



May 14, 2020

Response to Executive Order N-62-20

COVID-19 Workers' Compensation Presumption

On May 6, 2020, Governor Gavin Newsom signed an Executive Order creating a temporary rebuttable presumption for COVID-19 cases. This Executive Order will be in effect for 60 days from May 6, 2020, but it also retroactively applies to all claims made after the March 19, 2020 shelter in place order.

The Executive Order N-62-20 indicates that “any COVID-19 related illness” is rebuttably presumed compensable if it meets the following requirements:

1. The employee tested positive for or was diagnosed for COVID-19 within 14 days of working at their place of employment.
2. The employee was working on or after March 19, 2020.
3. The employee was not working from home during that time period.
4. The diagnosis was made by a licensed California physician. The diagnosis is confirmed by testing within 30 days of the date of the diagnosis.

[The Order](#) also addresses benefit eligibility, and most notably, a shortening of the standard investigative period from 90 days to 30 days.

This is a dynamic process so the TPA and employer should continue to track developments in the Legislature and the guidance from the Division of Industrial Relations. Recognize that EO N-62-20 is temporary. As of this date, there are at least four pieces of legislation relating to presumptions for virus-based exposures moving their way through the Legislature. Two are set for hearing next week.

Response to EO N-62-20:

With regard to this temporary Workers' Compensation presumption, we recommend that employers:

1. Review any policies, collective bargaining agreements or resolutions adopted for comparison. This includes actions taken either before or after the March 19, 2020 effective date of the Executive Order.
2. Review existing Workers' Compensation claims filed in relation to COVID-19 to ensure compliance. Ask these questions:
 - Do you have any disputed claims that should now be accepted?
 - Do you have any claims where temporary disability or 4850 benefits were paid that are not due and owing per the Order?
 - Do you have any claims where temporary disability or 4850 are now due and owing?If the answer is yes to any of these questions, we recommend you address them within 14 calendar days to avoid any potential penalties for untimely determinations.
3. Check with your risk sharing pool to ensure that you are reporting in accordance with program requirements.

Other suggestions:

1. The TPA or the employer may wish to set up a COVID-19 Care Line to offer education and support from a licensed medical professional for injured workers who were exposed to COVID-19. If provided by your TPA, check the costs. Since it is not a requirement of the Workers' Compensation Act, most policies will not cover the cost, but employers may still wish to provide it as an added service to their employees.
2. Contact the designated industrial clinic and find out the protocols in place for COVID-19 patients.
3. Work with the Medical Provider Networks or Preferred Provider Networks to determine if pulmonologists and immunologists are included. *Please note: Workers' Compensation doctors may not be treating COVID-19 patients during the initial treatment stages. If the employee is unable to seek treatment COVID-19 within the MPN, be sure to provide the proper notices allowing for a specific one-time exception to seek COVID-19 medical care outside of the MPN, but if any continued treatment is needed, treatment must resume within the MPN.*
4. Utilize Telehealth platforms when medically appropriate. The Governor issued an Executive Order (N-43-20) relaxing some of the regulations around privacy and liability during the crisis to promote telehealth. The Department of Workers Compensation has issued guidance on the topic during the COVID-19 response.
<https://www.dir.ca.gov/DIRNews/2020/2020-26.html>. In addition, emergency regulations have been proposed for QMEs and AMEs (8CCR78)
5. Report COVID-19 claims immediately. This allows for facilitation of immediate treatment for the injured or ill employee and enables the claims team to gather all necessary information during the shortened investigation window. When you are reporting a new claim, the following information would assist with the initial claim processing:
 - Confirm if the employee was directed to work outside of the home or residence
 - Determine if the specific worksite has any other positive COVID-19 cases
 - Notify your TPA if an employee was paid sick leave benefits specifically available in response to COVID-19. This does not include use of the employee's accrued leave balances. This only applies to State, Federal or employer disability benefits specific to COVID-19 leaves of balances.

This is obviously a rapidly evolving situation. Employers are encouraged to closely monitor the developments in the industry, the guidance by the California Department of Workers' Compensation, as well as legislative activity related to infectious disease presumptions.

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