

COVID-19 Workers' Compensation Presumption

Fact Sheet

On May 6, 2020, California Governor Gavin Newsom issued Executive Order N-62-20, which created a rebuttable presumption that any COVID-19 related illness is presumed to be work-related if certain conditions are met.

The press release announcing the Executive Order is available here:

<https://www.gov.ca.gov/2020/05/06/governor-newsom-announces-workers-compensation-benefits-for-workers-who-contract-covid-19-during-stay-at-home-order/>

The Executive Order (EO) is available here: <https://www.gov.ca.gov/wp-content/uploads/2020/05/5.6.20-EO-N-62-20-text.pdf>

Who is covered?

Any employee who was directed to perform work at the employee's place of employment at the employer's direction (Section 1(a)).

The EO specifically excludes coverage for work performed at the employee's home or residence (Section 1(c)).

Unlike the existing presumptions in the Labor Code (Sections 3212 et seq.), the EO presumption appears to cover *any* employee in the state – so long as that employee is working at their place of employment (that is not their home or residence) at their employer's direction; the EO is not limited to certain groups or just those employees deemed “essential” per Governor Newsom’s prior Executive Orders.

What time period is covered?

The EO presumption applies to a positive COVID-19 test or diagnosis that occurs on or after March 19, 2020, through 60 days from the date of the EO, or through July 5, 2020 (Sections 1(b), 2).

In addition, the positive COVID-19 test or diagnosis must occur within 14 days after a day that an employee performed work at their place of employment at their employer's direction (Section 1(a)).

Is a positive COVID-19 test required?

Yes. Although Section 1(a) requires that an employee test positive for COVID-19 or be diagnosed with COVID-19, Section 1(d) provides that when Section 1(a) is satisfied through a diagnosis of COVID-19, that diagnosis must 1) be made by a physician who holds a physician and surgeon license issued by the California Medical Board, *and* 2) that the diagnosis is confirmed by further testing within 30 days of the date of the diagnosis.

Is the presumption rebuttable?

Yes. Per Section 2, the presumption is “disputable and may be controverted by other evidence.” Absent such other evidence, however, if the requirements set forth in Section 1 are met, the Workers’ Compensation Appeals Board is bound to find in accordance with the presumption.

How long does a defendant have to accept or deny a COVID-19 claim?

30 days.

Unlike the typical 90 days provided by Labor Code Section 5402, Section 3 of the EO states that a COVID-19 claim is presumed compensable if not rejected within 30 days after the date the claim form is filed per Labor Code Section 5401.

What benefits are provided?

An injured worker with an accepted COVID-19 claim is eligible for all benefits of the California workers’ compensation system, including medical treatment, temporary disability, permanent disability, and death benefits, with some limitations on temporary disability and 4850 benefits, as noted further below (Section 4).

An injured worker is also presumably entitled to the supplemental job displacement benefit if their claim meets the requirements of Labor Code Section 4658.7. The SJDB is not specifically listed in Section 4 but is not specifically excluded in the EO and would thus be covered under the “all benefits” language in Section 4.

What are the limitations on temporary disability / 4850 benefits?

Sections 5 and 6 place some unique restrictions on temporary disability and Labor Code Section 4850 benefits that do not apply to non-COVID-19 claims.

Under Section 5, if an employee has paid sick leave benefits that are made available specifically in response to COVID-19, those benefits must be used and exhausted before any TD or 4850 benefits are payable.

In the absence of such sick leave benefits, TD or 4850 benefits are owed, if applicable, from the date of injury.

Under Section 6, there are additional requirements unique to COVID-19 claims that must be met in order for a worker to be eligible for TD or 4850 benefits.

For a positive COVID-19 test or diagnosis on or after May 6, 2020, the worker must be certified for TD within the first 15 days after the initial diagnosis, and then must be recertified for TD every 15 days thereafter, for the first 45 days following the initial diagnosis.

For a positive COVID-19 test or diagnosis prior to May 6, 2020, the worker must, within 15 days of the date of the EO, obtain a certification documenting the period during which the employee was temporarily disabled and unable to work, and then must be recertified for TD every 15 days thereafter, for the first 45 days following the diagnosis.

All TD certifications must be issued by a physician holding a physician and surgeon license issued by the California Medical Board. The certifying physician can be part of a Medical Provider Network, a predesignated physician, or a physician in the employee’s group health plan.

Is there a waiting period for temporary disability benefits?

No.

Section 5 states that “in no event shall there be a waiting period for temporary disability benefits.”

Is apportionment of permanent disability allowed?

Yes.

Unlike many of the existing presumptions in the Labor Code, apportionment per Sections 4663 and 4664 is not prohibited and is specifically allowed per Section 4 of the EO.

Other limitations:

Per Section 9, no death benefits are owed to the Death Without Dependents Unit for a worker who dies due to COVID-19 and does not have any dependents.