EXECUTIVE ORDER N-62-20

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS on March 19, 2020, I issued Executive Order N-33-20, directing all residents statewide to obey all state public health directives, including the State Public Health Officer's order to all individuals living in the state to stay home or at their other place of residence, except as otherwise specified, including as needed to maintain continuity of operations of critical infrastructure sectors during the COVID-19 response; and

WHEREAS employees who report to their places of employment are often exposed to an increased risk of contracting COVID-19, which may require medical treatment, including hospitalization; and

WHEREAS employees who report to work while sick increase health and safety risks for themselves, their fellow employees, and others with whom they come into contact; and

WHEREAS prompt and efficient treatment will be realized by facilitating access to this state's workers' compensation system for medical treatment and disability benefits; and

WHEREAS the provision of workers' compensation benefits related to COVID-19, when appropriate, will reduce the spread of COVID-19 and otherwise mitigate the effects of COVID-19 among all Californians, thereby promoting public health and safety; and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this Order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8571, and 8627, do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

1) 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:

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.

2) 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.

3) 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.

4) 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.

5) 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.

6) To qualify for temporary disability or Labor Code section 4850 benefit payments under this Order, an employee must satisfy either of the following:

a. 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

b. 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.

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.

7) The Administrative Director of the Division of Workers' Compensation shall adopt, amend, or repeal any regulations that the Administrative Director deems necessary to implement this Order. Any regulations so promulgated by the Administrative Director shall be exempt from the Administrative Procedures Act (Chapter 3.5 of Part 1 of Title 2 of the Government Code), except that the Administrative Director shall submit the regulations to the Office of Administrative Law for publication in the California Regulatory Notice Register.

8) 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.

9) The Department of Industrial Relations shall waive collection on any death benefit payment due pursuant to Labor Code section 4706.5 arising out of claims covered by this Order.

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.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 6th day of May 2020.

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GAVIN NEWSOM
Governor of California

ATTEST:

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ALEX PADILLA
Secretary of State