



**May 12, 2020 as of 4:00pm**

**ALERT!**

## California Executive Order Presumes COVID-19 Employees' Illness Contracted at Work

On May 6, 2020 California Governor Gavin Newsom issued [Executive Order N-62-20](#) which states that employees will be presumed to have contracted COVID-19 in the course and scope of employment for purposes of Workers Compensation benefits if all of the following conditions are satisfied:

- The employee contracts COVID-19 within 14 days of performing labor at the employer's direction and at the employer's worksite;
- If such work occurred on or after March 19, 2020;
- The worksite was not the employee's home; and
- The positive test is confirmed by further testing within 30 days of the date of diagnosis

The presumption rules will be in place from March 19 to July 5.

The Order applies to all Workers Compensation insurance carriers that provide coverage in California, self-insured employers, and public employers. The Order permits insurance carriers to adjust the costs of their policies as appropriate.

Press release [here](#).

California's State Fund, has [publicly stated](#) that it would accept COVID-19 cases as being work related illnesses with the full benefits that the Workers Compensation system has to offer "...regardless of whether or not that worker can demonstrate the virus was contracted during the course of employment." Other carriers' response seems to be more guarded and may become clearer after a Workers Compensation Insurance Rating Bureau (WCIRB) [May 19 hearing](#) on the potential cost impact of the Governor's Order.

From the 'glass half full' perspective, it is a temporary presumption, it includes limitations to reduce costs by ensuring that sick leave benefits are credited against the Workers Compensation benefit, and notes that the presumption may be 'controverted by other evidence'.

The Governor's Workers Comp presumptive Order comes as we await action from the Workers Compensation Insurance Rating Bureau (WCIRB) on a proposal to offer employers some relief and, on the flip side, as a more extreme expansion of the Governor's Workers Comp presumption is being considered by the California legislature in the form of [AB 196](#).

**WCIRB Rate Relief Hearing May 18, 2020** (not to be confused with the May 19 actuarial hearing referenced above)

As reported in our [May 1 COVID update](#), the WCIRB will conduct a hearing by telephone on May 18 to consider 3 employer relief measures:

1. Exclude Payments to Employees Who Continue to Be Paid While Not Working
2. Exclude COVID-19 Claims from Experience Rating
3. Allow Assignment of Classification 8810 for Temporary Change in Duties

### **AB 196 (Lorena Gonzales)**

This bill, authored by the same Assembly member that introduced the independent contractor bill [AB 5](#), seeks to remove some of the limitations provided in the Governor's Order.

[AB 196](#) would:

- create a *conclusive* presumption (meaning not rebuttable)
- extend that presumption following termination of service for a period of 90 days, commencing with the last date actually worked

### **Best Recommendations**

- Be diligent with your safety, hygiene, physical distancing and PPE practices.
- Document the safety protocols your company is using. The more evidence of workplace COVID-19 safety protocols you have, the stronger your position to rebut the cases you believe were not contracted at work.

There are many moving targets on the issue of COVID-19 Workers Compensation coverage and we will continue to bring you updates.

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Sincerely,

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