

# CLIENT NEWS BRIEF

## Governor's Executive Order Impacts Collective Bargaining Deadlines, Administrative Hearings, and POST

On May 7, 2020, California Governor Newsom signed Executive Order N-63-20 (EO N-63-20) as part of his broad response to COVID-19. EO N-63-20, among many things, extends multiple statutory and regulatory timelines. Below is an outline of the extensions and exemptions that affect collective bargaining, administrative hearings, and Peace Officer Standards and Training (POST) requirements. Subsequently, on June 5, 2020, and June 30, 2020, further Executive Orders were signed to modify and further the extensions, suspend the deadlines indefinitely, or in some cases put an end date on them.

The following outlines key deadline extensions under EO N-63-20 and the Executive Orders that followed.

- The period to request fact-finding under the Meyers-Milias-Brown Act (MMBA) (Gov. Code, §§ 3500-3511), the Educational Employee Relations Act (EERA) (Gov. Code, §§ 3540, *et seq.*), and the Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code, §§ 3560-3599), are extended by 60 days. Note, per Executive Order N-71-20 (EO N-71-20), signed on June 30, 2020, these extensions become inoperative on August 29, 2020.
- Certain workers' compensation program deadlines related to the filing and appeal of decisions by Workers' Compensation Administrative Law Judges were extended by 60 days. Relatedly, under Executive Order N-68-20 (EO N-68-20), signed on June 5, 2020, the deadline for the Workers' Compensation Appeals Board to act on any decision submitted by a Workers' Compensation Judge was also extended for a period of 60 days. EO N-71-20 set a sunset of August 29, 2020 for this latter extension.
- Certain Labor Commissioner and Cal/OSHA timelines for issuing citations or filing complaints, claims, or appeals that would have otherwise elapsed on or before July 6, 2020, were extended for 60 days. EO N-71-20 later suspended certain of these deadlines entirely, with the suspension to remain in effect until the State of Emergency is lifted or until the executive order is modified or rescinded. These include:
  - the deadlines in the Labor Code and related regulations setting the time for the Labor Commissioner to issue any citation under the Labor Code, including a civil wage and penalty assessment pursuant to Labor Code section 1741;
  - the deadlines in Labor Code sections 98, 98.7, 1700.44, and 2673.1, related to workers' rights to file complaints and initiate proceedings with the Labor Commissioner; and
  - the deadlines at Labor Code section 6317, related to the issuance of Cal/OSHA citations.

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Jenell Van Bindsbergen  
Partner  
Fresno Office  
[jvanbindsbergen@lozanosmith.com](mailto:jvanbindsbergen@lozanosmith.com)



Lauren Lyman  
Associate  
Los Angeles Office  
[llyman@lozanosmith.com](mailto:llyman@lozanosmith.com)



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EO N-71-30 also extended the following deadlines for 15 days:

- all Labor Code sections and related regulations setting deadlines for any employer or other person to appeal or petition for review of any citation issued by the Labor Commissioner; and
- those found at Labor Code sections 6319, 6600, 6600.5, 6601, and 6601.5, related to the appeal of citations, notices, or orders of Cal/OSHA.

**Public Employer Posting Requirements are suspended.** EO N-63-20 suspends any statute or regulation that requires a public employer to post notice on “employee bulletin boards” as long as the public employer provides such notice to employees through electronic means including e-mail, a posting on the employer’s web site, or other electronic means customarily used by the public employer to communicate with employees.

**In-Person Hearing Participation is suspended.** EO N-63-20 provides that any statute or regulation that allows a party or witness to participate in a hearing in person, a member of the public to be physically present at the hearing location, or allows a party to object to a hearing being conducted by telephone, television, or other electronic means is suspended if all of the following requirements are satisfied: (1) each hearing participant has an opportunity to participate in, and hear the entire proceeding and observe exhibits, (2) the public is entitled to observe using electronic means, and (3) the presiding officer satisfies all requirements of the American with Disabilities Act and Unruh Civil Rights Act.

## **Peace Officer Standards and Training (POST) extensions and exemptions:**

The Order empowers the POST Executive Director to (1) extend from 180 days to one year the period in which law enforcement agencies can temporarily reemploy peace officers who retired or separated in good standing from the requesting agency (California Code of Regulations, Title 11, section 1950(c)(1)(C)), and (2) grant individual technical and scheduling waivers or exceptions.

The Order allows POST to temporarily allow lecture-based Basic Academy instruction to be delivered online. However, POST must continue to require in-person instruction for testing and practical skills training.

## **Takeaways**

- Public employers should be acutely aware of how the Order will impact calculations for impasse and fact-finding and will need to reevaluate and potentially recalculate those time periods given the deadline extensions and suspensions.
- For remote administrative hearings, public employers should review their procedures and policies to conduct a remote hearing that complies with all applicable due process requirements.
- For law enforcement agencies re-employing retired peace officers, the agencies should verify that the retired peace officer is in good standing before rehiring and review any future extensions of this provision to comply with the authorized rehiring period.

If you have any questions regarding these Executive Orders or the related deadline extensions and suspensions, or for more information on employee issues arising from COVID-19 generally, please contact one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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