



## California Executive Order N-62-20

May 2020

On May 6, 2020, California Governor Gavin Newsom issued Executive Order N-62-20 creating a rebuttable presumption of occupational exposure for workers diagnosed with COVID-19. The Executive Order applies to workers' compensation claims retroactive to March 19, 2020, and remains in effect for the next 60 days, through July 5, 2020.

### What is the purpose of the Executive Order?

The purpose of the Executive Order is to shift the burden of proving a work-related COVID-19 illness, under certain circumstances and criteria, from the employee to the employer. The change in presumption is due to the concern that employees who report to work during the pandemic are often exposed to an increased risk of contracting COVID-19, which may require medical treatment, including hospitalization. In addition, there is a concern that employees who report to work while sick will increase health and safety risks for themselves, their fellow employees, and others with whom they come into contact. Therefore, the belief is that prompt and efficient treatment will be realized by facilitating access to this state's workers' compensation system for medical treatment and disability benefits.

### Who is covered?

The order provides coverage to all employees who report to work outside the home and who satisfy four specific conditions:

1. The employee tests positive or is diagnosed with COVID-19 within 14 days of the last day the employee worked at the employer's place of employment at the employer's direction,
2. The work the employee performed at the employer's direction was on or after March 19, 2020,
3. The employee's place of employment was not the employee's home or residence, and
4. The COVID-19 diagnosis was made 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.

### What is required for the employee to prove the illness is work-related?

If the employee satisfies the four conditions listed above and has reported to work outside the home, the illness will be automatically "presumed" to be work-related without the employee having to provide any further proof. No rule has been established to address cases diagnosed before the order. The order also does not address the situation of an employee working multiple jobs during the 14-day period.

### Can the presumption be rebutted?

Currently, the presumption is rebuttal and not conclusive. It may be rebutted by other evidence and although Governor Newsom has openly stated that it can only be rebutted under "strict criteria," there were no examples provided in the order. The state Administrative Director is given authority to adopt, amend, or repeal any regulations deemed necessary to implement the order and may later clarify the evidence that can be used to rebut the presumption.

### How does an employer prove that COVID-19 was contracted outside the workplace?

It's a difficult task, meaning most claims are likely now going to be covered by workers' compensation.



## **What is the time period for the employer to rebut the presumption?**

The employer has 30 days to investigate and accept or deny the claim after the claim form is filed, reduced from 90 days. If the claim is not rejected within the 30 days, it will be presumed compensable and can only be rebutted by “evidence only discovered subsequent to the 30-day period.” The Executive Order also does not address how the 30-day rebuttal period will apply to retroactive claims, which were filed following the March 19th retroactive date and are beyond the 30-day period.

## **What benefits are available to an employee with COVID-19?**

All normal benefits are available to employees including hospital, surgical, medical treatment, disability indemnity and death benefits but not expanded benefits for housing and other necessary expenses. There is no delay in the receipt of Temporary Disability benefits, but an employee must be certified by a physician every 15 days for the first 45 days of disability.

## **Are employees required to use sick leave before receiving workers' compensation benefits?**

Employees cannot be asked to use normal sick leave before receiving Temporary Disability benefits. However, the Emergency Paid Sick Leave Act requires that certain employers must extend an extra two weeks of paid sick leave for employees and this will need to be used before benefits are received.

## **How are pre-existing injuries or conditions applied?**

There is currently nothing barring apportionment to other causes, but due to the 1% aggravation rule in California, there is the potential that an employee's pre-existing condition could have an impact on and increase the cost of their COVID-19 claim.

## **What is the insured's obligation for filing a claim form?**

The duty to provide a claim form arises when the employer knows of an injury or claim and is “reasonably certain” the injury has occurred at work, not when the employer should have known. In addition, an employer must provide a claim form when they have been notified of an injury that may have occurred at work. The order does not directly change the rule on employer knowledge but is meant to remove the burden on workers to access benefits.

## **How will the Executive Order impact employers' workers' compensation programs?**

To date, this Executive Order is the most significant step taken by a State to expand workers' compensation benefits to employees for COVID-19 related illnesses. California employers are rightfully concerned about the implications this Executive Order may have on the workers' compensation system. There is little question that the additional costs generated by these changes will be passed through to all employers by increased premiums. The overall impact, however, to most employers will simply be a shift of costs from group health plans to workers' compensation plans. Many employers will see some if not all the following impacts to their workers' compensation exposure:

- Increased employee health and safety expenditures
- Increased claim frequency with the addition of COVID-19 as a presumed covered illness
- Increased direct workers' compensation claim costs, but this may be mitigated by reduced severity
- Increased defense costs as employers controvert the compensability of some COVID-19 claims
- Long tail claim aggravation exposure due to later complications related to COVID-19
- More complex and detailed payroll and class code reporting



- Increased underwriting questions and complexity
- Increased workers' compensation premiums
- Shifting of healthcare costs to first dollar workers' compensation program

## What can USI do to help employers with California workers' compensation COVID-19 exposures?

USI is committed to helping our clients navigate these new and difficult challenges in the following ways:

- Your USI risk control consultant can assist in reducing exposures to COVID-19 claims by working with you and your team to establish re-opening protocols, putting your company in the best position to mitigate losses
- USI claims consultants can assist with:
  - The development of medical and disability management protocols around COVID-19
  - Reviewing your return to work program to address COVID-19 exposure
  - Establishing processes and protocols to evaluate COVID-19 claim compensability
  - Regularly reviewing and aggressively managing existing COVID-19 claims to mitigate your long-term financial exposure
- Your USI account team will also work with you to understand the potential financial impact to your business caused by this Executive Order and develop a worker's compensation program to mitigate the impact and cost of risk.
  - Assist in verifying all claims, class codes and payroll records are accurate prior to experience modification calculations
  - Analyze historical and trending loss patterns relative to change in exposure and business practices and make appropriate adjustments to accurately reflect loss projections
  - Review and analyze overall insurance program structure and/or self-insured retentions to mitigate any effects from the Executive Order
  - Analyze expenditures and program structure regarding an overall employee wellness program focused on healthcare and workers' compensation costs

### Additional Resources

For additional resources, tools, information, and links, please visit our COVID-19 resource page at [www.usi.com/public-health-emergencies](http://www.usi.com/public-health-emergencies).



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