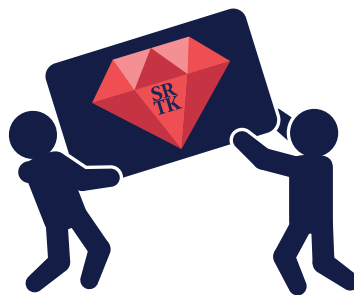




Governor Newsom issued an **Executive Order N-62-20** on May 6, 2020, that provides presumption of compensability of Covid-19 claims that meet the specific criteria outlined below:

- EE tests positive for Covid-19 or was diagnosed with Covid-19 within 14 days of labor or services performed at employer's direction outside of employee's residence, on or after March 19, 2020;
- If the diagnosis is only within 14 days of work, the diagnosis must be by a physician licensed in CA (either employer-provided, pre-designated, or group health provider) and confirmed by a positive test within 30 days of diagnosis;
- Presumption is rebuttable and may be "controverted" by other evidence;
- Applies only for 60 days following May 6, 2020;
- Employer has 30 days to deny from when Claim Form is filed. If not timely denied, Covid-19 illness is presumed compensable, unless rebutted by evidence only discovered after the 30 days;
- Requires exhaustion of Covid-19 specific benefits for sick leave paid benefits before any TTD/4850 is due;
- TTD must be re-certified every 15 days thereafter for the first 45 days following diagnosis;
- If diagnosis or test was prior to the Order, employee must obtain certification within 15 days of the order, documenting the period for which employee was TTD and unable to work and re-certified for 15 days for first 45 days.

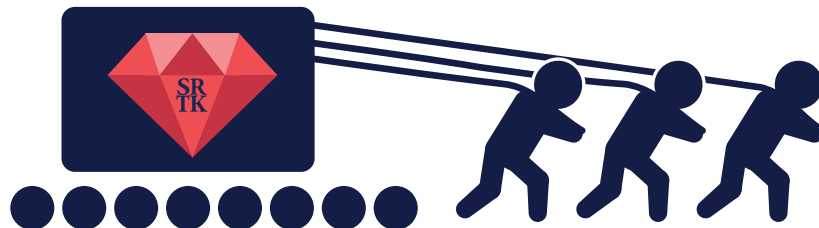


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## SRTK Best Practices for Discovery

- Prepare as if the Order applies and will be renewed and aggressively pursue investigation and discovery;
- Identify contemporaneous evidence that the sole cause of the illness was non work related and seek to prove that work was not the cause;
- Ask detailed questions aimed at contact tracing for exposures outside of employment in order to establish contemporaneous evidence to controvert the presumption;
- If the claim does not qualify for presumption under the Order, or if you miss sending a denial within the 30-day timeframe for claims covered under the Order, still conduct a good faith investigation and deny within 90 days of filing of the Claim Form. Positive test after 14 days of exposure is relevant for good faith denial decisions within 90 days;
- Investigate whether you can establish that the alleged exposure was not at the direction of the employer;
- Investigation period starts after a Claim Form has been filed. Establish Covid-19 protocols for providing workers with a Claim Form;
- Establish Order does not apply, based upon date Claim Form was filed;
- Focus on contact tracing through claim investigation, discovery, and health provider/evaluator history;
- Focus investigation on defending any attempt to qualify the illness as catastrophic, that could qualify the claim for psychiatric PD under Wilson.



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## SRTK Best Practices for Treatment

- If diagnosis was from pre-designated physician or group health provider, seek to ensure employee is provided treatment within MPN, if one exists.

## SRTK Best Practices for Benefits

- Ensure employee exhausts all Covid-19 specific benefits for sick leave before paying TTD/4850. Document your file and send employee benefit notice establishing basis for delay in TTD/4850 benefits;
- Ensure discovery focuses on pre-existing conditions, as Labor Code Apportionment under 4663/4664 apply;
- Document whether the claim is covered by the Order or not. No death benefits are due, if the claim is covered under the Order and there are no dependents;
- Seek to establish no ratable impairment under the AMA Guides 5th Edition, and prepare to defend *Almaraz/Guzman* arguments to impose impairment anyway;
- Ensure evaluator considers the natural progression of any pre-existing conditions in their apportionment analysis;
- Ensure evaluator's report constitutes substantial evidence and is predicated on reasonable medical probability, which may not exist with an absence of historical evidence on long-term effects of Covid-19 exposure or effect on pre-existing conditions.



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