

LIVE VIRTUAL BOARD MEETING



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TO PROVIDE PUBLIC COMMENT

You may submit a request to speak during Public Comment or provide a written comment by emailing PublicComment@lacera.com. If you are requesting to speak, please include your contact information, agenda item, and meeting date in your request.

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION
300 N. LAKE AVENUE, SUITE 650, PASADENA, CA

Attention: Public comment requests to speak must be submitted via email to PublicComment@lacera.com no later than 5:00 p.m. the day before the scheduled meeting.

A REGULAR MEETING OF THE BOARD OF RETIREMENT
LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION
300 N. LAKE AVENUE, SUITE 810, PASADENA, CA

9:00 A.M., THURSDAY, JUNE 11, 2020

This meeting will be conducted by the Board of Retirement by teleconference under the Governor's Executive Order No. N-29-20.

Any person may listen by telephone to the open session portions of the meeting (Items I-IX) by dialing 877-309-2071 Access Code 351-294-647 or view the meeting online at <https://attendee.gotowebinar.com/register/8405303906863134992>.

Disability applicants and counsel involved in closed session (Items X-XII.) will be separately contacted by LACERA with instructions on how to participate in their item.

*The Board may take action on any item on the agenda,
and agenda items may be taken out of order.*

I. CALL TO ORDER

II. PUBLIC COMMENT

(*You may submit written public comments by email to PublicComment@lacera.com. Please include the agenda number and meeting date in your correspondence. Correspondence will be made part of the official record of the meeting. Please submit your written public comments or documentation as soon as possible and up to the close of the meeting.

You may also request to address the Boards. A request to speak must be submitted via email to PublicComment@lacera.com no later than 5:00 p.m. the day before the scheduled meeting. Please include your contact information, agenda item, and meeting date so that we may contact you with information and instructions as to how to access the Board meeting as a speaker.)

III. CHIEF EXECUTIVE OFFICER UPDATE

(For Information Purposes Only)

IV. DISABILITY RETIREMENT APPLICATIONS ON CONSENT CALENDAR

V. CONSENT ITEMS

A. Recommendation as submitted by Ricki Contreras, Division Manager, Disability Retirement Services: That the Board grant the appeals and request for an administrative hearing for applicants Denise Jackson and Michael J. Clinkunbroomer. (Memo dated May 28, 2020)

V. CONSENT ITEMS (Continued)

- B. Recommendation as submitted by Ricki Contreras, Division Manager, Disability Retirement Services: That the Board dismiss with prejudice Marcus Freidemann's appeal for a service-connected disability retirement. (Memo dated May 19, 2020)
- C. Recommendation as submitted by Ricki Contreras, Division Manager, Disability Retirement Services: That the Board dismiss with prejudice Maria B. Arredondo's Application for Correction appeal for an earlier effective date. (Memo dated May 22, 2020)
- D. Recommendation as submitted by Ricki Contreras, Division Manager, Disability Retirement Services: That the Board dismiss with prejudice Rose K. Machado's Application for Correction appeal for an earlier effective date. (Memo dated May 19, 2020)

VI. EXCLUDED CONSENT ITEMS

VII. REPORTS

- A. For Information Only as submitted by Ricki Contreras, Division Manager, Disability Retirement Services, regarding the Application Processing Time Snapshot Reports. (Memo dated May 26, 2020)
- B. For Information Only as submitted by Francis J. Boyd, Senior Staff Counsel, regarding the Executive Order N-62-20: Workers' Compensation COVID-19 Presumption. (Memo dated May 22, 2020)

VIII. ITEMS FOR STAFF REVIEW

IX. GOOD OF THE ORDER

(For information purposes only)

X. DISABILITY RETIREMENT CASES TO BE HELD IN CLOSED SESSION

- A. Applications for Disability

X. DISABILITY RETIREMENT CASES TO BE HELD IN CLOSED SESSION
(Continued)

B. Staff Recommendations

1. Recommendation as submitted by Allison E. Barrett, Senior Staff Counsel: That the Board (1) Find that David A. Reynoso delayed filing his application for disability retirement because he was unable to ascertain the permanency of his incapacity until after the day following his last day of regular compensation; (2) That his application be deemed filed on the day after his last day of regular compensation in accordance with Government Code section 31724; and (3) That he is entitled to the option of an earlier effective date. (Memo dated May 21, 2020)

XI. EXECUTIVE SESSION

A. Conference with Legal Counsel – Existing Litigation
(Pursuant to Paragraph (1) of Subdivision (d) of California Government Code Section 54956.9)

1. Steven M. Dunner v. Los Angeles County Employees Retirement Association

XII. ADJOURNMENT

Documents subject to public disclosure that relate to an agenda item for an open session of the Board of Retirement that are distributed to members of the Board of Retirement less than 72 hours prior to the meeting will be available for public inspection at the time they are distributed to a majority of the Board of Retirement Members at LACERA's offices at 300 N. Lake Avenue, Suite 820, Pasadena, CA 91101, during normal business hours of 9:00 a.m. to 5:00 p.m. Monday through Friday.

****Requests for reasonable modification or accommodation of the telephone public access and Public Comments procedures stated in this agenda from individuals with disabilities, consistent with the Americans with Disabilities Act of 1990, may call the Board Offices at (626) 564-6000, Ext. 4401/4402 from 8:30 a.m. to 5:00 p.m. Monday through Friday or email PublicComment@lacera.com, but no later than 48 hours prior to the time the meeting is to commence.***



Documents not attached are exempt from disclosure under the California Public Records Act and other legal authority.

**For further information, contact:
LACERA
Attention: Public Records Act Requests
300 N. Lake Ave., Suite 620
Pasadena, CA 91101**



May 28, 2020

TO: Each Trustee
Board of Retirement

FROM: Ricki Contreras, Division Manager
Disability Retirement Services

SUBJECT: **APPEALS FOR THE BOARD OF RETIREMENT'S MEETING
OF JUNE 11, 2020**

IT IS RECOMMENDED that the Board of Retirement grant the appeals and requests for administrative hearing received from the following applicants, and direct the Disability Retirement Services Manager to refer each of these cases to a referee:

5129B	Denise Jackson	In Pro Per	Deny SCD – Employer Can Accommodate
5131B	Michael J. Clinkunbroomer	Michael Treger	Deny SCD


RC:kw

Memo.New
Appeals.docx



May 19, 2020

TO: Each Trustee
Board of Retirement

FROM: Ricki Contreras, Manager 
Disability Retirement Services Division

FOR: June 11, 2020 Board of Retirement Meeting

SUBJECT: DISMISS WITH PREJUDICE THE APPEAL OF MARCUS FRIEDEMANN

Mr. Marcus Friedemann applied for a service-connected disability retirement on May 7, 2015. On June 14, 2018, the Board denied his application for service-connected disability retirement.

Mr. Friedemann filed a timely appeal. On April 28, 2020, he signed a voluntary withdrawal letter advising LACERA that he did not wish to proceed with his appeal.

IT IS THEREFORE RECOMMENDED THAT THE BOARD:

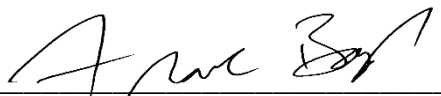
Dismiss with prejudice Marcus Friedemann's appeal for a service-connected disability retirement.

FJB: RC: mb

Friedemann, Marcus.docx

Attachment

NOTED AND REVIEWED:


Francis J. Boyd, Sr. Staff Counsel

Date: 5/20/20



May 22, 2020

TO: Each Trustee
Board of Retirement

FROM: Ricki Contreras, Manager 
Disability Retirement Services Division

FOR: June 11, 2020 Board of Retirement Meeting

SUBJECT: **DISMISS WITH PREJUDICE THE APPLICATION FOR CORRECTION
APPEAL OF MARIA B. ARREDONDO**

Ms. Maria B. Arredondo applied for a service-connected disability retirement on September 12, 2012. On December 4, 2013, the Board granted her application for service-connected disability retirement.

Ms. Arredondo filed a timely Application for Correction Appeal regarding the effective date of her service-connected disability retirement. On May 5, 2020, she signed a voluntary withdrawal letter advising LACERA that she did not wish to proceed with her appeal.

IT IS THEREFORE RECOMMENDED THAT THE BOARD:

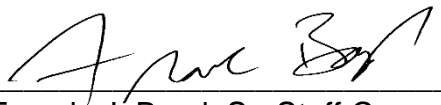
Dismiss with prejudice Maria B. Arredondo's Application for Correction appeal for an earlier effective date.

FJB: RC: mb

Arredondo, Maria B.docx

Attachment

NOTED AND REVIEWED:


Francis J. Boyd, Sr. Staff Counsel

Date: 5/22/20



May 19, 2020

TO: Each Trustee
Board of Retirement

FROM: Ricki Contreras, Manager 
Disability Retirement Services Division

FOR: June 11, 2020 Board of Retirement Meeting

SUBJECT: **DISMISS WITH PREJUDICE THE APPLICATION FOR CORRECTION
APPEAL OF ROSE K. MACHADO**

Ms. Rose K. Machado applied for a service-connected disability retirement on September 5, 2012. On March 19, 2015, the Board granted her application for service-connected disability retirement.

Ms. Machado filed a timely Application for Correction Appeal regarding the effective date of her service-connected disability retirement. On April 15, 2020, she signed a voluntary withdrawal letter advising LACERA that she did not wish to proceed with her appeal.

IT IS THEREFORE RECOMMENDED THAT THE BOARD:

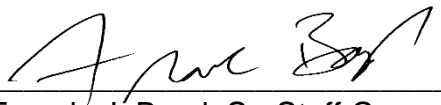
Dismiss with prejudice Rose K. Machado's Application for Correction appeal for an earlier effective date.

FJB: RC: mb

Machado, Rose K.docx

Attachment

NOTED AND REVIEWED:


Francis J. Boyd, Sr. Staff Counsel

Date: 5/20/20

FOR INFORMATION ONLY

May 26, 2020

TO: Each Trustee
Board of RetirementFROM: Ricki Contreras, Division Manager
Disability Retirement Services

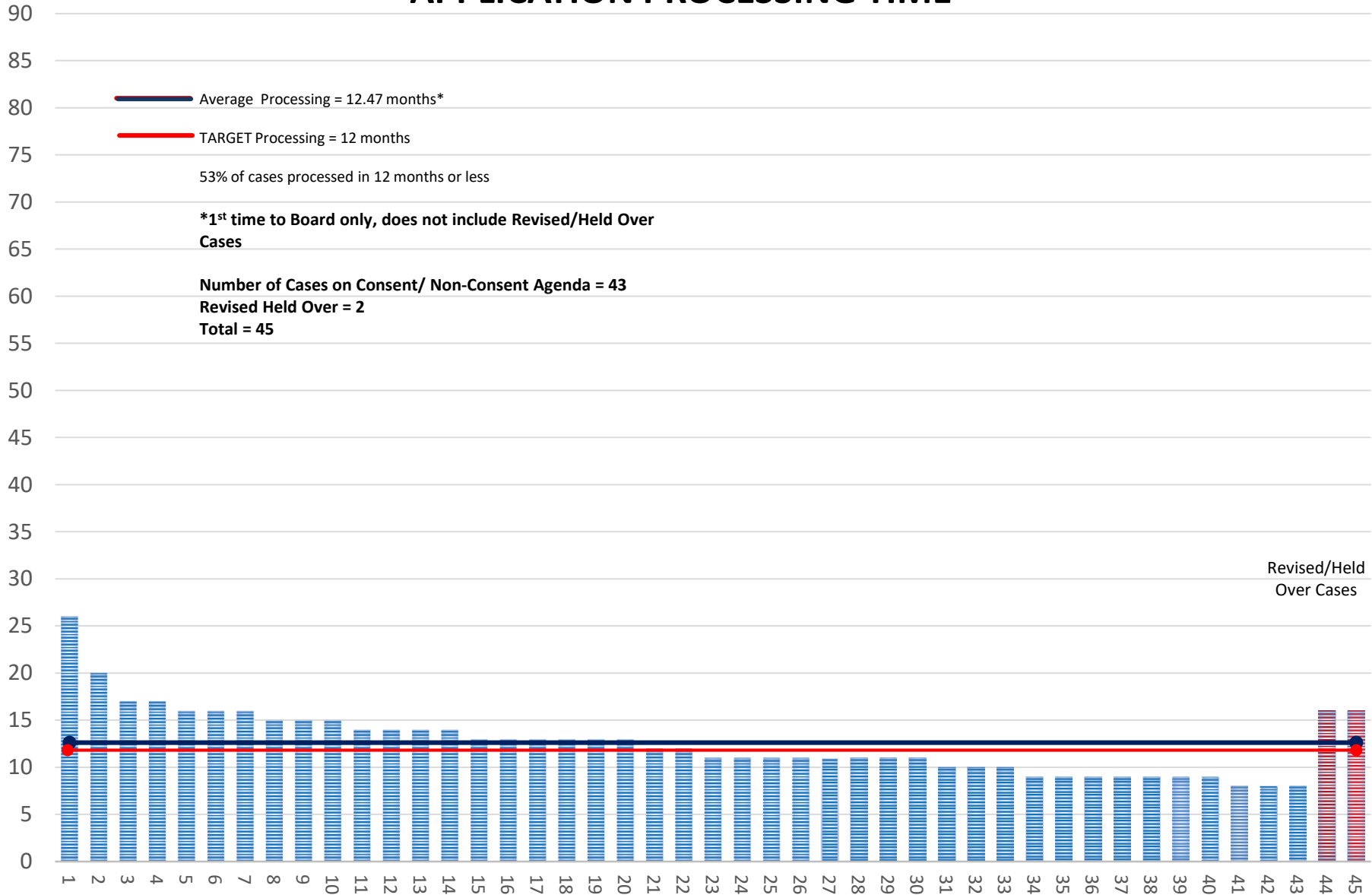
FOR: June 11, 2020 Board of Retirement Meeting

SUBJECT: **Application Processing Time Snapshot Reports**

The following chart shows the total processing time from receipt of the application to the first Board action for all cases on the June 11, 2020 Disability Retirement Applications Agenda.

Consent & Non-Consent Calendar		
Number of Applications	43	
Average Processing Time (in Months)	12.47	
Revised/Held Over Calendar		
Number of Applications	2	
Processing Time Per Case (in Months)	Case 1 16	Case 2 16
Total Average Processing Time All <u>45</u> Cases on Agenda		
		12.62

DISABILITY RETIREMENT SERVICES APPLICATION PROCESSING TIME



Revised/Held Over Cases

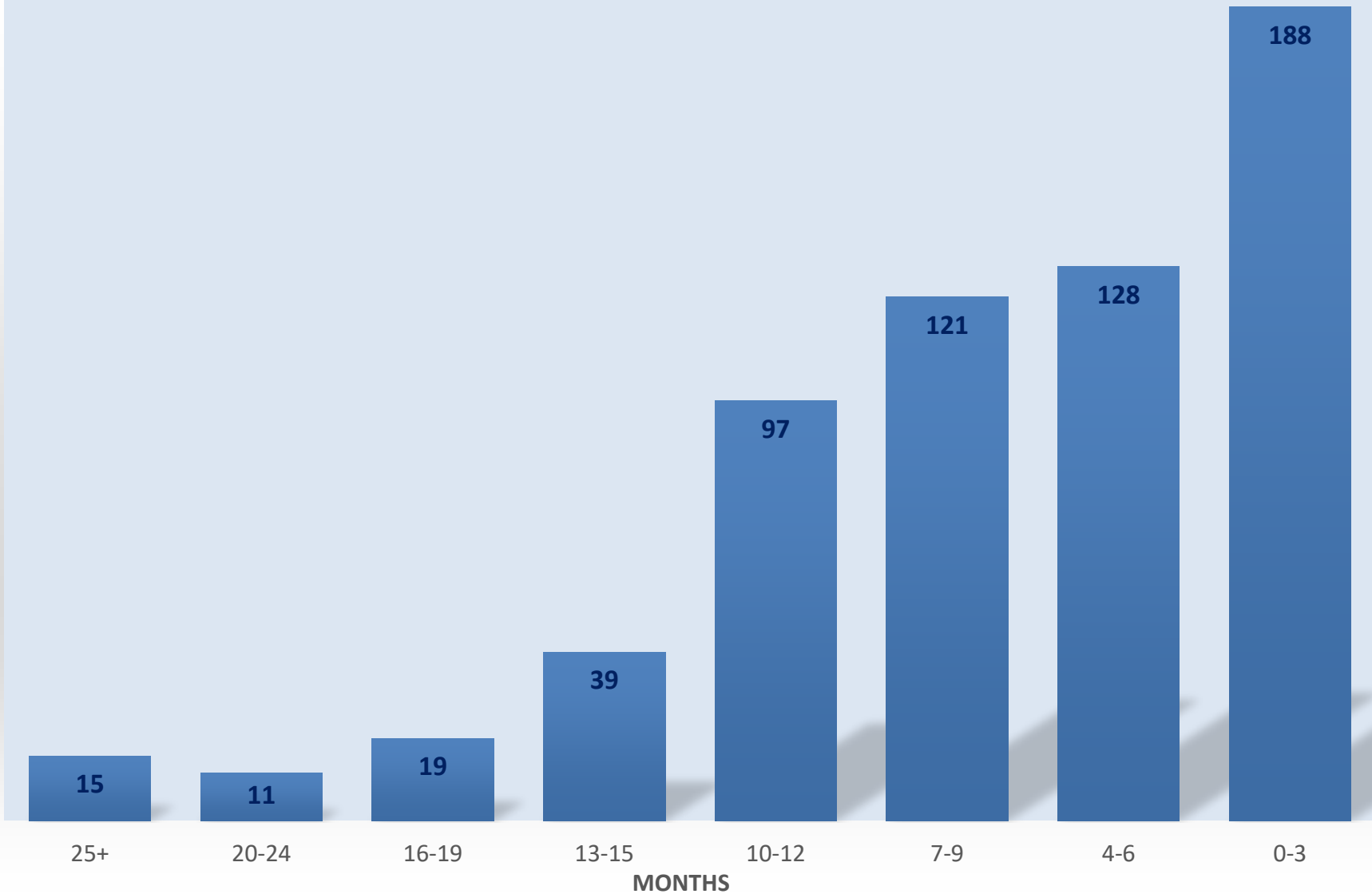
As of May 26, 2020

June 11, 2020 AGENDA

DISABILITY RETIREMENT SERVICES PENDING APPLICATIONS/TIME INTERVALS

Total Pending Cases = 618

NUMBER OF PENDING APPLICATIONS




As of May 26, 2020

**FOR INFORMATION ONLY**

May 22, 2020

TO: Each Trustee
Board of Retirement

FROM: Francis J. Boyd 
Senior Staff Counsel

FOR: June 11, 2020, Board of Retirement Meeting

SUBJECT: EXECUTIVE ORDER N-62-20: WORKERS' COMPENSATION COVID-19 PRESUMPTION

Introduction

On May 6, 2020, Governor Gavin Newsom signed Executive Order N-62-20, a COVID-19 presumption that is only applicable to workers' compensation claims. ***This presumption does not apply to disability-retirement claims under Government Code section 31720.*** The presumption applies to employees directed to work at an employer's place of business on or after March 19, 2020, who thereafter test positive for COVID-19. The Order currently has a sunset clause to expire on July 6, 2020, 60 days following the date of the May 6, 2020, Order.

Because COVID-19 is a novel virus that is not yet fully understood, the provisions of this presumption, including the sunset date, may change in the months to come. The purpose of this memorandum is to inform and explain the presumption in its current form to the Board of Retirement. A copy of the Order is attached.

Infectious Disease Rule Without the Presumption

Shortly after the 1918 influenza epidemic, the California Supreme Court established the following rule to determine whether an injury or death from an infectious disease arose out of employment:

Where risk of contracting the disease on the job is greater than the risk to which members of the general community are exposed, the risk is work related.¹

The case involved a hospital steward in San Francisco who died shortly after tending to 12 influenza patients. At the time, 1 out of 10 San Francisco residents had contracted

¹ *City and County of San Francisco v. Industrial Acc. Com.* (1920) 183 Cal. 273, 282-283.

the disease while 50% to 85% of hospital workers had contracted the disease. The court determined that the hospital steward's risk of contracting the disease at work was higher than the general population's risk and therefore found that his death arose out of his employment.

The rule established in *City and County of San Francisco* case still stands today and is the rule the Board of Retirement would apply when weighing the evidence in disability-retirement applications.

Requirements of the Executive Order N-62-20 Presumption

At the beginning of Executive Order N-62-20, Governor Newsom references his March 19, 2020, Executive Order N-33-20, directing residents to obey all state public health directives to shelter in place.

Paragraph 1 of the Executive Order N-62-20 states that any COVID-19-related illness of an employee shall be presumed to arise out of and in the course of employment for purposes of awarding workers' compensation benefits if the following requirements are satisfied:

- a) The employee tested positive for or was diagnosed with COVID-19 within 14 days after the date the employee performed labor or services at the employee's place of employment at the employer's direction;
- b) The day 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 was not the employee's home or residence; and
- d) The COVID-19 diagnosis was made by a physician who holds a physician and surgeon license issued by the California Medical Board, and the diagnosis must be confirmed by further testing within 30 days of the date of the initial diagnosis.

Sunset Clause

Executive Order N-62-20 was signed on May 6, 2020, and states that the presumption "shall only apply to dates of injury occurring through 60 days following the date of this Order [July 6, 2020]."

The Presumption is Rebuttable

The presumption presented in Executive Order N-62-20 is disputable and may be controverted by other evidence.

- **Requirements to Rebut**

The employer must reject the claim within 30 days after the claim form is filed under Labor Code section 5401 *unless rebutted by evidence only discovered subsequent to the 30-day period.*

Types of Benefits Available Under the Presumption

An accepted claim for the COVID-19-related illness is eligible for all benefits applicable under the workers' compensation law of this state, including full hospital, surgical, medical treatment, disability indemnity, and death benefits, including apportionment of permanent disability under Labor Code sections 4663 and 4664.

Use of Sick Leave or Labor Code Section 4850 Benefits

"Notwithstanding any applicable workers' compensation statute or regulation, when 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 benefit 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 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."

- **Qualification for Temporary Disability or Labor Code Section 4850 benefits**

- 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 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 this 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."

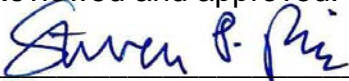
"All employees must be certified for temporary disability by a physician and surgeon license issued by the California Medical Board. The certifying physician can be a designated workers' compensation physician in an applicable Medical Provider Network or Health Care Organization, a pre-designated workers' 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 hold a physician and surgeon license."

Board of Retirement
Re: Executive Order N-62-20
May 22, 2020
Page 4

Conclusion

Though Executive Order N-62-20 is not applicable to disability-retirement law under the Government Code, your Board may see references to it in the workers' compensation medical records that are reviewed by LACERA's panel physicians. For this reason, I believe that it is important for Board trustees to understand how the law is applied in the workers' compensation arena. I will keep the Board apprised of any further developments of this Order.

Reviewed and approved.



Steven P. Rice, Chief Counsel

Attachment

FJB: jm

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 pre-designated 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.

GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State



Documents not attached are exempt from disclosure under the California Public Records Act and other legal authority.

**For further information, contact:
LACERA
Attention: Public Records Act Requests
300 N. Lake Ave., Suite 620
Pasadena, CA 91101**



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