

COVID-19 Workers' Compensation Rebuttable Presumption Expired on July 5, 2020

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On May 6, 2020, Governor Newsom issued an Executive Order N-62-20 that created a temporary rebuttable presumption indicating that employees who work outside of their homes who test positive for COVID-19, may receive workers' compensation benefits. As a result, the Governor's Executive Order simplified the process for such sick employees to seek certain wage replacement benefits, and also sought to encourage ill employees to stay home to reduce the spread of COVID-19.

The rebuttable presumption contained in Executive Order N-62-20 has apparently slipped away, almost entirely unnoticed. It expired on July 5, 2020, by the terms of the Executive Order (EO). However, there was language in the Order that indicated a positive test result or diagnosis through at least 14 days after the Order's expiration could arguably entitle the employee to assert the rebuttable presumption.

Under the expired Executive Order, employers and their workers' compensation insurers had only thirty (30) days to produce evidence to dispute the rebuttable presumption. Since this presumption, no longer exists, employees will now be required to prove causation that arose out of employment or was caused by their employment [AOE/COE] in order to assert a valid workers' compensation claim. In other words, a valid workers' compensation claim will exist if the employee asserts that the sickness occurred as a result of contact with fellow employees, customers or vendors of the employer who later tested positive for COVID-19 or were otherwise exposed to a person with COVID-19 as a result of their employment. But, employers will now have the former ninety (90) day response period to deny the workers' compensation claim.