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Another California Executive Order Makes it Easier to Receive Workers' Compensation Benefits for COVID-19 Claims

Another California Executive Order in response to the COVID-19 pandemic—this one issued on May 6, 2020—makes it easier for workers to receive workers' compensation benefits for claims relating to the COVID-19 illness caused by the novel coronavirus (SARS-CoV-2).

The Order introduces a rebuttable presumption that essential workers infected with COVID-19 contracted the virus in the workplace, effectively shifting the burden of proof that typically falls on the worker to prove the illness or injury occurred on the job. However, such COVID-19-related claims must satisfy specific criteria, and employers are given opportunity to rebut this time-limited presumption. The presumption will stay in place for 60 days after issuance of the Order.

Pursuant to the Order, any COVID-19-related illness of an employee will be presumed to arise out of and in the course of the employment for purposes of awarding workers' compensation benefits if all of the following requirements are satisfied:

1. The employee tested positive for or was diagnosed with COVID-19 within fourteen (14) days after a day that the employee performed labor or services at the employee's workplace at the employer's direction;
2. The day on which the employee performed labor (as referenced above) was on or after March 19, 2020;
3. The employee's place of employment (as referenced above) was not the employee's home or residence; and
4. The COVID-19 diagnosis referenced above was done by a physician who holds a physician and surgeon license issued by the California Medical Board and that diagnosis is confirmed by further testing within thirty (30) days of the date of the diagnosis.

This presumption will stay in place for sixty (60) days after issuance of the Order (with respect to dates of injury). Importantly, the presumption is disputable and may be controverted by other evidence; but unless so controverted, the Workers' Compensation Appeals Board is bound to find in accordance with it. The Order is not meant to reduce or eliminate any other worker rights or benefits, and in most cases where an employee has paid sick leave benefits specifically available in response to COVID-19, those benefits shall be used and exhausted before any temporary disability benefits are due and payable.

This Order applies to all workers' compensation insurance carriers writing policies that provide coverage in California, self-insured employers, and any other employer carrying its own risk. Nothing in the Order limits carriers' authority to adjust the costs of their policies, which means insurance premiums may rise.

Rebutting this temporary presumption may prove difficult for employers, who are advised to closely adhere to all applicable workplace safety guidelines amid COVID-19, including but not limited to those issued by OSHA and Cal/OSHA, the CDC, and the EEOC.

The announcement can be found here, and the text of the Executive Order can be found here.

For more COVID-19 related legal updates, please consider subscribing to our COVID-19 Task Force Newsletter.

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