



CLIENT ALERT

Overview of California Executive Order N-62-20

On May 6, 2020, 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 mandates that provisions of workers' compensation benefits under a certain set of criteria and applies to claims retroactive to March 19, 2020. It is effective for the next 60 days (through July 5, 2020).

For a COVID-19 case to qualify, the injured worker must meet a four part requirement:

1. The employee was diagnosed or tested positive with COVID-19 within 14 days after a day that he/she worked.
 2. On or between 03/19/20 – 07/05/20, the employee performed labor services at the discretion of his/her employer.
 3. The workday occurred at the place of employment, which is NOT the employee's home or residence.
 4. The employee was diagnosed by a licensed CA physician or surgeon and then confirmed by a positive test within 30 days of the date of the diagnosis.
- Presumption is disputable and can be controverted with evidence. Window to make claim is 60 days from the date of the order.
 - If the claim is not rejected within 30 days, it is presumed compensable.
 - An accepted claim is entitled to all prescribed benefits under the labor code.
 - If employee has paid sick leave benefits available, those must be exhausted before any temporary disability is awarded. If no leave time is accrued, they are entitled to benefits from day 1 (no waiting period).
 - Employee must be certified for temporary disability within 15 days of the initial diagnosis and must be recertified to temporary disability every 15 days for the first 45 days following the diagnosis. If diagnosed prior to the date of this order, employee must obtain a certification within 15 days of the date of this Order, documenting the period for which the employee was temporary disabled and unable to work and must be recertified to temporary disability every 15 days for the first 45 days following the diagnosis.
 - The order compels the Administrative Director of the Division of Workers' Compensation to adopt this order.
 - Order applies to all workers' compensation insurance carriers, including self-insured employers.
 - Department of Industrial Relations shall waive collection of any death benefits.

Analysis

It will become important for each employer to take all reasonable steps and document all measures and procedures taken to ensure that workers' are being provided reasonable accommodations to prevent exposure. The more evidence you can illustrate to dispute the presumption of compensability the greater chance you will have to refute the claim.

Impact

The [Workers' Compensation Insurance Rating Bureau](#) predicts a midrange cost of \$11.2 billion for AB 664 and a total range between \$2.2 billion to \$33.6 billion. So this is clearly a significant exposure that the actuaries have projected.

- California population is 41,000,0000
- California workforce is 19,516,000 as of 2/2020, or 48%
- Currently 54,937 cases in all of California. So assuming an even distribution of cases between working and nonworking adults, there would be approximately 26,150 cases to date among the workforce
- Construction workforce is about 2.8% of total workforce – 896,000
- Assuming 5 times current number of cases through the summer, still looking at only 0.65% of the workforce getting diagnosed with COVID19 assuming construction workers get sick at the same rate as the population as a whole. Figures could go up with better access to testing.

- 0.65% of 896,000 is 5,824 by end of summer, or about 1,100 cases currently (assuming even distribution of cases).
- Many cases are mild and people recover, so there won't be significant medical and disability bills associated with them – and people might take unemployment and sick leave through employer/union vs. disability. Presume there will be a couple thousand really expensive cases throughout the entire construction industry by end of summer
- One unintended aspect may be that health insurers try to recover from workers' compensation carriers (Sutter Health or Kaiser pursuing subrogation). This is where the real exposure exists.

The State of California Workers' Compensation benefits overview can be found here:

<https://www.dir.ca.gov/dwc/WorkersCompensationBenefits.htm>

This site outlines the disability benefit rates for temporary disability, permanent disability and death benefits.

References: <https://www.gov.ca.gov/wp-content/uploads/2020/05/5.6.20-EO-N-62-20-text.pdf>

Should you have any questions or concerns, **please engage your local Alliant contact immediately** or you can visit:

<https://insurance.alliant.com/COVID19-questions>

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