *SEC. 6.* Section 3212.26 is added to the Labor Code, to read:

17 3212.26. (a) In the case of a hospital employee who provides
18 direct patient care in an acute care hospital, the term “injury” as
19 used in this division includes post-traumatic stress disorder that is
20 diagnosed by a mental health professional and that develops or
21 manifests itself during a period of the person’s employment with
22 the hospital.

23 (b) The compensation that is awarded for post-traumatic stress
24 disorder shall include, but not be limited to, full hospital, surgical,
25 medical treatment, disability indemnity, and death benefits, as
26 provided by this division.

27 (c) The post-traumatic stress disorder that develops or manifests
28 in a hospital employee who provides direct patient care in an acute
29 care hospital shall be presumed to arise out of and in the course
30 of the employment. This presumption is rebuttable by other
31 evidence, but, unless rebutted, the appeals board shall presume the
32 post-traumatic stress disorder arose out of and in the course of the
33 employment. This presumption shall be extended to a hospital
34 employee following termination of employment for a period of
35 ~~three~~ 3 calendar months for each full year of employment, but not
36 to exceed 36 months, beginning with the last date actually worked
37 in the specified capacity.

38 (d) As used in this section:

(1) “Acute care hospital” means a health facility as defined in subdivision (a) or (b) of Section 1250 of the Health and Safety Code.

(2) “Mental health professional” means a person with professional training, experience, and demonstrated competence in the treatment and diagnosis of mental conditions, who is certified or licensed to provide mental health care services and for whom diagnoses of mental conditions are within the professional’s scope of practice, including a physician and surgeon, nurse with recognized psychiatric specialties, psychologist, clinical social worker, mental health counselor, or alcohol or drug abuse counselor.

~~SEC. 6.~~

SEC. 7. Section 3212.28 is added to the Labor Code, to read:

3212.28. (a) In the case of a hospital employee who provides direct patient care in an acute care hospital, the term “injury” as used in this division includes respiratory disease that develops or manifests itself during a period of the person’s employment with the hospital.

(b) The compensation that is awarded for respiratory disease shall include, but not be limited to, full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by this division.

(c) The respiratory disease that develops or manifests in a hospital employee who provides direct patient care in an acute care hospital shall be presumed to arise out of and in the course of the employment. This presumption is rebuttable by other evidence, but, unless rebutted, the appeals board shall presume the respiratory disease arose out of and in the course of the employment. This presumption shall be extended to a hospital employee following termination of employment for a period of ~~three~~ 3 calendar months for each full year of employment, but not to exceed 120 months, beginning with the last date actually worked in the specified capacity. The respiratory disease that develops or manifests in a hospital employee who provides direct patient care in an acute care hospital shall not be attributed to a disease existing prior to that development or manifestation.

(d) As used in this section:

1 (1) “Acute care hospital” means a health facility as defined in
2 subdivision (a) or (b) of Section 1250 of the Health and Safety
3 Code.

4 (2) “Respiratory disease” includes chronic obstructive
5 pulmonary disease or asthma.

6 *(e) This section shall remain in effect only until January 1, 2023,*
7 *and as of that date is repealed.*

8 SEC. 8. Section 3212.28 is added to the Labor Code, to read:

9 3212.28. (a) *In the case of a hospital employee who provides*
10 *direct patient care in an acute care hospital, the term “injury” as*
11 *used in this division includes respiratory disease that develops or*
12 *manifests itself during a period of the person’s employment with*
13 *the hospital.*

14 *(b) The compensation that is awarded for respiratory disease*
15 *shall include, but not be limited to, full hospital, surgical, medical*
16 *treatment, disability indemnity, and death benefits, as provided by*
17 *this division.*

18 *(c) The respiratory disease that develops or manifests in a*
19 *hospital employee who provides direct patient care in an acute*
20 *care hospital shall be presumed to arise out of and in the course*
21 *of the employment. This presumption is rebuttable by other*
22 *evidence, but, unless rebutted, the appeals board shall presume*
23 *the respiratory disease arose out of and in the course of the*
24 *employment. This presumption shall be extended to a hospital*
25 *employee following termination of employment for a period of 3*
26 *calendar months for each full year of employment, but not to exceed*
27 *120 months, beginning with the last date actually worked in the*
28 *specified capacity. The respiratory disease that develops or*
29 *manifests in a hospital employee who provides direct patient care*
30 *in an acute care hospital shall not be attributed to a disease*
31 *existing prior to that development or manifestation.*

32 *(d) As used in this section:*

33 *(1) “Acute care hospital” means a health facility as defined in*
34 *subdivision (a) or (b) of Section 1250 of the Health and Safety*
35 *Code.*

36 *(2) “Respiratory disease” includes chronic obstructive*
37 *pulmonary disease, asthma, or the novel coronavirus 2019*
38 *(COVID-19).*

- 1 (e) *This section shall become operative on January 1, 2023.*

O