

Executive Order Reduces the Burden on California's Workers Who Contract COVID-19

California Governor Gavin Newsom signed an executive order on May 6 that makes it easier for workers who contract COVID-19 to obtain Workers' Compensation benefits.

The order establishes a rebuttable presumption that a worker infected with COVID-19 contracted the disease on the job. This move shifts the burden of proof from the worker to the employer or the insurance carrier who can only rebut, in other words, deny the benefits under strict, proven conditions. The presumption is retroactive to March 19 (the date of the governor's first shelter-in-place order), and extends to 60 days from the date this latest order was signed, which makes the effective presumption period for employees working from March 19, 2020 through July 5, 2020.

"This is a positive development for workers who are putting their lives and well-being on the line every day during this pandemic," says Sherry Grant, a partner in the law firm of Gordon, Edelstein, Krepack, Grant, Felton & Goldstein, LLP (GEK). "It is critical that these workers are able to obtain the healthcare they need without any obstacles that may put their safety and welfare at risk. All of us at GEK thank Governor Newsom for taking this action as it ensures medical treatment and disability benefits for our frontline workers who may have previously felt that their needs and demands were going unheard."

Previous case law supported the fact that the burden of proof was on the employee (applicant) to establish that he or she was subject to a special or materially greater risk than that of the general public. Without this presumption, it could be difficult to pinpoint exactly when and where a worker contracted the disease.

What the Order Says

Under the executive order, any COVID-19-related illness shall be presumed to arise out of and in the course of the

employment for purposes of awarding Workers' Compensation benefits if all the following requirements are satisfied:

- ⇒ The employee tested positive for or was diagnosed with COVID-19 within 14 days after a day that the employee performed labor or services at the employee's place of employment at the employer's direction;
- ⇒ The day on which the employee performed labor or services at the employee's place of employment at the employer's direction was on or after March 19, 2020;
- ⇒ The employee's place of employment was not the employee's home or residence; and
- ⇒ The diagnosis 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 30 days of the date of diagnosis.

Who the Order Covers

The presumption covers any employees who must work outside of their homes during the stay-at-home order at the employer's direction. While all essential workers who were required to report to work are clearly covered, the presumption also covers any non-essential workers who performed "labor or services at the employee's place of employment at the employer's direction." The presumption would not cover employees who went to their place of employment without their employer's direction.

However, it should be noted that an employee not covered by the presumption can still rightfully make a claim for Workers' Compensation benefits if the facts support the claim. The only difference is that the employee has the burden of proof in this instance.

"There have been presumptions in the law for years for certain segments of the workforce (i.e., public safety)," says Adam Dombchik, co-managing partner of GEK. "Despite these laws, the employers and insurers will often invoke their right to investigate a claim and even deny the claim. It remains to be seen if they treat the COVID-19 presumptive cases any differently.

"We invite anyone with any questions on the filing or handling of a COVID-19 claim to contact us for guidance and support."

Pursuant to Labor Code Section 5432(a), making a false or fraudulent workers' compensation claim is a felony subject to up to 5 years in prison or a fine of up to \$50,000 or double the value of the fraud, whichever is greater, or by both imprisonment and fine.