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EXECUTIVE ORDER N-62-20

By Scott O'Mara

California Governor Gavin Newsom issued an Executive Order N-62-20 on 05/06/2020 that if an employee develops COVID-19 illness shall have the benefit of a presumption that the illness is work caused.

The presumption can be rebutted if certain elements are not there. (1) The diagnoses of CV-19 are within 14 days of the worker performing work at the work site per employer's direction. (2) The work done at the place of employment was on or after 03/19/2020. (3) The workers location of employment was not at the worker's home. (See 1 & 2) (4) The diagnosis of CV-19 is made by a California licensed physician or surgeon; and, the diagnosis is confirmed a second time within 30 days of the first diagnosis of CV-19.

Again, the presumption can be rebutted if the various elements are not there or developed. There is another presumption if after the employer receives notice of the claim and if they do not deny same within 30 days of employers' knowledge it can be presumed the CV-19 is job-related.

There are some **DISTINGUISHABLE PAYMENTS** that are different from other Workers' Compensation injuries. The Order states the worker has to use their own sick leave benefits. Also, the injured worker needs to be certified and re-certified 15 days after the diagnosis then, after, re-certified every 45 days for Temporary Disability or 4850 benefits. The doctor providing the certification shall be, again, California licensed either a physician or surgeon previously designated from the employer Medical Provider List, or a doctor from employee's health plan. If the employee does not have a designated Workers' Compensation doctor or a group health plan the worker can select his/her own doctor. There are certain elements that must be established by the worker if not the employer will have the power to deny the COVID-19 case.

The Government Code identifies a special area called "California Emergency Service Act". This Legislation was created to deal with situations such as the Corona Virus attack on our population.

Pursuant to §8566 the Governor has the power to expand appropriations for support of the California Emergency Services Act. The code also indicates consideration will be given to the plans of the Federal Government in preparing the State's Orders and Regulations. These Orders and Regulations are tools that the Executive Branch can utilize in the event of a State of Emergency, which we currently have.

There are distinguishable elements that separate a Legislative Enactment and the Executive Order.

The first, being a Legislative Enactment (a Bill) by the Assembly, Senate, and the signing of the Bill by the Governor. The Legislative Enactment (the Bill) can carry beyond the point of the time limit that is imposed by the State of Emergency Act. The Legislative Enactment (the Bill) removes the ability of the Governor to unilaterally terminate the increased benefits without the approval of both Legislative Branches by the passage of Legislation to terminate or cease the Bill.

The umbrella of protection through a Legislative Enactment (the Bill) can be a significant continuation of benefits.

The second is Executive Order from the Governor allows for automatic termination of benefits if the termination of benefits is directed by the Governor. The Governor *cannot*, unilaterally terminate benefits that were enacted by the Assembly and Senate and previously approved by the Governor (the Bill).

Yet, there are some very significant advantages to the Executive Order. The advantage to the Executive Order N-62-20 is the immediate implementation of same. Whereas, through the Legislative process (the Bill) can be tied up in small issues, and, not move forward quickly to help the economic damages that have occurred and are occurring because of the Corona Virus attack.

There are certain employees (*the Protectors*) who are at risk in providing health and safety for their California populous. Assembly Bill 664 also needs to go forward to protect the Protectors. AB 664 does not force the Protector to use up their own benefits (*sick leave*) before commencement of Labor Code 4850, 4800 and 4800.5.



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NOTICE: *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.*

