



BULLETIN

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As policymakers continue to debate issues surrounding the COVID-19 pandemic, including the appropriate role that workers' compensation systems should play in responding to the virus and the potential impact of COVID-19 presumptions of compensability, a new CWCI white paper examines the historic role of workers' compensation presumptions, compares the current and proposed COVID-19 presumptions in California, and reviews results of a survey detailing characteristics and outcomes of initial COVID-19 claims.

On May 6, Governor Newsom issued [Executive Order N-62-20](#), creating a disputable presumption of compensability for COVID-19 as it relates to California workers directed by their employers to work outside the home. The order applies to work performed on or after March 19, 2020 and unless extended, will remain in place until July 5, 2020. Beyond that, a legislative approach has been proposed in [SB 1159 \(Hill, Daly\)](#), a bill that advanced out of the Senate Labor, Public Employment and Retirement Committee and on to the Appropriations Committee last Thursday, which would create a disputable COVID-19 presumption with an extended timeframe for first responders and "critical" workers, a group that has yet to be specifically defined, but that would include public or private sector employees working to combat the spread of the virus.

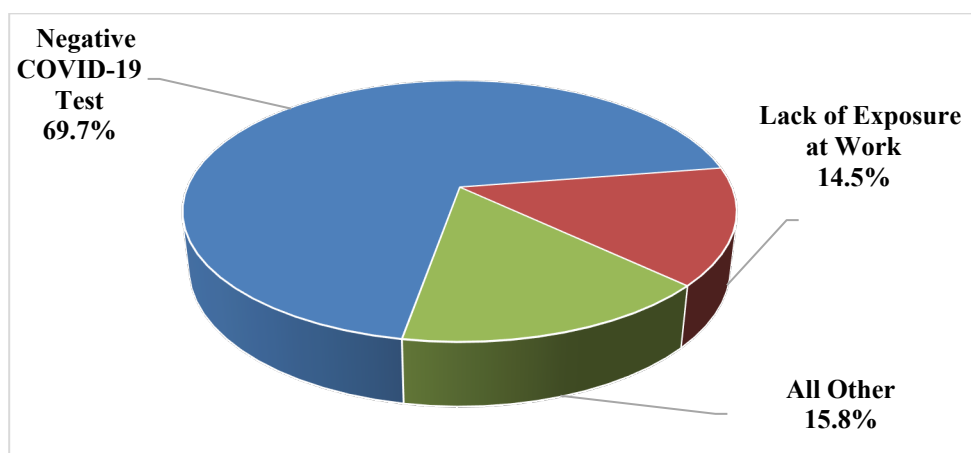
The CWCI analysis compares the differences between the current presumption granted through the governor's Executive Order and the proposed presumption included in SB 1159, but notes that both shift the traditional burden of proof found in workers' compensation by no longer requiring employees to prove the illness is work-related, instead requiring employers to accept compensability for a COVID-19 claim unless they can overwhelmingly prove it is not work-related. COVID-19 is new to workers' compensation, and the extent to which it may impact California workers' compensation remains unclear as only an estimated 3,000 COVID-19 claims had been filed as of May 1. However, the granting of COVID-19 presumptions has become a hot-button issue in California and around the country, so the report reviews existing precedents and policies regarding presumptions that policymakers should consider in evaluating the potential impacts of modifying the existing workers' compensation legal architecture in regard to compensability and coverage.

The white paper also adds real-world perspective to advance the presumption debate by providing results of a survey of 28 insurer and self-insured CWCI members that encompassed 1,077 California workers' compensation COVID-19 claims filed before April 30, a week before the governor's Order granted the disputable presumption. Among key results, the survey found that almost 41 percent of the COVID-19 claim sample originated from the health care provider sector, while first responders accounted for nearly one-third of the claims. Critical infrastructure workers (e.g., grocery and transportation workers) and other essential workers (e.g., individuals employed in banking and auto repair) comprised 11.4 percent of the sample, with the other 15.5 percent of claims coming from other employment sectors.

The survey also revealed some confusion among employers over when and whether to report a suspected COVID-19 illness, as some respondents reported instances where claims were filed for groups of workers without symptoms or positive tests because a co-worker had reported symptoms. Before the Order, claims adjusters had up to 90 days to review compensability while still providing up to \$10,000 in medical care treatment and evaluation. Although the Order shortened that 90-day determination period to 30 days, on average, claims reported in the survey had been open less than 30 days, so more than one-third of them were still under investigation – a process made all the more challenging by the scarcity of available COVID-19 tests during this period.

In terms of claim outcomes, the survey found that 35 percent of the COVID-19 claims in the study sample were denied, but 7 out of 10 workers whose claims were denied tested negative for the virus, with the balance of the denials made after it was found that the employee had not been exposed at work, or for other reasons including the lack of a diagnosis, lack of symptoms, or that the employee had been working at home or had refused to take a COVID-19 test.

Reasons for COVID-19 Claim Denials



Source: CWCI May 2020 Member Survey on COVID-19 Claims

CWCI has released the white paper as a Report to the Industry, “*Integrating COVID-19 Presumptions into the California Workers’ Compensation System.*” The free report is available on the CWCI website, www.cwci.org/research.html.

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