

May 7, 2020

Governor Newsom Signs Executive Order Giving COVID-19 Workers' Compensation Rebuttable Presumption to All CA Employees

On Wednesday, May 6, 2020, Governor Gavin Newsom issued a temporary executive order which outlines any COVID-19-related illness shall be presumed to arise out of and in the course of the employment for purposes of awarding workers' compensation benefits if all of the following requirements are satisfied:

- 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;
- 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;
- The employee's place of employment was not the employee's home or residence; and
- The 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 diagnosis.

While this action and the presumption were somewhat expected, what makes this order significant is that it goes beyond covering only those categorized as [essential workers](#) and covers all workers in all industries who are performing "labor or services at the employer's place of employment at the employer's direction."

Keep in mind that for an employee to bring a successful claim, they must meet the four conditions outlined above. However, even if those are met, the presumption is still rebuttable and may be controverted by "other evidence," but this burden is on the employer to prove causation was unrelated to the industrial exposure.

Key Considerations

According to the Governor's Order, the employee must work at the "employee's place of employment" (not the employee's home or residence) and have a positive diagnosis confirmed by further testing within 30 days. It will be easy to agree on what the employee's home or residence may be. But, what does "employee's place of employment" really mean? Is it a fixed location, a rolling place where a delivery driver or salesman performs his or her job at no fixed location? There is no one definition of "place of employment," so details will matter.

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There is also a time-sensitivity factor built into the order, which requires that a COVID-19 related claim be rejected within 30 days of a California DWC-1 claim form being filed, otherwise it will be presumed compensable (accepted), unless rebutted by evidence only discoverable subsequent to the 30-day window. This contrasts with the existing statute that allows for a 90-day investigation period.

This presumption shall only apply to dates of injury occurring through July 5, 2020.

All of this highlights the importance of prompt reporting to your insurance carrier or third-party administrator (TPA) and a thorough employer-level investigation.

Recommended Claim Reporting Guidelines

Due to the short period in which an adjuster will have to investigate the merits of a claim, obtaining quick clarification on any ambiguous details will be imperative. If an employee asks to have a claim filed on their behalf, a [claim form](#) should be provided, and some level of basic details confirmed, which will help with the initial claim reporting.

Some important details to share with the insurance adjuster if possible:

- Where did the (alleged) exposure occur, i.e., facility address/department
- When is the (alleged) date of exposure
- How did it occur, if known
- Are there any other confirmed cases at your facility; available details on those cases
- Are you aware of any family members of the employee who have tested positive

Once this and other required personal information on the employee is pulled together, you should immediately call your carrier or TPA's reporting number to submit the claim. Provide them with the answers you obtained during your initial investigation. Even if you do not have all the information needed to make a decision on the claim, the insurance carrier will assume responsibility for all next steps and obtain any missing details directly from the claimant.

Most importantly, once you have notice of a potential claim, report the exposure to the insurance carrier or TPA. Be factual and provide the specific details you gathered.

If you have any questions or are not sure about the steps to take should an issue arise, you may call your Woodruff Sawyer representative for assistance at any time.