

MAY 8, 2020

COVID-19: CALIFORNIA GOVERNOR ORDERS PRESUMPTION OF COMPENSABILITY FOR COVID-19

On May 6th, the Governor of California issued an Executive Order creating a rebuttable presumption of compensability for employees contracting COVID-19 if they are diagnosed within 14 days after a day they performed work outside of the home.

Ten other states have put in place rebuttable presumptions for COVID-19 workers compensation claims (Alaska, Arkansas, Florida, Kentucky, Minnesota, Missouri, New Hampshire, New Mexico, Utah and Wisconsin). The difference between the California order and the orders and legislation of other states regarding rebuttable presumptions is that **California's order is not limited to emergency or frontline workers. California's order extends to all employees in all industries.** The order remains in effect for 60 days, expiring on July 5th 2020.

Rebuttable presumptions change the burden of proof. In workers compensation claims, it is up to the employee to establish that the injury occurred in the course and scope of the employee's work for the employer. Rebuttable presumptions in favor of the employee now require the employer to establish that the injury occurred outside of the employment relationship. For example, an employee who contracts COVID-19 can file a workers compensation claim and absent an employer providing evidence to the contrary, the injury will be presumed to have occurred at work. This is not to say that employers are denied an opportunity to fight these cases where warranted. An employer could deny a COVID-19 workers compensation claim in the event, for example, that the employer is able to



establish that there was no COVID-19 exposure at the employment location and/or that the employee was exposed to family members residing in the same household. It is yet to be seen whether these arguments will be sufficient to overcome these broad presumptions in favor of compensability.

The **Workers Compensation Rating Bureau** in California estimated the cost of similar proposals to be between \$2.2 and \$33.6 billion dollars per year. The impact of this rebuttable presumption will be felt particularly hard on larger selfinsured employers and employers with large deductibles because large deductibles for “occupational disease” claims apply on a “per employee” basis not a “per occurrence” basis.

If you have any questions about the compensability, of Workers Compensation claims, please contact your Graham Claims Consultant or please reach out to: Sean Brogan, Esq., Managing Director at sbrogan@grahamco.com.

For additional COVID-19 resources and risk management recommendations, please visit our **COVID-19 Risk Management Center**.

A PDF of the above information can be found **here**.