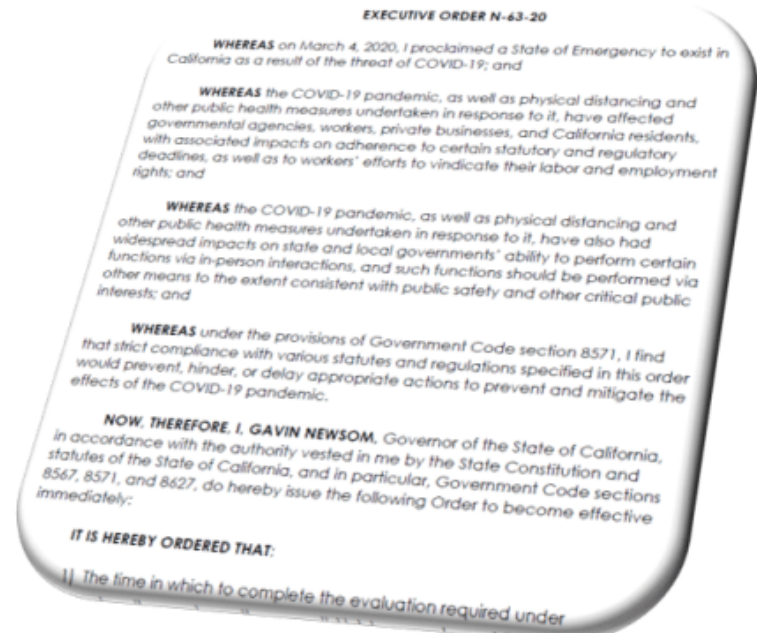


MAY 15, 2020 | CAL/OSHA INSPECTIONS, CITATIONS & ENFORCEMENT

California Governor Issues COVID-19 Executive Order Extending Deadlines for Cal/OSHA Citations and Appeals

By [Fred Walter](#) and [Andrew Sommer](#)

With no fanfare, California Governor Gavin Newsom issued the latest in his series of COVID-19-related executive orders on May 7, 2020. [Executive Order N-63-20](#) extends by 60 days the time for Cal/OSHA to issue citations and for employers to file appeals, motions and petitions for reconsideration.



As rationale for extending these statutory, jurisdictional deadlines, Governor Newsom explained:

WHEREAS the COVID-19 pandemic, as well as physical distancing and other public health measures undertaken in response to it, have affected governmental agencies, workers, private businesses, and California residents, with associated impacts on adherence to certain statutory and regulatory

deadlines, as well as to workers' efforts to vindicate their labor and employment rights; and

WHEREAS the COVID-19 pandemic, as well as physical distancing and other public health measures undertaken in response to it, have also had widespread impacts on state and local governments' ability to perform certain functions via in-person interactions, and such functions should be performed via other means to the extent consistent with public safety and other critical public interests....

As to the Cal/OSHA related deadlines specifically, the Order states:

"The deadlines specified in or that apply to (Labor Code section 6317, related to the issuance of Cal/OSHA citations, and Labor Code sections 6319, 6600, 6600.5, 6601a and 6601.5) shall be extended for a period of 60 days to the limited extent that at the time to issue a citation or file a complaint, claim, or appeal would otherwise elapse in the 60-day period..." following the effective date of the Order, which was May 7, 2020.

A review of the cited Labor Code sections reveals that this Order extends Cal/OSHA's time to issue citations and the employer's time to file appeals, motions and petitions for reconsideration.

Labor Code section 6317 gives Cal/OSHA six months following the occurrence of a violation of a safety order to issue a citation or notice in lieu of citation. The remaining Labor Code sections cited in the Order put employers on notice that they must file an appeal within 15 working days of receipt of a citation or notice. If they do not, their right to do so would be lost.

As with most executive orders, this language is open to interpretation. Cal/OSHA Enforcement reads the Order to mean that any deadline for issuing citations which would arise before July 7, 2020 in the normal course, will now be extended another 60 days. So, for example, if the 6 month deadline for issuing a citation falls on July 6, 2020 (one day short of the expiration of the Order) Cal/OSHA interprets the Order to mean that the agency has until September 6, 2020 to issue that citation.

The Appeals Board, on the other hand, interprets the Order differently. In its view, the grace period afforded by the Order expires on July 7, 2020, after which all statutory deadlines apply as they would in the normal course. It will be interesting to see how if a case finds its way to the Appeals Board testing the tension between these two interpretations.

And for employers, the Order is unclear whether the extra 60 days to file appeals are to be counted as calendar days or working days, as would be the norm for the statutory deadline to file appeals. So, for citations received by employers on July 6, 2020 (the 59th day of the Order) is the last day to file an appeal 15 working days plus 60 additional working days, 15 working days plus 60 calendar days, or just the usual 15 working days because the normal deadline for such citations would fall outside the expiration of the Executive Order?

A few points of caution:

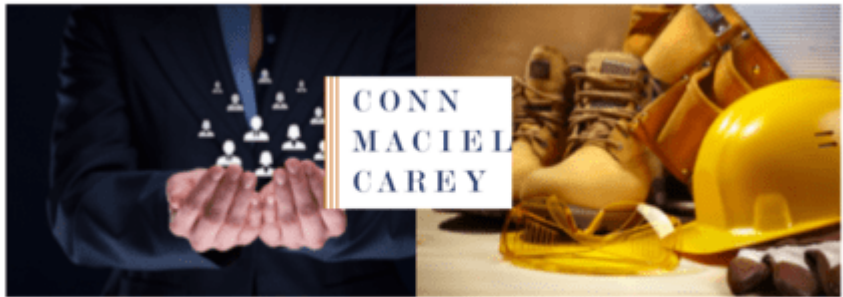
First is the distinction between a citation's issuance date and the date it is received by the employer. A

citation is deemed “issued” when it is completed and signed by a District Manager and placed in the mail. The 15 working day clock for the employer’s appeal, however, does not start to run until the date the citation is actually *received* by the employer. Cal/OSHA keeps track of that date by mailing citations via certified mail, return receipt requested.

Second is that reliance on an uncertain rule can lead to disaster. As we have explained, Cal/OSHA Enforcement and the Appeals Board have reached different interpretations of the Order, with material differences to important deadlines. If one interpretation proves to be “right” over the other, the consequences could be severe. Accordingly, we do not recommend reliance on either of these early interpretations, at least until further guidance is provided by Cal/OSHA Enforcement and/or the Appeals Board. Indeed, for purposes of employers’ deadlines in the Cal/OSHA appeal process, we do not recommend taking advantage of the extended deadlines by the Order at all. Pandemic or not, the safest course is to file appeals and other litigation documents in accordance with the regular deadlines.

Finally, as with earlier orders, this Order calls into question the authority of the Governor to override statutes enacted by the legislature. Objections have already been raised by legislators in regard to earlier orders but none as yet have been subjected to judicial review. That does not mean, however, that this Order will not be put through the judicial process. A court could very well find that the Order is unlawful – another reason we do not recommend relying on it.

For additional resources on issues related to COVID-19, please visit Conn Maciel Carey’s [COVID-19 FAQ Page](#) for an [extensive index of frequently asked questions](#) with our answers about HR, employment law, and OSHA regulatory related developments and guidance. Likewise, subscribe to our [Employer Defense Report](#) blog and [OSHA Defense Report](#) blog for regular updates about the Labor and Employment Law or OSHA implications of COVID-19 in the workplace. Conn Maciel Carey’s COVID-19 Task Force is monitoring federal, state, and local developments closely and is continuously updating these blogs and the FAQ page with the latest news and resources for employers.



COVID-19 FAQs for Employers