Workers’ Compensation:
Presumption Regarding COVID-19

Presented by:

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CA Requirements Continued...

• The California Department of Industrial Relations (DIR) requires employers to give new hires the right to worker’s compensation pamphlet, Time Of Hire Pamphlet, DWC Form 9783.1, no later than the end of their first pay period.
If you can’t hear me...

Using the Phone
To ask questions of the presenter please use the chat function below.
Disclaimer

We wish to express confidence in the information contained here. Used with discretion, by qualified individuals, it should serve as a valuable management tool in assisting employers to understand the issues involved and to adopt measures to prevent situations which commonly give rise to legal liability. However, this text should not be considered a substitute for experienced labor counsel, as it is designed to provide information in a highly summarized manner.

The reader should consult with Barsamian & Moody at (559) 248-2360 for individual responses to questions or concerns regarding any given situation.
Overview

• Issuance of Executive Order
• Applicability of Presumption
• Rebuttal of Presumption
• Temporary Disability Payments
• What This Means for Employers
Issuance of Executive Order
Executive Order N-62-20

• “Rebuttable” presumption, rather than employee proof.
• All essential workers who contract COVID-19 did so in the course and scope of work, and therefore, are entitled to workers’ comp benefits.
• All other workers who reported to work outside of their homes at their employer’s direction.
• Covers claims retroactive to March 19, 2020.
• Currently in place until July 5, 2020.
Applicability of Presumption
Required Criteria

• For the presumption to apply, all of the following must be met:
  – The employee must actually test positive for COVID-19;
  – The positive test must be within 14 days after the employee performed work at the employer’s premises (this means that no presumption arises when the employee is working from home, but it is not clear if that applies to all teleworking), and that date of work must be after March 19, 2020;
Additional Required Criteria

For the presumption to apply, all of the following must be met:

– The positive diagnosis must be made by a physician or surgeon whose license was issued by the State of California; and

– The diagnosis must be confirmed by further testing within 30 days of the date of diagnosis.
Rebuttal of Presumption
Rebutting the Presumption

- California’s standards for workers’ comp coverage specifically state that the workers’ comp statutes are to be “liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment.”

- The Executive Order further provides that the employer has only 30 days to reject and rebut the claim, and that any evidence used to rebut the claim must be discovered within 30 days from the date of the claim from being filed.

  – Not 90 days like normal
Rebutting the Presumption

- Newsom: “strict criteria” for rebuttal
- DIR supposed to be clarifying
- Rebuttal will be an uphill battle
- Do everything you can to avoid it in the workplace
  - Cal/OSHA Guidance
  - CDC Guidance
  - Etc.
Benefits Available

• Accepted claims are eligible for the full range of comp benefits, including hospital, surgical, medical treatment, disability indemnity and death benefits.

• However, where the employee is entitled to paid sick leave related to COVID-19, such paid sick leave shall be exhausted prior to temporary disability benefits are paid under the comp system.
Temporary Disability Payments
Requirements

• To qualify for temporary disability payments, the employee must satisfy either of the following:
  – If the employee tests positive 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 after diagnosis; or
Requirements

• To qualify for temporary disability payments, the employee must satisfy either of the following:
  – If the employee tested positive prior to May 6, 2020, the employee must obtain certification within 15 days of the date of the Order (i.e.; May 21, 2020), documenting the period for which the employee was temporarily disabled and unable to work, and must be recertified every 15 days thereafter for the first 45 days after the diagnosis.
Certification

• Any certification for temporary disability must be done by a physician holding a physician and surgeon license issued by the State of California.

• The physician can be designated in the applicable Medical Provider Network or Health Care Organization, a predesignated workers’ comp physician, or a physician in the employee’s group health plan.

• If the employee does not have a designated workers’ comp physician or a group health plan, the employee should be certified by a physician or surgeon of the employee’s choosing who holds a CA license.
Applicability

• The Executive Order applies to all carriers writing polices in California, and to all self-insured employers.
What This Means for Employers
Many Claims – Not Much Time

• Unfortunately, employers are going to see a lot of claims, particularly as COVID-19 testing becomes more readily available.

• With the tight timelines on this, it is imperative that you work quickly to try to discovery any evidence that may rebut the claim.
Costs? Carriers? Hope?

• WCIRB says between $2 billion and $33 billion
  – And that was with only essential workers – with other sectors opening up, this could balloon higher.

• Will more carriers leave?

• Litigation?
  – Illinois presumption blocked by court.
Questions?
Resources

✓ Executive Order N-62-20
✓ Barsamian & Moody
✓ LWDA Resources for COVID-19
✓ Cal/OSHA Guidance
✓ AgSafe Resource Page
✓ Western Growers Resource Page
✓ Dept of Labor FAQ
✓ IRS Guidance on Tax Credits
✓ Employee Leave Rights Poster & Spanish
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