

## **BARSAMIAN & MOODY**

A Professional Corporation

Attorneys at Law

1141 West Shaw Avenue, Suite 104

Fresno, California 93711-3704

E-mail: laborlaw@theemployerslawfirm.com

Tel: (559) 248-2360

Fax: (559) 248-2370

### **Follow Up On Workers' Comp Presumption re COVID-19**

As we reported yesterday, Governor Newsom issued Executive Order N-62-20 creating a rebuttable presumption that all essential workers who contract COVID-19 did so in the course and scope of work, and therefore, are entitled to workers' comp benefits. I have now been able to see the actual Executive Order and want to provide the following information. The Order can be seen [here](#). Remember, that the presumption is retroactive back to the date of the initial shelter in place Order on March 19, 2020, and is in place for 60 days after the presumption Order, until July 5, 2020.

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

- a. The employee must actually test positive for COVID-19;
- b. 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;
- c. The positive diagnosis must be made by a physician who holds a physician and surgeon license issued by the State of California; and
- d. The diagnosis is confirmed by further testing within 30 days of the date of diagnosis.

The presumption is rebuttable, but under California's standards for workers' comp coverage, which 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," rebuttal will definitely be an uphill battle. 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 form being filed.

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.

To qualify for temporary disability payments, the employee must satisfy either of the following:

a. 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

b. If the employee tested positive prior to May 6, 2020, the employee must obtain certification within 15 days of the date of the Order (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.

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 of the employee's choosing who hold a physician and surgeon license.

The Executive Order applies to all carriers writing policies in California, and to all self-insured employers.

### **What This Means for Employers:**

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.

We remain open and available to answer your questions. We will continue to keep you up to date as additional information becomes available. Contact Barsamian & Moody for any questions on the managing coronavirus issues in the workplace.

*The goal of this article is to provide employers with current labor and employment law information. The contents should neither be interpreted as, nor construed as legal advice or opinion. The reader should consult with Barsamian & Moody at (559) 248-2360 for individual responses to questions or concerns regarding any given situation.*