



STATE OF CALIFORNIA WORKERS' COMPENSATION COVID-19 QUICK GUIDE

Prepared by

Thorndal, Armstrong, Delk, Balkenbush & Eisinger

(702) 366-0622

www.thorndal.com

GENERAL CALIFORNIA PROVISIONS

- 30 days to give written notice of work-related injury to an employer. Cal Lab Code § 5400
- An employer must provide a claim form to the employee within 1 day of receiving notice of injury Cal Lab Code §5401
- An employee has 1 year to file a claim. Cal Lab Code §5405
- Within one day of notice of injury, an employer must provide claim form and authorize medical treatment (up to \$10,000) while a claim is pending; injury is presumed covered if the claim is not rejected within 90 days. Cal Lab Code §5402

COMPENSABILITY

Generally, compensation is not due merely for injury caused by disease contracted by an employee while employed. The injury must be one arising out of the employment, and where the injury is by disease, there must exist the relation of cause and effect between the employment and the disease. The common cold, flu or a virus are not typically compensable unless the allegedly injured worker establishes that he or she suffered a “special exposure.” The injured employee would have to prove that the employment causes an increased risk, a materially greater risk or a higher probability, of contracting the disease than the general public. *See Bethlehem Steel Co. v. Industrial Acci. Com., 21 Cal. 2d 742, 135 P.2d 153, (1943).*

Update: On May 6, 2020, Governor Gavin Newsom, issued Executive Order N-62-20, creating a presumption of compensability for employees who contract COVID-19. The employee must have 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. That day of performed services must have occurred on or after March 19, 2020 (the date of the stay at home order). This order and presumption do not apply if the employee’s place of employment is the employee’s home or residence. The presumption is rebuttable and may be controverted by other evidence, but unless so controverted, the Workers’ Compensation Appeals Board is bound to find in accordance with it. Currently, this presumption only applies to dates of injury occurring through 60 days following the date of the Order, May 6, 2020. If liability for a claim of a COVID-19-related illness is not rejected within 30 days after the date the claim form is filed under Labor Code section 5401, the illness shall be presumed compensable, unless rebutted by evidence only discovered subsequent to the 30-day period.

Under the Order, an accepted claim for the COVID-19-related illness referenced will be eligible for all benefits applicable under the workers’ compensation laws of this state, including full hospital, surgical, medical treatment, disability indemnity, and death benefits. Notably, however, if 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 or benefits under Labor Code section 4850 are due and payable. 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 following diagnosis. If the employee tested positive or was diagnosed prior to the date of this Order, the employee must obtain a certification, within 15 days of the date of the Order, documenting the period for which the employee was temporarily disabled and unable to work, and must be recertified for temporary disability every 15 days thereafter, for the first 45 days following diagnosis.

BENEFITS

An employee would be entitled to temporary disability benefits, either total or partial, medical treatment, permanent partial disability benefits, and, potentially, dependency benefits. It is unknown to what extent COVID-19 will result in permanent disability benefits, but there is some early suggestion that the disease may result in diminished lung capacity that could yield a permanency finding. Should an employee be unable to return to work as a result of permanent symptoms, vocational rehabilitation may be awarded as well. Please also see the exceptions / special requirements provided by Governor Gavin Newsom's May 6, 2020, Executive Order N-62-20 outlined above.

AREAS OF INQUIRY DURING COVID-19 INVESTIGATIONS

- Employee's job duties/length of employment
- Employee's symptoms/diagnosis/treatment/test results
- Employee's allegation regarding exposure (i.e., have co-workers/vendors/clients/patients tested positively?)
- Other possible sources of exposure (i.e., roommates/family/friends?)
- Recent travel (personal and/or business) – what/when/where/for how long/purpose
- Secondary employment
- Use of mass transit/public transportation/carpools
- Hobbies/recent events prior to diagnosis (e.g., concerts/sporting events/rallies)
- Social media activity
- Medical canvasses
- Experts (e.g., epidemiologists/infectious disease specialists/industrial hygienists)
- Results of governmental investigations (OSHA/CDC/local health authorities)
- Employer precautions (e.g., did the employer follow CDC guidelines, what other measures did employer take to prevent spread?)

HELPFUL LINKS

- [CDC Workplace Guidance](#)
- [Centers for Disease Control and Prevention – COVID-19](#)
- [EEOC's COVID-19 Page](#)
- [OSHA's COVID-19 Page](#)
- [OSHA's Guidance on Preparing Workplaces for COVID-19](#)
- [World Health Organization COVID-19 Updates](#)

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