

CLIENT NEWS BRIEF

Contracting COVID-19 While Working Could Make Employees Eligible for Workers' Compensation Benefits

On May 6, 2020, Governor Gavin Newsom signed [Executive Order N-62-20](#), the latest in a series of Executive Orders expanding protections for workers during the ongoing COVID-19 pandemic. This order imposes a presumption that a California worker working outside their home who contracts COVID-19 has contracted the illness at work, making them eligible for workers' compensation benefits. The presumption remains in place from March 19, 2020, through July 5, 2020, and can be rebutted by the employer.

When Does the Presumption Arise?

For the presumptions to apply, an employee must test positive for or be diagnosed with COVID 19 within 14 days after the employee worked for their employer at a location outside of their home or residence. The date the employee worked must have been on or after March 19, 2020. If the employee's contracting of the virus is established through diagnosis rather than testing, the diagnosis must be provided by a physician who holds a physician and surgeon license issued by the California Medical Board and the diagnosis must be confirmed by further testing within 30 days of the date of the diagnosis.

The presumption is rebuttable and may be controverted by other evidence. If the claim is not denied within 30 days—a shortened timeframe from the typical 90 days—of the claim form being filed by the employee, it is presumed compensable, unless rebutted by evidence that could only be discovered subsequent to the 30-day period.

Eligibility Requirements

To qualify for workers' compensation benefits such as temporary disability or Labor Code section 4850 salary continuation benefits under Executive Order N-62-20, an employee must satisfy either of the following:

- A. If the employee tests positive for COVID-19 or is diagnosed with the virus on or after May 6, 2020, the employee must be certified for temporary disability within the first 15 days after the initial diagnosis, and must be recertified for temporary disability every 15 days thereafter, for the first 45 days following diagnosis; or
- B. If the employee tested positive or was diagnosed prior to May 6, 2020, the employee must obtain a certification by May 21, 2020, documenting the period for which the employee was temporarily disabled and unable to work, and must be recertified for temporary disability every 15 days thereafter, for the first 45 days following diagnosis.

May 2020
Number 45



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What Benefits Are Available?

Under this Order, qualifying employees are eligible for all workers' compensation benefits, including full hospital, surgical, medical treatment, disability indemnity, and death benefits, and are subject to the workers' compensation laws.

Typically under the workers compensation rubric, there is a three day waiting period prior to an injured worker receiving temporary disability benefits. Executive Order N-62-20 waives this waiting period.

However, where an employee has paid sick leave benefits specifically available in response to COVID-19, for example, benefits provided under the Families First Coronavirus Response Act (FFCRA), those benefits shall be used and exhausted before any temporary disability benefits or benefits under Labor Code section 4850 are due and payable.

[\(See 2020 Client News Brief Number 17 for more information on FFCRA\)](#)

Takeaways

The Governor has put in place another protection for California workers who return to work during the COVID-19 pandemic, creating further incentive for employees to seek medical treatment if they experience COVID-19 symptoms contracted at work and for employers to implement policies and procedures to protect workers and reduce their risk of exposure. This Executive Order raises questions regarding its interplay with other leave provisions. For example, it is unclear what impact this presumption has on industrial illness and accident leave under the Education Code. See the [Lozano Smith COVID-19 Leave Chart](#) for further information regarding how leave is affected by the ongoing COVID-19 pandemic.

If you have any questions about Executive Order N-62-20, COVID-19 related leave or any other leave related questions, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).