



COVID-19 UPDATE

By Dennis Timoney, ARM, Chief Risk Officer, Special Districts Risk Management Authority (SDRMA)

On May 6, 2020, Governor Newsom signed Executive Order N-62-20, which provides that under certain circumstances it is presumed that workers who contract a COVID-19-related illness between March 19 and July 5, 2020 have done so at work and are thus eligible for workers' compensation benefits. This document provides guidance related to the implementation of the order.

The Order will apply to all workers' compensation insurance carriers writing policies that provide coverage in California, self-insured employers, and any other employer carrying its own risk, including the State of California. Nothing in this order shall be construed to limit the existing authority of insurance carriers to adjust the costs of their policies.

In a report published in late May, WCIRB estimated the cost of COVID-19 claims filed by workers subject to the May 6 Executive Order N-62-20 issued by Gov. Gavin Newsom, putting it in the range of \$0.6 billion to \$2.0 billion, with a mid-range estimate of \$1.2 billion. The WCIRB has evaluated the potential workers' compensation claims cost arising from COVID-19 claims under the order. While some of the workers who are directed to work outside

their home during this period have filed or would file a compensable workers' compensation claim in the absence of a rebuttable presumption, we had no basis to estimate this proportion and, as a result, made no estimate of the incremental impact of the order. Also, since an actual positive test or diagnosis of COVID-19 is required for the order to apply, our cost estimates exclude any potential costs for workers who are quarantined, but have not been diagnosed with COVID-19. Finally, our estimates reflect the potential cost impact arising from COVID-19 diagnoses during the time the order applies and do not reflect costs for potential extensions of the order or future legislation.

Here are some Frequently Asked Questions regarding the Governor's order.

1. What does Executive Order N-62-20 do?

Governor Newsom's Executive Order N-62-20 provides that all California employees who work at a jobsite outside their home at the direction of their employer between March 19, 2020 and July 5, 2020 and who test positive for COVID-19 within 14 days of working at their jobsite are presumed to have contracted any COVID-19-related illness at work for the purposes of awarding workers' compensation benefits.

2. What are the requirements for qualifying for the presumption under Executive Order N-62-20?

To qualify for the presumption, all of the following conditions must be met:

- You must test positive for or be diagnosed with COVID-19 within 14 days after a day you worked at your employer's jobsite at its direction.
- The day you worked at your employer's jobsite was on or after March 19, 2020.
- The employer's jobsite is not your home or residence.
- If you are diagnosed with COVID-19, the diagnosis was done by a medical doctor and confirmed by a positive test for COVID-19 within 30 days of the date of the diagnosis.

3. Executive Order N-62-20 provides that the presumption of a work-related illness "is disputable and may be controverted by other evidence." What does that mean?

This means that even when an employee is presumed to have become ill from COVID-19 at work, an employer may dispute that conclusion. In such a case, however, the employer bears the burden of proving that the injury or illness did not occur at work.

4. Executive Order N-62-20 requires that my doctor's diagnosis be confirmed by a test. What kind of test is acceptable?

The Centers for Disease Control and Prevention (CDC) advise that there are generally two kinds of tests available for COVID-19: viral tests and antibody tests.

- A viral test tells you if you have a current infection.
- An antibody test tells you if you had a previous infection.

Additional tests are in development. For your records, you will want to keep copies of all medical records, including records related to your test.

5. Does Executive Order N-62-20 impact a claim for a COVID-19-related illness that was accepted prior to May 6, 2020?

No. The executive order does not apply to COVID-19-related claims, regardless of date of injury, that were accepted by the claims administrator as compensable prior to May 6th. Those claims should be handled in the same manner as other accepted claims would be absent the executive order. For claims that were denied prior to May 6th, see question number 6 below.

6. I filed a workers' compensation claim for a COVID-19-related illness that my employer denied before the issuance of Executive Order N-62-20. Does the executive order automatically reverse my employer's decision?

No. Where the denial occurred before the executive order, the employer may reconsider and accept the claim based upon

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the order or stand by the denial. However, if your employer does not reverse its decision and you believe that you are entitled to benefits under this executive order, you may file for a hearing at your closest DWC district office. You may seek assistance from an attorney or speak with one of the division's information and assistance officers to help you.

7. If the presumption is not applicable to me, does that mean I'm unable to file a workers' compensation claim for a COVID-19-related illness?

No. If you are an employee and suffer a job-related injury or illness, you are entitled to file for workers' compensation benefits. You should tell your employer that you would like to file a workers' compensation claim. They are then required to provide you with a claim form. DWC's website has detailed information on how to file a claim. If you don't qualify for the presumption under the executive order, you may still be eligible to receive workers' compensation benefits if you contracted COVID-19 at work. You will need to meet certain threshold requirements, including proving that your injury or illness arose out of your employment.

8. I was diagnosed with COVID-19 and have been using my own sick leave while I have been unable to work. Under Executive Order N-62-20, if my illness is deemed related to my work, is my employer required to give me my sick leave back?

As explained below, it depends upon the type of sick leave benefits you are using.

- If your employer is providing you paid sick leave specifically available in response to COVID-19 (such as under the Families First Coronavirus Response Act or Executive Order N-51-20), then you must use that sick leave before you receive temporary disability benefits.
- If you do not have any supplemental paid sick leave specifically available in response to COVID-19, temporary disability benefits or benefits paid under Labor Code section 4850 should have been paid by your employer from the time you became disabled. This means that, if you took paid leave (sick leave, vacation time, personal time off)

through your employer's plan, that leave should be restored back to you. If you have any questions about this or to address your specific situation, please speak with your employer.

9. I am not sure if I am an essential worker, but I have been working for my employer outside of my home since March 19th and have tested positive for COVID-19. Will this presumption apply to me?

Yes. This presumption applies to all employees who were working at their employer's direction outside of their homes or residence between March 19 and July 5, 2020, regardless of whether they were working in "essential" industries or providing "essential" services.

10. My doctor diagnosed me with a COVID-19-related illness after March 19th, but she didn't give me a test. What do I need to do to qualify for the presumption?

If, within 14 days of a day that you reported to work, you were diagnosed with COVID-19 by a physician who has a physician and surgeon license issued by the California Medical Board, you will need to confirm the diagnosis with a positive test within 30 days of the initial diagnosis.

11. I was working after March 19th and then got sick and tested positive for COVID-19. Do I qualify for benefits under Executive Order N-62-20?

Maybe. If you meet the executive order's requirements, you will be presumed eligible for benefits. However, that presumption is rebuttable, which means that your employer can dispute your claim and present evidence that you did not contract COVID-19 at work or are otherwise ineligible for the presumption. If your employer disputes your claim, you have the right to have the issue heard and decided by a workers' compensation judge.

12. How long does my employer have to decide whether it will accept or deny my claim?

If you meet the criteria for this presumption, your employer will have up to 30 days to investigate and make a decision whether to accept or deny your claim. If your employer fails to reject your claim within 30 days, your injury or illness is presumed compensable, and your employer can then rebut that presumption only

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with evidence it discovered after the 30-day period. Until your employer makes that decision, you will be eligible for up to \$10,000 in medical treatment for your COVID-19-related illness. During that time, you may be eligible to receive federal, state, or local COVID-19-specific paid sick leave benefits, so you should speak to your employer about those benefits. If such benefits are not available, you may be eligible for benefits from the Employment Development Department.

13. What benefits may I be entitled to as a result of Executive Order N-62-20?

Workers' compensation insurance provides five basic benefits:

- Medical care: Reasonable and necessary medical treatment paid for by your employer to help you recover from an injury or illness caused by work.
- Temporary disability benefits: Payments if you lose wages because your injury prevents you from doing your usual job while recovering.
- Permanent disability benefits: Payments if you don't recover completely.
- Supplemental job displacement benefits: Vouchers to help pay for retraining or skill enhancement if you don't recover completely and don't return to work for your employer.
- Death benefits: Payments to your spouse, children, or other dependents if you die from a job injury or illness.

14. I filed a claim for a COVID-19-related illness. What notification is my employer required to give advising me of the status of my claim?

Regardless of whether an employee files a claim before or after the issuance of the Executive Order, the employer is

required to notify you of acceptance or denial of your claim by letter, as they must do under current law.

15. I was diagnosed with a COVID-19-related illness before the issuance of Executive Order N-62-20, and unable to work. What do I need to get from my doctor in order to be eligible for temporary disability benefits under the executive order?

If you tested positive or were diagnosed with a COVID-19-related-illness before May 6, 2020, you will need to get documentation or a statement from your physician by May 21st setting forth the period that you were temporarily disabled and unable to work. Please see Question # 16 below to see the type of doctor who can provide this documentation or statement. You must continue to be recertified for temporary disability benefits by your physician every 15 days thereafter, for the first 45 days following your diagnosis.

16. Can my own personal physician provide the required certification for temporary disability benefits during the 45-day period following my diagnosis?

Maybe. Under the executive order, only a physician who holds a physician and surgeon license issued by the California Medical Board may certify a person for temporary disability benefits. A physician meeting this requirement can be a member of your group health plan or your employer's Medical Provider Network or Health Care Organization, or a medical doctor you pre-designated as your treating physician in the event you suffer a work-related injury or illness. If you don't have access to one of these physicians, you may be certified by another physician of your choice who holds a physician and surgeon license. If you have questions about whether your physician holds a physician and surgeon license, please check the California Medical Board's website. 

For additional information or to answer your questions contact SDRMA Chief Risk Officer Dennis Timoney at dtimoney@sdrma.org.

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