



**COVID-19 Coverage Under
California Workers' Compensation**

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Information about California governor's May 6, 2020 Executive Order

On May 6, 2020, Governor Gavin Newsom announced an executive order declaring a rebuttable workers' compensation presumption for all workers who are diagnosed with COVID-19 (confirmed by testing) within 14 days of working at their employer's direction outside of their residence during the period of March 19, 2020 through July 5, 2020.

What's changed under the executive order?

- Applies to all workers who are diagnosed with COVID-19 within 14 days of performing labor or services at the employee's place of employment at the direction of the employer. The diagnosis must be supported by a positive test within 30 days of the diagnosis. This does not apply if the employee is performing work or services at the employee 's home or residence.
- The diagnosis of COVID-19 must be done by a physician who holds a physician and surgeon license issued by the California Medical Board and that diagnosis must be confirmed by testing within 30 days of the date of the diagnosis.
- Covers all claims filed on or after March 19, 2020 (the first day of the stay-at -home order) through July 5, 2020 (60 days from signing of the May 6th executive order).
- Presumption - the burden of proof is on the employer instead of the employee.
- 30 days to make compensability decision as opposed to the usual 90 days.
- If determined compensable, the employee shall be eligible for all benefits applicable under workers' compensation.
- Employee must exhaust all paid sick leave benefits offered specifically in response to COVID-19 before obtaining temporary disability (TD) or 4850 benefits
- The three-day waiting period is eliminated for provision of temporary disability (TD) benefits.
- Temporary disability must be recertified every 15 days within the first 45 days - then every 45 days thereafter.

What has not changed under the executive order?

- Timely reporting: An Employers Report of Occupation Injury (Form DLSR 5020) needs to be completed 5-days after an employer receives notice or has reasonable knowledge of an employee illness due to COVID-19.
- Thorough investigation is permitted; the presumption is rebuttable. The investigation will be conducted by the County's third-party investigator, Sedgwick, but timely cooperation by the County agency in the investigation process is imperative based upon the shortened timeline.
- Employers must provide employees who become ill due to employment with an Employee Claim Form (DWC1 form) within one working day of knowledge of the illness, but the employee is *not* required to complete the form if they do not want to file a workers' compensation claim.

EMPLOYER RESPONSIBILITIES:

How should employers handle claims that were filed prior to the order - will they be re-evaluated?

The presumption only applies to claims filed on or after March 19, 2020 (the first day of the stay-at-home order) through July 5, 2020 (60 days from the date of the order issued on May 6). Any claim filed prior to this time will not be subject to re-evaluation. If a claim was filed within this time frame and compensability was denied, the County's third-party administrator, Sedgwick, will be re-evaluating those cases within 30 days of the issuance of the order to determine if there is a need for a change in determination. If the determination is changed based upon the executive order Sedgwick will issue an acceptance letter and cc: County Benefits/HR/Fiscal personnel typically copied on these notices for each agency.

If the employee filed a workers' compensation claim that was previously denied, but is now accepted based upon the governor's executive order will the leave of absence have to be updated?

Yes, the leave of absence will have to be updated to an industrial leave. Additionally, if the employee used any non-COVID sick leave entitlements appropriate payroll and benefit adjustments will need to be made.

What if an employee tested positive/was diagnosed with COVID-19 on or after March 19, 2020 and had been directed to their County worksite, but did not previously request an Employee Claim Form (DWC-1)?

The employee should be provided with an Employee Claim Form (DWC-1) at this time with notification that they *may* be entitled to workers' compensation benefits pursuant to the governor's May 6, 2020 executive order. It is up to the employee whether they file a claim or not, and thus, they are not required to complete the claim form.

Given the shorter timeframe to make a compensability decision when does the timeframe?

The 30-day period starts on the day the claim form is filed by the employee, if the employee was provided with the Employee Claim Form (DWC-1) within one working day of the employer's knowledge of a positive COVID-19 test/diagnosis. If the claim is not rejected within 30 days after the date the claim form is filed, the illness is presumed compensable, unless rebutted by evidence only discovered subsequent to the 30-day period. This shortened timeframe makes communication with our Sedgwick claims team in the investigative process all the more important. Efforts to direct them to the appropriate contacts, with accurate contact information for those who are teleworking will help to facilitate the process.

A prompt review of all claims that fall within the retroactive period that were already filed is underway by the County's third-party administrator, Sedgwick.

Failure to provide the employee with the Employee Claim Form (DWC-1) timely could result in the claim being deemed compensable and waive the County's ability to rebut the presumption.

If the claim is accepted how will Sedgwick confirm that the employee has exhausted all available leave prior to initiating TD/4850 benefits?

Examiners will coordinate directly with the leave of absence/HR personnel within the agency to obtain the information needed to establish benefits have been exhausted prior to the initiation of TTD/4850 benefits.

Are California COVID-19 cases recordable and/or reportable to OSHA?

Recordable: OSHA currently breaks employers into two groups. The first group includes emergency workers, health care workers and correctional officers. For this group, COVID-19 is a recordable illness. The second group includes all other employers for which it is harder to determine if the exposure is from work versus community spread. For this second group, OSHA maintains that employers may only have a work-related case that is recordable if there is objective evidence that was reasonably available to the employer. OSHA is expected to release more information to further help employers differentiate illnesses that are work-related versus community spread.

Reportable: COVID-19 cases that are work-related and lead to a fatality and/or inpatient hospitalization should be reported to Cal/OSHA within eight hours of the employer's knowledge. If the employer can demonstrate that exigent circumstances exist, the timeframe for the report may be made no longer than 24 hours after the incident.

