

# WACA ALERT

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## **Governor Newsom Issues Executive Order N 62-20 to Expand Workers' Compensation Utilization**

On May 6, Governor Newsom issued [Executive Order N-62-20](#) declaring that COVID-19-related illness of an employee shall be presumed to have occurred in the place of employment for purposes of awarding workers' compensation benefits, if specific requirements are satisfied. The effect of the order will make it easier for employees to access workers' compensation benefits by shifting the burden of proof to employers, who will have to prove employees did not contract COVID-19 at work in order to avoid a claim.

### **Overview of Executive Order:**

1. The order affirms that any COVID-19 related illness of an employee shall be presumed to arise out of and in the course of employment for purposes of awarding workers' compensation benefits if **all** of the following requirements are satisfied:
  - a) Employee tested positive or was diagnosed with COVID-19 within 14 days after a day that the employee performed work on behalf of the employer;
  - b) Work was performed on or after March 19, 2020;
  - c) Place of work performed was not the employee's home or residence;
  - d) If diagnosed, the diagnosis was performed by a licensed physician or surgeon and then confirmed with a positive test for COVID-19 within 30 days of the date of the diagnosis.
2. **Presumption is disputable and can be controverted with evidence.** The window to make a claim under the presumption is 60 days from the date of the order, meaning the presumption expires July 5<sup>th</sup>, 2020.
3. If the claim is not rejected within 30 days, it is presumed compensable, unless rebutted by evidence discovered subsequent to the 30-day period.
4. An accepted claim is entitled to all prescribed benefits under the labor code.
5. If the employee has paid sick leave benefits available, those benefits must be exhausted before any temporary disability is awarded. If no paid sick leave time is accrued, the employee is entitled to temporary disability benefits immediately.
6. Employees covered by the order must be certified for temporary disability within 15 days of the initial positive test or diagnosis and must be recertified to temporary disability every 15 days for the first 45 days following the diagnosis. If an employee tested positive or was diagnosed prior to the date of the order, the employee must obtain a certification within 15 days of the date of the 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 positive test or diagnosis.
7. The order compels the Administrative Director of the Division of Workers' Compensation to adopt the order.
8. The order applies to all workers' compensation insurance carriers, including self-insured employers.
9. The order requires that the Department of Industrial Relations waive collection of any death benefits.

### **Advice to Industry**

Workers' compensation brokers and industry legal counsel are advising contractors to, at a minimum, implement protocols based on [CalOSHA's construction industry specific guidance](#) on COVID-19 jobsite safety practices. Failure to do so may be viewed as a failure to take all reasonable precautions to protect employees from COVID-19 exposure.

In addition, our industry's strict health and safety protocols combined with social distancing and limited exposure to the public should help limit illegitimate claims. However, **it is important for contractors to document all measures and procedures that are being taken to ensure that workers are being provided reasonable accommodations to prevent exposure.** The more documentation contractors have on safety protocols in the workplace, the stronger a contractor's position will be to rebut those cases which they believe were not contracted on the jobsite