

Dear Risico Customer:

As you may be aware, California Governor Gavin Newsom issued [Executive Order N-62-20](#) on May 6, 2020 creating a “disputable” presumption to award workers’ compensation benefits to California employees who contract COVID-19. The order increases the possibility that private businesses will bear the responsibility for COVID-19 related costs, irrespective of the source of causation. Under the order, the disease is presumed to have been contracted at work.

The following is a summary of the Governor’s Executive Order and Risico’s guidance pertinent to the order’s effects on the workers’ compensation process.

Risico continues to believe that health effects created by communicable infections, or diseases should be addressed through health plans or other public safety nets, and should not be the responsibility of the private business sector. Notwithstanding, there are a few elements in the Governor’s Executive Order that are business-friendly under the circumstances:

- A “disputable presumption” vs a “conclusive presumption”;
  - A disputable presumption is a presumption that can be rebutted, or disproved by evidence to the contrary.
  - A conclusive presumption is a presumption of law that cannot be rebutted by evidence and must be taken to be the case whatever the evidence to the contrary.
- Requiring an employee that has paid sick leave benefits specifically available in response to COVID-19 (e.g., [FFCRA](#) and California [COVID-19 Supplemental Paid Sick Leave](#) for Food Sector Workers including Agriculture) to use and exhaust those benefits before any temporary disability benefits are due and payable;
- Establishing a finite timeframe for the Executive Order to apply; and
- Defining specific required criteria that must be met for the presumption to apply.

## THE ORDER’S CRITERIA

The Executive Order’s presumption affects *all* employees who were directed by their employers to remain at their place of employment and test positive, or are/were diagnosed with COVID-19 from March 19, 2020, through July 5, 2020.

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

1. The employee tested positive for or was diagnosed with COVID-19 within 14 days from when the employee performed labor or services at the employee’s place of employment at the employer’s direction on or after March 19, 2020;
2. The diagnosis of COVID-19 was done by a physician who holds a physician and surgeon license issued by the California Medical Board;
3. and the diagnosis is confirmed by further testing within 30 days of the date of the diagnosis.

Employees who are working from their home would not qualify for the disputable presumption under this executive order.

## OTHER FACTORS OF THE EXECUTIVE ORDER

The presumption is disputable and may be rebutted by other evidence. If it is not rebutted the Workers’ Compensation Appeals Board is bound to find the illness Arising Out of Employment / Course of Employment (AOE/COE).



Liability for a claim of a COVID-19-related illness must be accepted, or rejected within 30 days (reduced from the usual 90 days) after the date the claim form is filed. If the claim is not rejected within 30 days, the illness shall be presumed compensable, unless rebutted by evidence only discovered after the 30 days. *The reduced period to accept or deny a claim places an increased level of importance to timely reporting.*

Claims accepted under this presumption are eligible for all benefits applicable under the workers' compensation laws of this state, including full hospital, surgical, medical treatment, disability indemnity, and death benefits.

## REPORTING A COVID-19 CLAIM

Due to the unprecedented nature of the pandemic, we expect questions to arise regarding the reporting of COVID-19 claims and how these claims will be handled by Risico.

1. You should report a COVID-19 claim to Risico if an employee:
  - a. Tests positive for COVID-19, or is diagnosed with COVID-19 by a licensed physician; and
  - b. The employee performed work at the employee's place of business at the direction of the employer on or after March 19, 2020 and on or before July 5, 2020.
2. You do *not* need to report a claim to Risico if the criteria from number 1 are not met. For example, if an above employee states they were (or believe they were) exposed to COVID-19. Exposure alone does not meet the requirements of the workers' compensation presumption established by Executive Order N-62-20.
3. Please be advised that reporting a claim does not mean it is compensable. Risico will fully investigate each individual claim. Specific protocols have been developed to help ensure the management of COVID-19 claims is fair and consistent with California's workers' compensation laws.

For additional questions, or concerns please contact Risico's Client Services Coordinator, Juanita Rodriguez, by email at [jrodriguez@risico.com](mailto:jrodriguez@risico.com).

## RISICO IS HERE TO SUPPORT YOU

Risico has developed a library of resources, adding content regularly on new emerging issues pertinent to COVID-19, to help customers navigate through this unprecedented time. These resources are available by visiting our [Resources](#) page on [Risico.com](http://Risico.com).

Risico's Senior Loss Control Consultant is also available to provide guidance or assistance at any time.

Risico's Executive Leadership team remains at your convenience to answer any other questions or concerns that arise.

Thank for being a Risico policyholder and considering us a partner that you can trust. We hope you keep safe and healthy.

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