

# COVID-19 Executive Order

Explaining Governor Newsom's Executive Order  
Related to Workers' Comp Claims Presumption



Yesterday, Governor Newsom signed an executive order regarding COVID-19 as it relates to workers' compensation. The order is retroactive to the date of the stay-at-home order and will stay in effect for 60 days after its effective date. Therefore, the presumption is effective for employees working from March 19, 2020 through July 5, 2020.

The order is summarized as follows:

- 1) Any COVID-19 related illness of an employee shall be presumed to arise out of and be considered in the course of the employment (AOE/COE) for purposes of awarding workers' compensation benefits; if all the following requirements are satisfied:
  - 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;
  - c. The employee's place of employment was not the employee's home or residence; and
  - d. 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.
- 2) An accepted claim for the COVID-19-related illness is eligible for all benefits applicable under the workers' compensation laws of this state, including full hospital, surgical, medical treatment, disability indemnity, and death benefits. The executive order only covers regular workers' compensation benefits. It does not authorize reimbursement for personal protective equipment (PPE) or temporary housing.
- 3) The executive order states that a COVID-19 related illness shall be subject to those laws including apportionment towards permanent disability. NOTE: Medical treatment is not apportionable.
- 4) Temporary disability (TD) salary continuation payments start only after a worker uses all other state sick leave benefits, with required re-testing every 15 days during the first 45 days of TD payments:
  - a. If the employee tested positive or was diagnosed prior to May 6, 2020, the employee must obtain a certification, within 15 days of the date of the order, documenting the period for which the employee was temporarily disabled and unable to work, and must be recertified for temporary disability every 15 days thereafter, for the first 45 days following diagnosis.
  - b. Being diagnosed with COVID-19 does not automatically entitle an employee to temporary disability benefits. An employee must still be certified for temporary disability by a physician licensed by the California Medical Board
- 5) Department of Industrial Relations (DIR) will not require the carrier to pay a death benefit in a situation where an injured worker dies without a beneficiary.
- 6) Claims for injuries beginning March 19<sup>th</sup> and 60 days after the date of the Order (May 6<sup>th</sup>) could be longer than the duration of the Shelter-In-Place Order.
- 7) Time for the carrier to deny a claim is reduced from the current 90 days to 30 days.

Lastly, COVID-19 claims are currently covered by an employer's workers' compensation insurance. However, under current law, the burden of proof to show that contraction of the illness occurred at work is on the worker. This Executive Order has the effect of reversing the burden of proof and placing it on the employer or the employer's insurance company.

It is anticipated there will be substantial civil litigation against employers for failure to adequately protect their workers. If there is any silver-lining to be found in this Order for employers, it is likely these civil cases would be stopped or blocked as workers' compensation coverage is an exclusive remedy for injured workers.

Relation Claims Team