



EXECUTIVE ORDER N-62-20

Understanding the Order And How It Applies to You.

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Brought to You By:

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DISCLAIMERS:

Nothing in this presentation is legal advice.

Nothing in this presentation creates an attorney-client relationship with me or my firm.

Nothing in this presentation is comprehensive.

This is a “general, educational, practical need to know” presentation only.

Myth v. Reality: The Actual Order

This Order is only applicable for dates of injury from March 19, 2020 through May 18, 2020.

However, legislation is pending which will extend the substantive terms of the Order to claims and exposures on and after May 18, 2020 and “non-presumption claims” can, will and still are being filed as well as are legal.

Myth v. Reality: The Actual Order

IT IS HEREBY ORDERED THAT:

Any COVID-19-related illness of an employee shall be presumed to arise out of and in the course of the employment for purposes of awarding workers' compensation benefits ***if all of the following requirements are satisfied: [Emphasis added].***

Myth v. Reality: The Actual Order

- a. 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;
- b. The day referenced in subparagraph (a) 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;
- c. The employee's place of employment referenced in subparagraphs (a) and (b) was not the employee's home or residence; and
- d. Where subparagraph (a) is satisfied through a diagnosis of COVID-19, 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 the diagnosis.

Myth v. Reality: The Actual Order

The presumption set forth in Paragraph 1 is disputable and may be controverted by other evidence, but unless so controverted, the Workers' Compensation Appeals Board is bound to find in accordance with it. This presumption shall only apply to dates of injury occurring through 60 days following the date of this Order.

What is a California Workers' Compensation Presumption?

In plain language:

It is a condition which once claimed is automatically recognized as industrial, work-related and “arising out of and during the course of employment” unless the employer “controverts” the claim with “other evidence” it offers on its own.

It is often referred to as “shifting the burden of proof on causation” to the employer.

Myth v. Reality: The Actual Order Continued:

Notwithstanding Labor Code section 5402, if liability for a claim of a COVID-19-related illness pursuant to Paragraph 1 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.

Myth v. Reality: The Actual Order Continued:

An accepted claim for the COVID-19-related illness referenced in Paragraph 1 shall 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, and shall be subject to those laws including Labor Code sections 4663 and 4664, except as otherwise provided in this Order.

Myth v. Reality: The Actual Order Continued:

Notwithstanding any applicable workers' compensation statute or regulation, where 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. Where an employee does not have such sick leave benefits, the employee shall be provided temporary disability benefits or Labor Code section 4850 benefits if applicable, from the date of disability. In no event shall there be a waiting period for temporary disability benefits.

Myth v. Reality: The Actual Order Continued:

To qualify for temporary disability or Labor Code section 4850 benefit payments under this Order, an employee must satisfy one of two things:

1. If the employee tests positive or is diagnosed under Paragraph 1 on or after the date of this Order, 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; or
2. If the employee tested positive or was diagnosed under Paragraph 1 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.

Myth v. Reality: The Actual Order Continued:

All employees must be certified for temporary disability by a physician holding a physician and surgeon license issued by the California Medical Board. The certifying physician can be a designated workers' compensation physician in an applicable Medical Provider Network or Health Care Organization, a predesignated workers' compensation physician, or a physician in the employee's group health plan. If the employee does not have a designated workers' compensation physician or group health plan, the employee should be certified by a physician of the employee's choosing who holds a physician and surgeon license.

Myth v. Reality: The Actual Order Continued:

This Order shall apply to all workers' compensation insurance carriers writing policies that provide coverage in California, self-insured employers, and any other employer carrying its own risk, including the State of California. Nothing in this Order shall be construed to limit the existing authority of insurance carriers to adjust the costs of their policies.

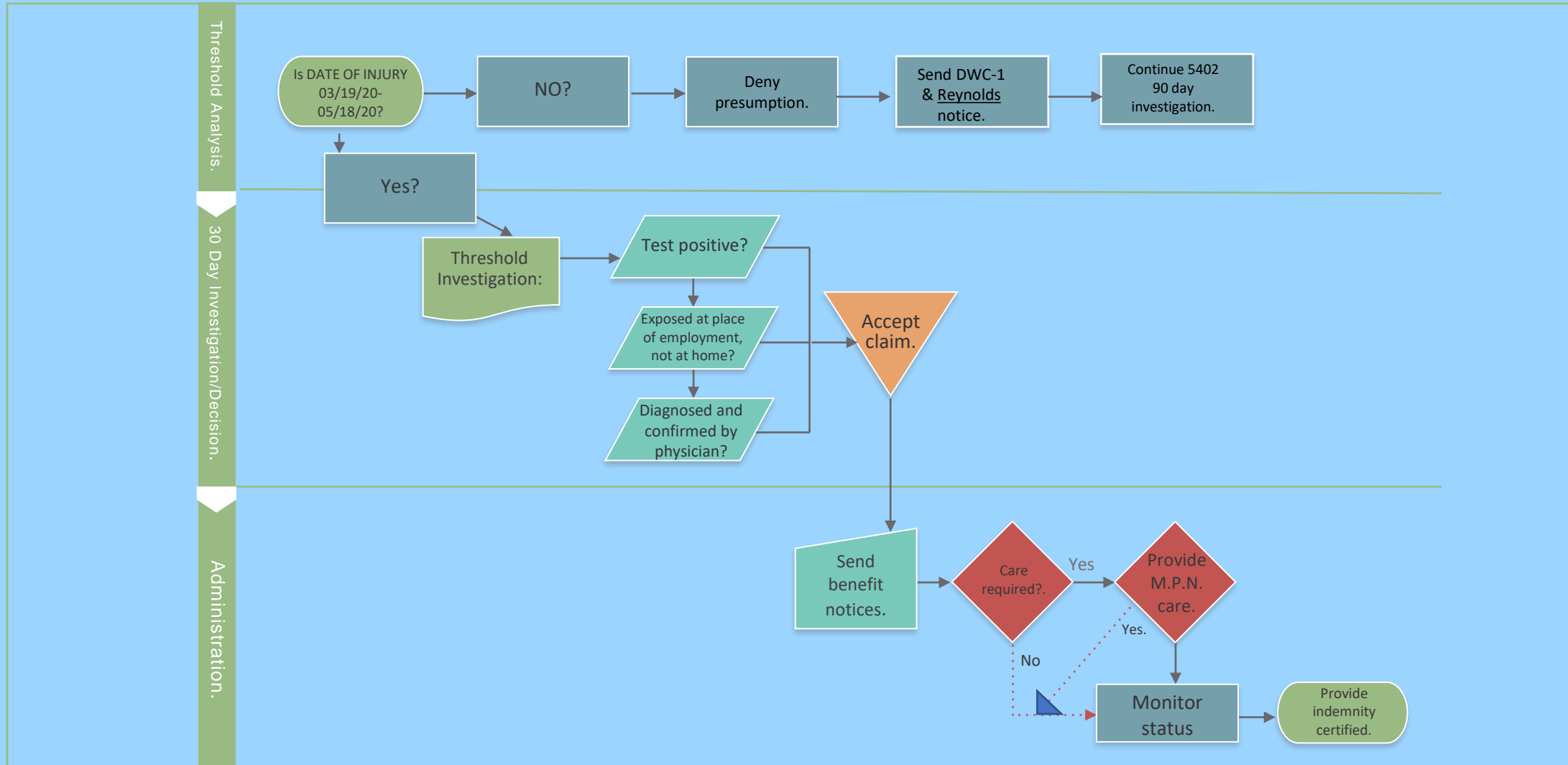
Myth v. Reality: The Actual Order Continued:

Nothing in this Order shall be construed to modify or suspend any workers' compensation statute or regulation not in conflict with this Order, or to reduce or eliminate any other right or benefit to which an employee is otherwise entitled under law, including the Families First Coronavirus Recovery Act, collective bargaining agreement, or Employee Benefit Plan, including group health insurance, that is in effect prior to March 19, 2020.

Proactive Measures.

1. Tips on handling claims and mitigating costs
2. What the future may hold.

Proactive Measures (A Flow Chart).



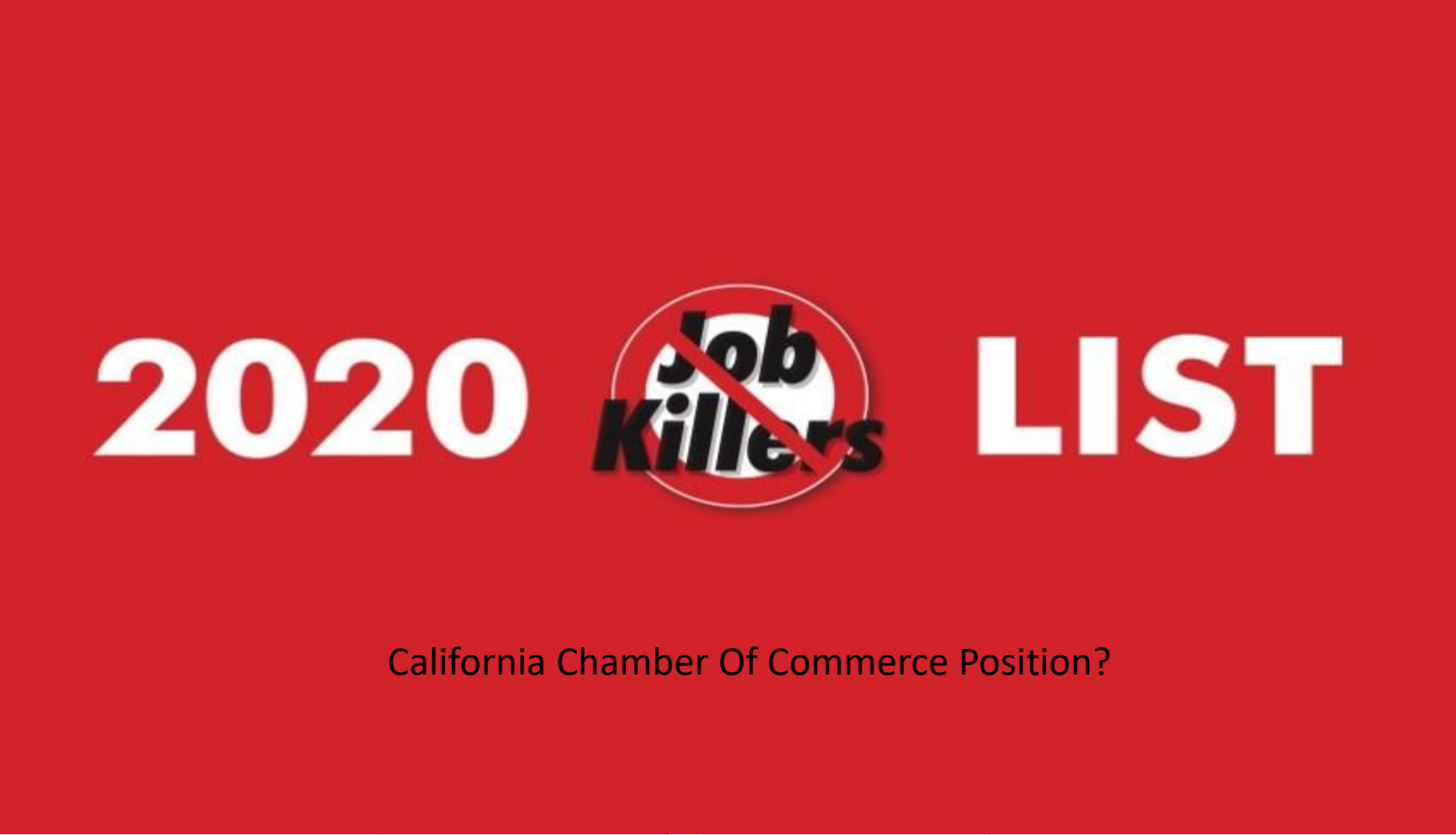
Proactive Measures: Read the Highlights.

| Executive Order N-62-20 | Labor Code § 5402 | California Code of Regulations § 10109 |
|--|--|--|
| Applies to 03/19/2020-05/18/2020 claims. | Knowledge of injury from any source = notice of injury. | Duty to conduct good faith investigations. |
| DWC-1 claim form filing required. | Injury presumed compensable if not denied within 90 days of knowledge. | Must be “reasonable and timely...upon receiving notice or knowledge of an injury or claim...” |
| Positive COVID-19 diagnosis required. | 1 working day after filing of DWC-1 claim form treatment must be authorized and paid up to \$10,000 or until claim accepted or rejected. | Reasonable attempt must be made “to obtain the information needed to determine and timely provide each benefit...which may be due to the employee...” |
| Positive COVID-19 testing required. | See <u>Honeywell v. Workers’ Compensation Appeals Board</u> 70 Cal. Comp. Cases 97, 98. [90 days runs from date of filing of claim form]. | May not “restrict” investigation to “objections or defenses” but must “fully and fairly gather the pertinent information.” |
| Workplace exposures only covered. | Both “investigation” deadlines run from “the date of filling” of claim form. | Investigation “must supply the information needed to provide benefits and to document for audit the...basis for...claims decisions.” |
| Home exposures not covered. | However, see California Code of Regulations § 10109. Investigation appears to require “reasonable and timely” investigation upon receiving notice of an injury or claim. | Claims administrator “must document...the investigatory acts...documentation shall be retained in claims file...administrators shall deal fairly and in good faith...” |
| Does NOT eliminate Labor Code § 5402 90 day presumption. | Immediate investigations are recommended. “When in doubt, check it out!” © 2020 David H. Parker, Attorney at Law | See California Code of Regulations § 10111.1. Schedule of Administrative Penalties for Injuries On or After January 1, 1994. |

What The Future May Hold: One Prediction.

| Pending Legislation | Proposal Summarized | Status |
|--------------------------------|--|----------|
| AB 664 (Cooper, D-Elk Grove) | "Conclusively" presumes (non-rebuttable) that exposure or contraction of communicable diseases, including COVID-19, are caused by the workplace if passed. | Pending. |
| AB 196 (Gonzalez, D-San Diego) | "Conclusively" presumes (non-rebuttable) that contraction of COVID-19 by all "essential workers" is a workplace injury if passed. | Pending. |
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What The Future May Hold: Read the WC Highlights.

| Pending Legislation | Proposal Summarized | Status | |
|----------------------|---|--------|--|
| AB 664 (Cooper, D-E) |  <p data-bbox="529 692 1039 842">2020</p> <p data-bbox="1108 635 1457 899">Job Killers</p> <p data-bbox="1549 692 1987 842">LIST</p> <p data-bbox="873 1049 1717 1092">California Chamber Of Commerce Position?</p> | | |
| AB 196 (Gonzalez, D- | | | |
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Thanks to All Attending!

And Thanks

Guadalupe "Lupe" Sandoval

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