

# COVID-19 WORKERS COMPENSATION

## Regulatory Update

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## EXECUTIVE SUMMARY

### Introduction

This document provides current information regarding legislation, executive orders, regulatory directives, and the current regulatory environment as respects the compensability of workers compensation claims related to COVID-19 illness. This information presented in this document is current as of December 9, 2020, the date this report was published. Updates will be published periodically. We encourage the reader to consult claims professionals (including insurance carriers, third-party administrators and/or legal counsel) for a complete understanding of whether a specific claim is compensable.

### Updates Since the November 23, 2020 Publication

- **CA:** Removed AB 196, AB 664 and SB 893 from pending legislation section as all three bills died.
- **TX:** Added HB 637 to pending legislation section.

## Summary of Results

### Enacted Legislation, Executive Orders, and Regulatory Directives

The following is a summary of current information regarding enacted legislation, executive orders, and regulatory directives enacted in response to the pandemic which address the compensability of workers compensation claims related to COVID-19 illness, by jurisdiction. The information presented in this document is current as of December 9, 2020, the date this report was published. Updates will be published periodically.

	Relevant Legislation or Order	Effective Date	Sunset Date	Occupations Impacted
<b>AK</b>	New law, SB 241, which establishes a conclusive presumption of compensability for workers who contract COVID-19.	3/11/20	11/15/20	First responders and healthcare workers.
<b>AR</b>	Governor's order 20-19 that modifies portions of the state's workers compensation law to allow workers who contract COVID-19 to more easily file a claim. The order does not create a presumption. Workers will still have to demonstrate they contracted the disease through employment.  On June 15, 2020, a separate Executive Order (20-35) which classifies COVID-19 or any similar respiratory condition as an occupational disease, provided the contraction meets all requirements for occupational diseases provided by law.	3/11/20 for EO 20-19 and 6/15/20 for EO 20-35	Duration of State of Emergency, or Governor Rescinding.	All employees who, within the normal scope of employment, have exposure to COVID-19 or to any other disease caused by acute respiratory syndrome coronavirus 2.
<b>AZ</b>	Industrial Commission of Arizona issued a "Substantive Policy Statement" on May 14, 2020, effective May 15, 2020, that workers' compensation insurance carriers, self-insured employers, the Special Fund, and authorized claims processing representatives administering Arizona workers compensation claims <i>may not categorically deny COVID-19 claims</i> .	May 15, 2020	No Limit	All entities involved in processing and adjudicating workers compensation claims in Arizona.

	<b>Relevant Legislation or Order</b>	<b>Effective Date</b>	<b>Sunset Date</b>	<b>Occupations Impacted</b>
<b>CA</b>	Governor issued executive order N-62-20 on May 6, 2020 that creates a rebuttable presumption that any employee who tests positive for or is diagnosed with COVID-19 within 14 days of performing work at their place of employment contracted the virus while at work. SB 1159 was passed by the California legislature and is expected to be signed into law by the Governor. SB 1159 extends and expands the presumptions put into place by the executive order retroactively from the date the order expired, July 6, 2020, to January 1, 2023.	3/19/20	1/1/2023	All occupations are affected by SB 1159.
<b>CT</b>	Governor issued executive order 7JJJ on July 24, 2020 that creates a rebuttable presumption that any employee who lost a day of work between March 10, 2020 and April 6, 2020 due to COVID-19 contracted the disease during the course of employment. Further, any essential employee who lost a day of work between April 7, 2020 and May 20, 2020 due to COVID-19 is also presumed to have contracted the disease during the course of employment.	3/10/20	5/20/20	All employees for the period between 3/10/20 and 4/6/20. Employees deemed essential by the Department of Economic and Community Development pursuant to Executive Order 7H between 4/7/20 and 5/20/20.
<b>FL</b>	The Chief Financial Officer of the State of Florida issued Directive 2020-05 on March 30, 2020 that creates a rebuttable presumption that applicable employees of the state who contract COVID-19 were exposed during employment. However, note that on the CFO also issued Directive 2020-5M on April 6, 2020 reminding carriers that first responders, health care workers, and others that contract COVID-19 due to work-related exposure would be eligible for workers' compensation benefits under Florida law.	3/30/20	Until rescinded.	Directive 2020-05 that creates a rebuttable presumption affects Florida Frontline State Employees Only. Frontline state employees include police officers, firefighters, EMTs, paramedics, etc. However, Directive 2020-5M, which reminds carriers of their obligations under Florida statute, addresses all workers.

	<b>Relevant Legislation or Order</b>	<b>Effective Date</b>	<b>Sunset Date</b>	<b>Occupations Impacted</b>
<b>HI</b>	Existing law establishes a rebuttable presumption for every workers compensation claim, supported by strong case law. The presumption is rebuttable only with substantial evidence to the contrary. Workers compensation COVID-19 related claims filed by health care providers, public safety employees, and other occupations where extended contact with the general public is expected as part of employment will likely be compensable under current Hawaiian law, unless the employer can present substantial evidence that the illness was not acquired during the course of employment. As such, we do not expect any legislative or regulatory activity related to COVID-19 in this state.	Current Law	None.	All occupations.
<b>IL</b>	New law, HB 2455, creates a rebuttable presumption that first responders, healthcare workers and employees of essential business (such as pharmacy and food store personnel), who develop COVID-19 contracted the illness due to employment and are entitled to workers compensation benefits.	3/9/20	12/31/20	First responders, healthcare workers, and employees of essential businesses including grocery and pharmacy workers, hotel employees, and funeral service employees.
	SB 0471 extends the maximum duration for disability benefits for certain classes of public safety officers where compensation during recovery for line of duty injuries is outside the workers compensation system. The extension applies when recovery is hindered due to the contraction of COVID-19 during the recovery period. The law applies to circumstances attributable to COVID-19 that arise from 3/9/20 to 12/31/20.	3/9/20	12/31/20	Certain classes of public safety officers not covered by the workers compensation system.

	<b>Relevant Legislation or Order</b>	<b>Effective Date</b>	<b>Sunset Date</b>	<b>Occupations Impacted</b>
<b>KY</b>	Governor's order 2020-277 was issued 4/9/20. Additional guidance issued 4/15/20. They order and guidance provide workers compensation wage replacement (indemnity) benefits for workers quarantined due to COVID-19 exposure. The order is silent on medical costs and applies only to the quarantine period. The 7-day waiting period for indemnity benefits was also suspended. However, employees must still prove that the exposure was work related to be eligible for workers compensation benefits beyond the quarantine period.	3/6/20	Duration of State of Emergency.	First responders, healthcare workers, grocery workers, postal service workers, and child care workers.
<b>MI</b>	Governor's order created a rebuttable presumption that first responders who develop COVID-19 are presumed to have developed the disease due to employment. First responders are defined as public safety officers and health care workers. A second executive order issued June 17, 2020, and refined June 18, 2020, expanded the presumption to all COVID-19-response employees, which includes employees whose job responsibilities require them to have regular or prolonged contact with COVID-19 in the course of their employment. The Michigan Supreme Court found the statutory basis for these orders to be unconstitutional in late September. On October 16, 2020, the governor issued emergency rules directly addressing the presumptions on the basis of statutes (MCL 408.1009) that all employees shall be provided safe and healthful work environments free of recognized hazards. The rules put the original presumptions back in place and expire on March 20, 2021.	3/18/20	3/20/21	First response and healthcare related employees
<b>MN</b>	New law, H.B. 4537, created a rebuttable presumption for employees who develop COVID-19 are presumed to have developed the disease due to employment.	4/8/20	5/1/21	First responders, healthcare workers, and those required to provide child care to first responders and healthcare workers.

	<b>Relevant Legislation or Order</b>	<b>Effective Date</b>	<b>Sunset Date</b>	<b>Occupations Impacted</b>
<b>MO</b>	Governor's order that creates a rebuttable presumption that workers who develop COVID-19 are presumed to have developed the disease due to employment.	4/22/20	2/1/21	First responders.
<b>ND</b>	The Governor issued Executive Order 2020-03 which provides workers compensation benefits for workers quarantined due to COVID-19 exposure. The 5-day waiting period for wage replacement benefits was also suspended. The order identifies COVID-19 as an occupational disease and applies to first responders and health care workers. However, employees must still prove that the exposure was work related to be eligible for workers compensation benefits beyond the quarantine period. On July 28, 2020, the Governor issued an additional order, 2020-03, that extends the impact of 2020-03 to additional classes of employees who provide direct care and services to individuals with intellectual or developmental disabilities.	3/13/20	Duration of State of Emergency.	First responders and healthcare workers. Extended to employees who provide direct care and services to individuals with intellectual or developmental disabilities.
<b>NH</b>	Emergency order #36 creates a rebuttable presumption for first responders who contract COVID-19. First responders are "Emergency response/public safety" workers as set forth in RSA 281-A:2 V-C. On 06/17/2020 Emergency order #53 added any member of the New Hampshire National Guard ordered into active state service pursuant to RSA 110-B:6, to the definition of first responder.	3/13/20	Duration of State of Emergency.	First responders, as defined by Emergency order #36 and #53.
<b>NJ</b>	New Jersey's Legislature has passed S2380, which creates a rebuttable presumption that COVID-19 infections contracted by essential employees are work-related during the public health emergency. The bill was passed at the end of July and was signed into law on 9/14/2020. The law applies retroactively to 3/9/20.	3/9/20	Duration of the public health emergency.	The law refers to essential employees, but which are defined as first responders, health care workers, and effectively any worker in close proximity to the public

	<b>Relevant Legislation or Order</b>	<b>Effective Date</b>	<b>Sunset Date</b>	<b>Occupations Impacted</b>
<b>NM</b>	Executive Order 2020-025 directs all state executive agencies to employ a presumption that certain agency employees and eligible volunteers who contracted COVID-19 suffered a compensable occupational disease under the New Mexico Occupational Disease Disablement Law. The Order also encouraged local governments and insurers to adopt similar presumptions.	4/23/20	None	All agency employees and eligible volunteers who contract COVID-19 within two weeks of working in any capacity with potential exposure.
<b>NY</b>	Existing law provides benefits to any worker who contracts “any and all occupational disease” due to the nature of his employment. On April 15, 2020 the Chair of the Workers Compensation Board issued a letter to carriers and payers urging them to encourage and assist employees with filing COVID-19 related claims.	4/15/20	None.	Likely first responders and healthcare workers will be favored during the claim adjudication process, but other occupations could be affected as well.
<b>OR</b>	The Oregon Workers’ Compensation Division accepted a new rule that promotes appropriate and consistent processing of claims for COVID-19 exposure. The rule requires a “reasonable investigation” for all COVID-19 claims. It also requires the director of the Division to review all denied claims for insurers that have filed at least 5 COVID-19 claims prior to 10/1/20 to ensure a reasonable review was performed.	10/1/20	3/29/21	Likely first responders and healthcare workers will be favored during the claim adjudication process, but other occupations could be affected as well.
<b>PR</b>	New law, Act No. 56-2020, amends existing WC law to include COVID-19 as an occupational disease. Due to existing PR law, this act effectively creates a presumption for frontline workers, and any other worker the Administrator finds to have been exposed to the virus as a function of his employment.	3/1/20	None given.	First responders, healthcare workers, laboratory employees, caregivers and potentially any other worker with exposure to the public.
<b>UT</b>	HB 3007 creates a rebuttable presumption for first responders and healthcare workers who contract COVID-19. HB 5006 modifies the definition of a first responder covered under UT’s COVID-19 presumption and makes technical and conforming changes.	3/21/20 for HB 3007; 6/25/20 HB 5006.	6/1/21	First responders and healthcare workers

	<b>Relevant Legislation or Order</b>	<b>Effective Date</b>	<b>Sunset Date</b>	<b>Occupations Impacted</b>
<b>VT</b>	SB342 creates a presumption that frontline workers who develop COVID-19 contracted the disease due to employment. The law also creates a presumption for any worker who provides documentation of contact with an individual with COVID-19 in the course of employment.	3/1/20	1/15/21	Frontline workers, and any worker who provides documentation of contact with an individual with COVID-19 in the course of employment.
<b>WA</b>	Governor's order that provides indemnity benefits for first responders and healthcare workers quarantined following exposure to the coronavirus.	3/5/20	None Given.	First responders and healthcare workers.
<b>WI</b>	New law, Act 185, that modifies portions of the state's workers compensation law to allow first responders and healthcare workers to more easily file a claim for COVID-19.	4/15/20	30 days After Public Health Emergency Ends.	First responders and healthcare workers.
<b>WY</b>	SF 1002 creates a rebuttable presumption that any employee who develops COVID-19 contracted the illness due to employment.	1/1/20	12/30/20	All employees subject to the workers compensation act.

## Pending Legislation and Other Activity

The following list is a partial compilation of activity in other jurisdictions that has not yet resulted in a change in statute, rules, or regulations. Note that some states listed in the prior section, where there have already been executive orders and enacted legislation, are on this list as well because of additional legislative activity. Bills that are known to have failed or are no longer under consideration are not on this list.

**LA** S.B. 475 defines COVID-19 as a compensable workers compensation injury for every essential worker who is disabled because of the contraction of the disease, COVID-19, or the dependent of an essential worker whose death is caused by COVID-19. Essential workers are defined as persons working in public safety, government, emergency response, health care, or private business as designated and deemed necessary or critical for response to the COVID-19 pandemic by their employer or by virtue of their official commission. The bill is currently in Senate Committee. The full text of the bill may be found at:  
<http://www.legis.la.gov/legis/ViewDocument.aspx?d=1168160>

**H.B. 793** Current LA law provides that the furnishing of medical services or payments by the employer or his insurance carrier for workers compensation benefits is not an admission of liability for compensation. The proposed law retains present law with the exception that the proposed law provides a rebuttable presumption of compensability that will attach 90 days following the date of the accident. This bill is not COVID-19 specific. However, if passed, it potentially could impact the

adjudication of COVID-19 related workers compensation claims. The bill is in House Committee. The full text of the bill may be found at:  
<http://www.legis.la.gov/legis/ViewDocument.aspx?d=1167949>

**MA** H.D. 4749 creates a rebuttable presumption that an employee who develops COVID-19 developed the disease due to employment. This presumption applies to persons employed as emergency medical technicians, emergency room and urgent care medical personnel, and emergency room and urgent care non-medical staff. The bill is currently in Joint Committee. The text of the bill may be found at the following link:  
<https://malegislature.gov/Bills/191/HD4949>

H.D. 4739 is similar to H.D. 4749, except that it applies to essential workers. Essential worker is defined as any individual who works for an essential business outside of the individual's home and who has any contact with any other person. Essential business is defined as any business that has been deemed essential in Order No. 13 dated March 23, 2020 and any amendments thereto. The list of businesses deemed essential is extensive. A detailed list may be found at the following link:

<https://www.grsm.com/publications/2020/massachusetts-executive-order-covid-19-order-no-13-directive-regarding-essential-businesses>

The bill is currently in joint committee. The text of the bill may be found at the following link:  
<https://malegislature.gov/Bills/191/H4739>

**MI** H.B. 5758 extends the rebuttable presumption created by emergency order from first responders who develop COVID-19 to all essential workers. The bill defines essential workers as those individuals working during a state declared emergency because he or she is considered necessary to sustain or protect life or to conduct minimum operations. MI is in the list of states for which action has already been taken with respect to COVID-19. The bill is in House Committee. The text of the bill may be found at the following link:  
[http://www.legislature.mi.gov/\(S\(wcbsijlqexcwx5t43rc4udzg\)\)/mileg.aspx?page=getObject&objectName=2020-HB-5758](http://www.legislature.mi.gov/(S(wcbsijlqexcwx5t43rc4udzg))/mileg.aspx?page=getObject&objectName=2020-HB-5758)

H.B. 5743 creates a rebuttable presumption for emergency first responders due to exposure to infectious diseases during an emergency declared by the governor. MI is in the list of states for which action has already been taken with respect to COVID-19. The bill is in House Committee. The text of the bill may be found at the following link:  
[http://www.legislature.mi.gov/\(S\(b2vqfkwjw1o0andswbht3occ\)\)/mileg.aspx?page=getObject&objectName=2020-HB-5743](http://www.legislature.mi.gov/(S(b2vqfkwjw1o0andswbht3occ))/mileg.aspx?page=getObject&objectName=2020-HB-5743)

S.B. 906 creates a rebuttable presumption for emergency first responders due to exposure to COVID-19 during an emergency declared by the governor. MI is in the list of states for which action has already been taken with respect to COVID-19. The bill is in Senate Committee. The text of the bill may be found at the following link:  
[http://www.legislature.mi.gov/\(S\(u5hqgi0zr23h0ggulsppqxso\)\)/mileg.aspx?page=getObject&objectName=2020-SB-0906](http://www.legislature.mi.gov/(S(u5hqgi0zr23h0ggulsppqxso))/mileg.aspx?page=getObject&objectName=2020-SB-0906)

H.B. 6040 would assume that essential workers who contract coronavirus during an emergency declared by the state's governor sustained that personal injury on the job unless the employer is able to rebut that presumption. Essential workers are defined as employees whose employers

require them to work outside of their home during the declared emergency. The legislation would apply to diagnoses of COVID-19 on or after March 10. The bill is in House Committee. The text of the bill may be found at the following link:

[http://www.legislature.mi.gov/\(S\(mbl11ruakti044m3gn0udfva\)\)/mileg.aspx?page=getObject&objectName=2020-HB-6040](http://www.legislature.mi.gov/(S(mbl11ruakti044m3gn0udfva))/mileg.aspx?page=getObject&objectName=2020-HB-6040)

S.B. 928 creates a rebuttable presumption regarding infectious diseases for essential employees who are required to work during an emergency declared by the governor. The text of the bill may be found at the following link.

<http://www.legislature.mi.gov/documents/2019-2020/billintroduced/Senate/pdf/2020-SIB-0928.pdf>

**MN** HF 6, SF 16, and HF 9 create a rebuttable presumption for educational employees. The bills may be found at the following links:

[https://www.revisor.mn.gov/bills/text.php?number=HF6&type=bill&version=0&session=ls91&session\\_year=2020&session\\_number=5](https://www.revisor.mn.gov/bills/text.php?number=HF6&type=bill&version=0&session=ls91&session_year=2020&session_number=5)

[https://www.revisor.mn.gov/bills/text.php?number=SF0016&session=ls91&version=latest&session\\_number=5&session\\_year=2020](https://www.revisor.mn.gov/bills/text.php?number=SF0016&session=ls91&version=latest&session_number=5&session_year=2020)

[https://www.revisor.mn.gov/bills/text.php?number=HF9&type=bill&version=0&session=ls91&session\\_year=2020&session\\_number=4](https://www.revisor.mn.gov/bills/text.php?number=HF9&type=bill&version=0&session=ls91&session_year=2020&session_number=4)

HF 4515 and SF 4425 create a presumption for firefighters infected by a disease declared to be pandemic by the World Health Organization. The bill is in House Committee. The text of the bills may be found at the following links:

[https://www.revisor.mn.gov/bills/text.php?number=HF4515&type=bill&version=0&session=ls91&session\\_year=2020&session\\_number=0](https://www.revisor.mn.gov/bills/text.php?number=HF4515&type=bill&version=0&session=ls91&session_year=2020&session_number=0)

[https://www.revisor.mn.gov/bills/text.php?number=SF4425&version=latest&session=ls91&session\\_year=2020&session\\_number=0](https://www.revisor.mn.gov/bills/text.php?number=SF4425&version=latest&session=ls91&session_year=2020&session_number=0)

HF 4515 and SF 4558 create a rebuttable presumption for first responders and healthcare providers, including licensed peace officers, firefighters, nurses, healthcare workers, correctional officers, security counselors, emergency medical technicians, childcare providers to first responders, and other. The bills may be found at the following links:

[https://www.revisor.mn.gov/bills/text.php?number=HF4537&type=bill&version=0&session=ls91&session\\_year=2020&session\\_number=0](https://www.revisor.mn.gov/bills/text.php?number=HF4537&type=bill&version=0&session=ls91&session_year=2020&session_number=0)

[https://www.revisor.mn.gov/bills/text.php?number=SF4458&version=latest&session=ls91&session\\_year=2020&session\\_number=0](https://www.revisor.mn.gov/bills/text.php?number=SF4458&version=latest&session=ls91&session_year=2020&session_number=0)

SF 4130 establishes a workers compensation COVID-19 reimbursement fund to reimburse workers compensation providers for COVID-19 workers compensation costs paid with respect to employees in job classifications entitled a presumption of occupational disease. The bill is in Senate Committee. The full text of the bill may be found at the following link:

<https://www.revisor.mn.gov/bills/bill.php?f=SF4130&b=senate&y=2020&ssn=0>

**NC** H1056 creates a rebuttable presumption for covered employees who contract COVID-19 that the disease was developed due to exposure at work. Covered employees include law enforcement officers, jailers, prison guards, firefighters, emergency medical technicians, or paramedics employed by the state or local government, including volunteer firefighters, and health care workers. The bill allows for rebuttal only be clear and convincing evidence. The bill is in House Committee. The full

text of the bill may be found at the following link:  
<https://www.ncleg.gov/BillLookup/2019/HB1056>

H1057 is similar to H1056 above, except it also includes essential workers, defined as those employees of businesses deemed essential by executive order of the governor, or by declaration of local governments. The bill is in House Committee. The full text of the bill may be found at the following link:  
<https://www.ncleg.gov/BillLookup/2019/hb1057>

**NJ** AB4784 creates a rebuttable presumption that coronavirus disease contracted by employees working in distribution centers or warehouses, is work-related and fully compensable for the purpose of workers compensation benefits and other employment benefits provided for work-related injuries and illnesses. The text of the bill may be found at:  
[https://www.njleg.state.nj.us/2020/Bills/A5000/4784\\_I1.PDF](https://www.njleg.state.nj.us/2020/Bills/A5000/4784_I1.PDF)

**NY** S. 8266 and A. 10401 (identical bill) seek to classify exposure to the corona virus as an occupational illness for numerous types of workers, including those working in nursing homes, train stations, daycare centers, retail outlets and more. The bills do not address compensability, rather, they appear to identify *exposure* to the corona virus as an occupational disease. One potential impact is that lost time and related medical costs associated with quarantine could be compensable. It is not clear what other impact these bills would have if enacted into law. Both bills are in committee. The full text of each bill may be found at the links below:  
<https://nyassembly.gov/leg/?bn=S08266&term=2019>  
[https://nyassembly.gov/leg/?default\\_fld=&leg\\_video=&bn=A10401&term=2019&Summary=Y](https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A10401&term=2019&Summary=Y)

S. 08117 and A. 10391 (identical bill) creates a presumption that if a member of a large class of public safety officers specified in the bills was exposed to the virus that causes COVID-19 and subsequently tests positive for COVID-19, the infection occurred in the line of duty unless competent evidence to the contrary is presented. The bill states that the 50% of the medical cost of treatment will be funded by the individual's specific employer and the 50% by the state. The individual would also receive full pay while ill. Both bills are in committee. The full text of each bill may be found at the links below:  
[https://nyassembly.gov/leg/?default\\_fld=%0D%0A&leg\\_video=&bn=s8117&term=2019&Summary=Y&Text=Y](https://nyassembly.gov/leg/?default_fld=%0D%0A&leg_video=&bn=s8117&term=2019&Summary=Y&Text=Y)  
<https://nyassembly.gov/leg/?bn=A10391&term=2019>

S. 8041 and A. 10172 (identical bill) provide that if, as a result of services performed in line of duty during a state of emergency, a volunteer firefighter or volunteer ambulance worker is exposed to or comes in contact with COVID-19, the chief engineer or other executive officer of the fire department or fire company or the captain or other executive officer of the ambulance department, volunteer ambulance company or ambulance district of which he or she is a member may authorize such volunteer firefighter or volunteer ambulance worker to obtain such examinations, tests, treatment and care as are immediately necessary to determine whether he or she is injured; the bills further grant a presumption that exposure to COVID-19 caused partial or total disability or death. Both bills are in committee. The full text of each bill may be found at the links below:  
[https://nyassembly.gov/leg/?default\\_fld=&leg\\_video=&bn=S08041&term=2019&Summary=Y#jump\\_to\\_Summary](https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=S08041&term=2019&Summary=Y#jump_to_Summary)  
<https://nyassembly.gov/leg/?term=2019&bn=A10172>

**OH** HB 571 adds COVID-19 contracted by a peace officer, firefighter, or emergency medical worker to a list of occupational diseases covered under Ohio's workers compensation law and creates a rebuttable presumption that contraction of the disease was a result of employment. The bill would be in effect from March 9, 2020, the date a state of emergency was declared, through the 14-day period after the state of emergency ends. The bill is in House Committee. The bill may be found at the following link:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-571>

HB 573 adds COVID-19 contracted by any employee required to work outside of their home to a list of occupational diseases covered under Ohio's workers compensation law and creates a rebuttable presumption that contraction of the disease was a result of employment. The bill would be in effect from March 9, 2020, the date a state of emergency was declared, through the 14-day period after the state of emergency ends. The bill is in House Committee. The bill may be found at the following link:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-573>

HB 605 adds COVID-19 contracted by employees of retail food establishments and food processing business to a list of occupational diseases covered under Ohio's workers compensation law and creates a rebuttable presumption that contraction of the disease was a result of employment. The bill would be in effect from March 9, 2020, the date a state of emergency was declared, through the end of the state of emergency. The bill is in House Committee. The bill may be found at the following link:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-605>

HB 633 adds COVID-19 contracted by an employee of a nursing home, residential care facility, health care facility, or health care location as defined under Ohio law, to a list of occupational diseases covered under Ohio's workers compensation law and creates a rebuttable presumption that contraction of the disease was a result of employment. The bill would be in effect from March 9, 2020, the date a state of emergency was declared, through the 14-day period after the state of emergency ends. The bill is in House Committee. The bill may be found at the following link:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-633>

HB 667 adds COVID-19 contracted by a corrections officer to a list of occupational diseases covered under Ohio's workers compensation law and creates a rebuttable presumption that contraction of the disease was a result of employment. The bill would be in effect from March 9, 2020, the date a state of emergency was declared. The bill does not have a sunset clause. The bill is in House Committee. The bill may be found at the following link:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-667>

HB 668 adds COVID-19 contracted by a peace officer, firefighter, or emergency medical officer to a list of occupational diseases covered under Ohio's workers compensation law and creates a rebuttable presumption that contraction of the disease was a result of employment. The bill would be in effect on passage into law and does not have a sunset clause. The bill is in House Committee. The bill may be found at the following link:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-668>

**PA** HB 2485 and HB 2486 would establish a presumption that specific frontline workers that contract COVID-19 did so in the course of employment and that the workers are therefore entitled to

workers compensation benefits. Both bills were introduced and referred to the House Committee on Labor and Industry on July 1, 2020.

HB 2485 applies healthcare providers who are responsible for providing in-person care to patients involving exposure to COVID-19.

HB 2486 applies to professional and volunteer firefighters, volunteer ambulance corps personnel, volunteer rescue and lifesaving squad personnel, emergency medical services personnel and paramedics, police officers, parole agents, county probation officers, deputy sheriffs and deputy coroners, correctional employees and forensic security employees.

Both bills are in House Committee. The bills may be found at the following links:

<https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2019&sInd=0&body=H&type=B&bn=2485>

<https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2019&sInd=0&body=H&type=B&bn=2486>

SB 1106 would extend Heart and Lung Act benefits to an eligible employee who contracts, is diagnosed with COVID-19, or is subject to quarantine resulting from exposure to COVID-19. Eligible employees include select State and local government employees (most first responders) who are injured or contract certain diseases in the performance of their duty. If an employee is eligible for benefits from the Heart and Lung Act, that same employee is no longer entitled to workers compensation benefits, and the employer is reimbursed any benefits already paid. The bill passed the Senate Veterans Affairs and Emergency Preparedness Committee and the Appropriations Committee. The bill is currently in Senate Committee. The bill may be found at the following link: <https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2019&sInd=0&body=S&type=B&bn=1106>

HB 2396 states that an individual employed by a life-sustaining business or occupation and who is required to work, who contracts, has symptoms of or is otherwise exposed to an infectious disease, including COVID-19, shall establish a presumption that the individual's medical condition or inability to work is work-related hazardous duty. Such individuals are qualified for unemployment compensation and worker's compensation and do not have to use PTO/Vacation/Sick Leave for treatment or quarantine. The life-sustaining occupations include, but are not limited to: first responders, correction officers, emergency service dispatchers, ambulance drivers, retail/food service workers, food/agriculture workers, healthcare workers, pharmacists, home health care workers, public utility workers, government employees, trash collectors, warehouse workers. An important note is that in its current form, the presumption that this bill would create appears to be conclusive (i.e. not rebuttable). The bill is currently in House Committee. The bill may be found at the following link:

<https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2019&sInd=0&body=h&type=b&bn=2396>

**RI** HB 8066 was introduced to the House on June 18, 2020. The bill would create a conclusive presumption that frontline workers who contract COVID-19 did so in the course of employment and that the disease is work-related. Workers covered under this presumption include first responders, healthcare workers, grocery workers, retail workers and parcel delivery workers, among others. The bill requires that the employee contract COVID-19 during a declared a state of emergency because of the COVID-19 pandemic. The bill is currently in House Committee. The bill may be found at the following link:

<http://webserver.rilin.state.ri.us/BillText/BillText20/HouseText20/H8066.pdf>

**SC** H 5482 would establish a presumption that a first responder, healthcare provider, or correctional officer contracting COVID-19 is entitled to workers' compensation benefits as an occupational disease and would provide temporary total disability benefits for first responders, healthcare providers, and correctional officers required to isolate due to COVID-19 if certain conditions are met. The bill is currently in House Committee. The bill may be found at the following link: <https://www.scstatehouse.gov/billsearch.php?billnumbers=hb5482>

**TN** HB 8008 establishes a legal presumption that an employee who contracts COVID-19 has an occupational disease arising out of and in the course of employment if 10 or more employees at the same location have contracted COVID-19 or if the employee is an essential worker. This bill defines "essential worker" to mean a person working for a business that has been designated as essential by the government or a person working for a business providing essential services as defined in the governor's Executive Order No. 22, dated March 30, 2020. The presumption that COVID-19 is an occupational disease arising out of and in the course of employment may be rebutted if the employer or insurer demonstrates, by clear and convincing evidence that the employee's contraction of COVID-19 did not arise out of or in the course of the employee's employment. A nonessential worker is not entitled to the rebuttable presumption that COVID-19 is an occupational disease arising out of and in the course of employment but is not precluded from filing workers compensation claims based on contraction of COVID-19. Under this bill, for purposes of a workers compensation claim, the contraction of COVID-19 may be demonstrated through a positive laboratory diagnostic test; the written diagnosis of a licensed physician, physician's assistant, or nurse practitioner; or, in the case of a deceased employee, COVID-19 being listed as the cause of death on the employee's death certificate. An employer or insurer who exercises good faith in the administration of a COVID-19-related workers compensation claim retains all statutory protections established for the purpose of protecting persons or entities from COVID-19-related liability. The bill is currently in House Committee. The bill may be found at the following link: <http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB8008&GA=111>

**TX** HB 34 would create a presumption that SARS-CoV-2 and COVID-19 are contracted during the course and scope of employment as a public safety employee. The bill can be found here: <https://capitol.texas.gov/tlodocs/87R/billtext/html/HB00034I.htm>

HB 47 would create a presumption that SARS-CoV-2 and COVID-19 are contracted during the course and scope of employment as an employee of a school district. The bill can be found here: <https://capitol.texas.gov/tlodocs/87R/billtext/html/HB00047I.htm>

HB 310 would change TX WC code such that any disease that is "the basis for a disaster declared by the governor ... for all or part of the state" is not considered an "ordinary disease of life" for public safety workers (defined as firefighters, peace officer or emergency medical technician), thereby assuring that they and their survivors are entitled to workers compensation benefits. The bill can be found here: <https://capitol.texas.gov/tlodocs/87R/billtext/html/HB00310I.htm>

SB 107 and HB 637 create a presumption identical to HB 310, but the presumption would also apply to detention officers. The bill can be found here: <https://capitol.texas.gov/tlodocs/87R/billtext/html/SB00107I.htm>

HB 396 would create a presumption that nurses who treated patients diagnosed with COVID-19 or came in contact with a patient diagnosed with COVID-19 and acquired COVID-19 on or after

February 1, 2020 are presumed to have contracted the virus in the course and scope of their employment. The bill can be viewed here:

<https://capitol.texas.gov/tlodocs/87R/billtext/html/HB003961.htm>

HB 541 would create a presumption that a public safety employee who suffers from coronavirus disease (COVID-19) resulting in disability or death is presumed to have contracted the disease during the course and scope of employment as a public safety employee. The bill can be found here: <https://capitol.texas.gov/tlodocs/87R/billtext/html/HB005411.htm>

**VA** SB 5104 and SB 5097 are identical bills and establish a rebuttable presumption that COVID-19 causing the death or any health condition or impairment resulting in total or partial disability of any firefighter, law-enforcement officer, first responder, or health care provider is an occupational disease unless such presumptions are overcome by a preponderance of competent evidence to the contrary. The bills would be effective retroactively to January 1, 2020 and do not have a sunset date. The bills are in Senate Committee. The bills may be found at the following links:

<https://lis.virginia.gov/cgi-bin/legp604.exe?202+ful+SB5104>

<https://lis.virginia.gov/cgi-bin/legp604.exe?202+ful+SB5097>

SB 5066 is identical to the prior bills with the exception that SB 5066 applies to:

- firefighters
- law-enforcement officers
- first responders
- health care providers
- correctional officers

The bill is Senate Committee. The bill may be found at the following link:

<https://lis.virginia.gov/cgi-bin/legp604.exe?202+ful+SB5066S1>

SB 5022 is identical to the prior bills, except that SB 5022 applies to an extensive detailed list of occupations:

- salaried or volunteer firefighter
- salaried or volunteer emergency medical services personnel
- member of the State Police Officers' Retirement System
- member of county, city, or town police departments
- sheriff or deputy sheriff
- Department of Emergency Management hazardous materials officer
- city sergeant or deputy city sergeant of the City of Richmond
- Virginia Marine Police officer
- conservation police officer who is a full-time sworn member of the enforcement division of the Department of Wildlife Resources
- Capitol Police officer
- special agent of the Virginia Alcoholic Beverage Control Authority
- officer of the police force established and maintained by the Metropolitan Washington Airports Authority
- officer of the police force established and maintained by the Norfolk Airport Authority
- conservation officer of the Department of Conservation and Recreation
- sworn officer of the police force established and maintained by the Virginia Port Authority
- any campus police officer employed by any public institution of higher education

The bill is Senate Committee. The bill may be found at the following link:

<https://lis.virginia.gov/cgi-bin/legp604.exe?202+ful+SB5022>

HB 5028 is identical to the prior bills with the exception that HB 5028 applies to:

- firefighters
- law-enforcement officers
- first responders
- health care providers
- school board employees

The bill is House Committee. The bill may be found at the following link:

<https://lis.virginia.gov/cgi-bin/legp604.exe?202+ful+HB5028E>

## DETAILS BY JURISDICTION

### Alaska

On April 10, 2020 Governor Dunleavy signed into law S.B. 241 which established a conclusive presumption of compensability under the Workers' Compensation Act for emergency response and health care employees who contract COVID-19 during the public health disaster declared by Governor Dunleavy on March 11, 2020.

- An injury is compensable if the employee:
  - Is employed as a firefighter, emergency medical technician, paramedic, peace officer, or health care provider;
  - Is exposed to COVID-19 in the course of employment; and
  - Receives any of the following:
    - COVID-19 diagnosis by a physician;
    - Presumptive positive COVID-19 test result; or
    - Laboratory-confirmed COVID-19 diagnosis.
- S.B. 241 is a multifaceted bill addressing the coronavirus pandemic and includes provisions relating to state tax deadlines, legal issues such as evictions, wills and repossessions, and telehealth.
  - This element of the law expires on November 15, 2020.
- IMPACT: Creates a conclusive (non-rebuttable) presumption of compensability for workers in the listed occupations who develop COVID-19. The law can be found here:  
<http://www.akleg.gov/PDF/31/Bills/SB0241Z.PDF>

## Arkansas

The Governor issued an emergency order EO 20-19 on April 13, 2020 that modified portions of the state's workers compensation law to allow first responders and healthcare workers to more easily file a claim for COVID-19. Further, the Governor issued an emergency order EO 20-35 on June 15, 2020 that modified portions of the state's workers compensation law to include COVID-19 or any respiratory condition resulting from acute respiratory syndrome coronavirus 2 (SARS-CoV-2) as an occupational disease, provided the contraction meets all requirements for occupational diseases provided by law.

- Arkansas law defines an occupational disease as a disease that arises out of or during the course of employment. To be compensable, the burden of proof is on the claimant to establish, through a preponderance of evidence, that a causal connection exists between contraction of the disease and employment. Note that this element of the law is unchanged.
- EO 20-19 addresses the following elements of the law addressing communicable diseases for first responders and healthcare workers only:
  - Arkansas law allows for communicable disease claims only if the disease was contracted in the course of employment in or in the immediate connection with a hospital or sanatorium where individuals suffering from that disease are being treated. The order suspends this rule for first responders and health care workers.
  - Ordinary diseases of life to which the general public is exposed are not compensable. The order suspends this rule for first responders and health care workers.
- EO 20-19 will expire when the state of emergency in the state expires, or when the governor otherwise rescinds the order.
- The Governor issued follow-up emergency order EO-22 on April 21, 2020 that specifically defined first responders and health care workers. EO-22 also included active duty national guard soldiers and air personnel as individuals potentially eligible for workers' compensation benefits in the event that an individual contracts COVID-19.
- EO 20-35 amends EO-22 to include exposure to COVID-19 in the definition of "unusual and unpredicted incident" that may be found to have been the major cause of physical harm.
- EO 20-35 creates an exception to the prohibition on compensation for an ordinary disease of life for COVID-19 or any illness stemming from SARS-CoV-2.
- EO 20-35 also reiterates workers compensation as an exclusive remedy for workplace injuries amid the pandemic, ensuring employers who open for business amid the pandemic are immune from civil liability from their employees.
- IMPACT: EO 20-19 allows for COVID-19 related workers compensation claims from first responders and healthcare workers by removing the bar to ordinary diseases of life to which the general public is exposed. Furthermore, the order removes the requirement that exposure be in or near a hospital setting. However, the order does not create a presumption. First responders and healthcare workers still have to demonstrate that they contracted the disease through employment. EO 20-35 facilitates the receipt of workers compensation benefits for all workers who contract COVID-19, provided a causal connection exists between contraction of the disease and employment.

[https://governor.arkansas.gov/images/uploads/executiveOrders/EO\\_20-19\\_.pdf](https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-19_.pdf)

[https://governor.arkansas.gov/images/uploads/executiveOrders/EO\\_20-35.pdf](https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-35.pdf)

## Arizona

On May 14, 2020, the Industrial Commission of Arizona issued a “substantive” policy statement effective May 15, 2020.

“Workers’ compensation insurance carriers, self-insured employers, the Special Fund, and authorized claims processing representatives administering Arizona workers’ compensation claims may not categorically deny COVID-19 claims. All claims must be reviewed and investigated in good faith. Claim denials related to COVID-19, like any claim denial, must be “well-grounded in fact” and “warranted by existing law” (or based upon a good faith argument for the extension, modification, or reversal of existing law).”

While not a change in law or a new regulation, the policy statement was intended to remind stakeholders that occupational diseases are compensable as workers compensation claims under Arizona law (AZ 23-901.01), provided that the all of the following six requirements are met:

- There is a direct relationship between the conditions under which the worker is subjected and the occupational disease.
- The disease can be seen as being naturally caused by the work as a result of the exposure the employee is subjected to.
- The proximate cause of the disease can be traced back to the worker’s employment.
- The disease is not related to a hazard the worker would have been exposed to outside his or her work.
- The disease is a consequence of the nature of the business and not independent of the relation between the employer and employee.
- The origin of the disease is a risk regularly connected to the worker’s job-related duties.

Furthermore, the statement reminded stakeholders that categorically denying a workers compensation claim could be considered acting in bad faith or as utilizing unfair claim practices.

## California

On May 6, 2020, Governor Gavin Newsom issued Executive Order N-62-20, which expanded workers' compensation eligibility for employees who are diagnosed with COVID-19. The Order creates a rebuttable presumption that employees who test positive for or are diagnosed with COVID-19 within 14 days of performing work at their place of employment contracted the virus while at work. The Order expired on July 6, 2020. The California legislature passed SB 1159 at the end of August and was signed into law on September 16, 2020. SB 1159 extends and expands the presumptions established by the Governor's order retroactive from July 6, 2020 to January 1, 2023.

The key elements of SB 1159 are:

- Authorizes a year-long study of COVID-19 impacts on the workers' compensation system.
- Codifies into law provisions of the Executive Order (EO) Governor Newsom issued covering dates of employment from March 19, 2020, to July 5, 2020, and clarifies that claims made during that period will continue to be handled under the same rule set until January 1, 2023.
- Creates a rebuttable presumption of compensability until January 1, 2023, for anyone infected with COVID-19 who works as a firefighter, peace officer, or in a broadly-defined set of health care professions.
- For all other businesses with more than five employees, creates a rebuttable presumption of compensability for COVID-19 illness, but under specified conditions:
  - The presumption arises only if there is an "outbreak," which is defined as four or more positive tests in a "specific place of employment" where the employer has 100 employees or fewer, otherwise the outbreak trigger is 4% of employees, all within 14 days of the worker being in that "specific place of employment."
  - "Specific place of employment" is defined to encourage separation of work units by building, facility, agricultural field, etc. This helps employers who diligently and consistently divide work crews because the "outbreak" presumption will not carry across carefully divided work units.
- Guidance is provided that evidence to rebut the presumption can include showing: (i) there were "measures in place to reduce potential transmission"; and (ii) the employee had "nonoccupational risks" of infection (see page 10). Note: This section encourages safety at work and knowledge of employee activities outside work. Zenith is creating safety guidance we believe should meet this standard. Zenith will contact all CA customers to share this information.
  - Compensability decisions must be made within 45 days.

The law, as passed, may be found at the following link:

<https://image.s1.sfmc-content.com/lib/ff011d72746604/m/1/c3f9857e-54bb-47c5-9d6d-9a453a77f72d.pdf>

The following are summaries of important elements of the new law.

### NEW LABOR CODE § 3212.86

Codifies Governor Newsom's Executive Order N-62-20 (EO), which created a rebuttable presumption that COVID-19 and related conditions were compensable for workers not subject to the Governor's stay-home order and expands the EO and applies to any employee with a COVID-19 related illness who was working outside the home between March 19 and July 5, 2020. Requirements which must be met before the rebuttable presumption applies include:

1. The employee has 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(s) of employment at the employer's direction.
2. The employee's place(s) of employment do not include the employee's residence.
3. The day that the employee performed labor or services is between March 19 and July 5.
4. If the employee makes a claim for workers' compensation benefits based upon a diagnosis of COVID-19, the diagnosis must be done by a licensed physician and surgeon holding an M.D. or D.O. degree, or a state licensed physician assistant or nurse practitioner, acting under the review or supervision of a physician and surgeon pursuant to standardized procedures or protocols within their lawfully authorized scope of practice, and that diagnosis is confirmed by testing or by a COVID-19 serologic test within 30 days of the date of the diagnosis.
5. If 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 Section 4800, 4800.5, or 4850 are due and payable. If an employee does not have those sick leave benefits, the employee shall be provided temporary disability benefits or Section 4850 benefits, if applicable, from the date of disability. There shall not be a waiting period for temporary disability benefits.
6. If temporary disability (TD) is awarded, the employee must be recertified for TD by a physician every 15 days for the first 45 days following the diagnosis.
7. The claims administrator has 30 days in which to reject or accept the claim. After that 30 days, the claim can only be contested with evidence discovered after the 30-day period.
8. The law sunsets on January 1, 2023.

#### NEW LABOR CODE § 3212.87

Creates a rebuttable presumption of compensability for an extensive list of certain health care and public safety/rescue personnel. In order to claim a presumption that COVID-19 is compensable, the employee must meet most of the same standards as would have been required under the Executive Order. The following criteria apply:

1. The last day worked by the employee is on or after July 6, 2020.
2. The employee has tested positive for 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.
3. The employee's place of employment does not include the employee's residence.
4. If an employee has paid sick leave benefits specifically available in response to COVID-19, those benefits shall be used and exhausted before any benefits are payable. There shall not be a waiting period for temporary disability benefits.

5. The rebuttable presumption shall be extended to employees subject to this subdivision following termination of service for a period of 14 days, commencing with the last date actually worked in the specified capacity at the employee's place of employment.
6. The law sunsets on January 1, 2023.

#### Covered Employment Under Labor Code § 3212.87

Employees of Public Employers: Active firefighting members, peace officers who are primarily engaged in active law enforcement activities, and fire and rescue services coordinators.

Employees of Private Employers: Employees who provide direct patient care, custodial employees in contact with COVID19 patients who work at a health facility, registered nurses, emergency medical technicians, paramedics, home health agency employee who provide direct patient care, employees of health facilities other than those who provide direct patient care, providers of in-home supportive services.

#### NEW LABOR CODE § 3212.88

This section of the Labor Code applies to employees not covered under new Labor Code § 3212.87. Workers in these classifications of employment whose employers employ five or more workers will be entitled to a rebuttable presumption that COVID-19 is a work-related injury if there is an outbreak at a specific place of employment. The following apply:

1. The last day worked by the employee is on or after July 6, 2020.
2. The employee has tested positive for 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.
3. The employee's positive test occurred during a period of an outbreak at the employee's specific place of employment.
4. A specific place of employment means the building, store, facility, or agricultural field where an employee performs work at the employer's direction. A specific place of employment does not include the employee's home or residence, unless the employee provides home health care services to another individual at the employee's home or residence.
5. An outbreak exists if within 14 calendar days one of the following occurs at a specific place of employment if the employer has 100 employees or fewer at a specific place of employment and four employees test positive for COVID-19, if the employer has more than 100 employees at a specific place of employment and four percent (4%) of the number of employees who reported to the specific place of employment test positive for COVID-19, or if a specific place of employment is ordered to close by a local public health department, the State Department of Public Health, the Division of Occupational Safety and Health, or a school superintendent due to a risk of infection with COVID-19.
6. If an employee has paid sick leave benefits specifically available in response to COVID-19 those benefits shall be used and exhausted before any benefits are due and payable. If an employee does not have those sick leave benefits, the employee shall be provided temporary disability

benefits or Section 4850 benefits, if applicable, from the date of disability. There shall not be a waiting period for temporary disability benefits.

7. The rebuttable presumption shall be extended to employees subject to this subdivision following termination of service for a period of 14 days, commencing with the last date actually worked in the specified capacity at the employee's place of employment.
8. The claims administrator has 45 days in which to reject or accept the claim. The claim can only be contested following that 45-day period with evidence discovered after the 45-day period.
9. A claim is not part of an outbreak if it occurs during a continuous 14-day period where the requisite number of positive tests have not been met.
10. In the case of an employee who performs work at the employer's direction in multiple places of employment within 14 days of the employee's positive test, the employee's positive test shall be counted for the purpose of determining the existence of an outbreak at each of those places of employment.
11. The law sunsets on January 1, 2023.
12. Requires certain actions to be taken by the employer that are independent of any presumption regarding compensability of an employee claim of occupational COVID19.

## Connecticut

Executive Order 7JJJ on July 24, 2020 established a rebuttable presumption that any employee who lost a day of work between March 10, 2020 and April 6, 2020 due to COVID-19 contracted the disease during the course of employment. Further, any essential employee who lost a day of work between April 7, 2020 and May 20, 2020 due to COVID-19 is presumed to have contracted the disease during the course of employment. Conditions are:

- That such employee worked, at the direction of the employer, outside the home during at least one of the fourteen days immediately preceding the date of injury and had not received an offer or directive from said employer to work from home instead of from his or her place of employment.
- The date of injury for an essential employee who has contracted COVID-19 shall be the date between March 10, 2020 and May 20, 2020 that the employee was first unable to work or died due to a diagnosis of COVID-19 or to symptoms that were diagnosed as COVID-19, whichever occurred first.
  - Such employee would have to have been employed by an employer deemed essential by the Department of Economic and Community Development pursuant to Executive Order 7H.

The date of injury for any employee not deemed essential who has contracted COVID-19 shall be the date between March 10, 2020 and April 6, 2020.

Diagnosis must be confirmed by test or physician.

- Wage benefits paid will be offset by other programs in place.
- The presumption may be rebutted only if the employer or insurer demonstrates to a workers' compensation commissioner by a preponderance of the evidence, that the employment of the individual was not the cause of his or her contracting COVID-19.
- IMPACT: The impact of the order is limited in the sense that it applies only to those employees who contracted the disease between March 10, 2020 and May 20, 2020, inclusive. Additionally, the order appears to apply to all employees who contracted the disease between March 10, 2020 and April 6, 2020, inclusive, but applies only to employees of essential businesses who contracted the disease subsequent to April 6, 2020, but on or prior to May 20, 2020. The order can be found here: <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7JJJ.pdf>

## Florida

Directive 2020-05, issued March 30, 2020 by the Chief Financial Officer of the State of Florida, created a conclusive presumption (meaning regardless as to any other contributing factor, the claim will be compensable) for frontline state employees where, if an employee contracts COVID-19, the disease was contracted due to employment and is therefore a compensable workers compensation claim. Frontline state employees are defined to include the following:

- First Responders: Law enforcement officers, firefighters, emergency medical technicians or paramedics.
- Corrections officers and other employees whose official duties require physical presence in a state-operated detention facility.
- State Employees working in the healthcare field, whose duties require contact with persons as they are being tested for COVID-19 or otherwise known to be infected with COVID-19.
- Child Safety Investigators, whose duties require them to conduct welfare checks on behalf of minors.
- Members of the Florida National Guard, who are called to active duty for service in the State of Florida in response to COVID-19.

Florida already provides for compensability for occupational diseases contracted by first responders. However, the law is written such that burden of proof lies with the claimant to demonstrate that the disease was contracted as a result of employment.

- IMPACT: Florida will not contest workers compensation claims filed by frontline state employees, as defined above, who contract COVID-19. The directive can be found here:

<https://www.myfloridacfo.com/coronavirus/documents/CFO-Directive-20-05.pdf>

Of note is that on April 6, 2020 the Chief Financial Officer of the State of Florida issued Directive 2020-05M stating the following:

*“All Regulated Entities are reminded that section 440.09, Florida Statutes, requires an employer to provide workers’ compensation coverage if the employee suffers a compensable injury arising out of work performed in the course and scope of employment. First responders, health care workers, and others that contract COVID-19 due to work-related exposure would be eligible for workers’ compensation benefits under Florida law. See § 440.151, Fla Stat. Insurers licensed to provide workers’ compensation coverage in Florida are reminded of this statutory requirement, which must be applied on a non-discriminatory basis. The OIR expects workers’ compensation insurers to comply with all of the provisions of Florida’s Workers’ Compensation Law and will take appropriate action in the event of non-compliance.”*

Note that while this order does not create a rebuttable presumption (i.e., move the burden of proof from the employee to the employer), it seems to indicate that COVID-19 related claims filed by the listed workers may be viewed favorably.

The Florida DWC published a report on statewide COVID-19 WC experience through August 31, 2020. The report may be found at:

<https://www.myfloridacfo.com/Division/WC/PublicationsFormsManualsReports/Reports/2020-COVID-19-September-Report.pdf>

Highlights of the report include:

- 17,653 WC COVID-19 claims were reported through August 31, 2020 in Florida.
  - Large increases in claim counts in June and July followed by August having lowest number of claims in a month since February
- The table below summarizes the claims experience through August 31 by insurer type:

Insurer Type	Reported Indemnity Claims	Denied Claims	Accepted Claims	Paid Benefits: Medical and Indemnity	Paid Benefits per Reported Claim	Paid Benefits per Accepted Claim
Private Insurer	8,697	5,000	3,697	\$7,988,703	\$919	\$2,161
Self-Insurer						
Private	2,750	1,092	1,658	\$2,897,109	\$1,053	\$1,747
Self-Insurer						
Government	6,206	1,668	4,538	\$11,641,808	\$1,876	\$2,671
<b>TOTAL</b>	<b>17,653</b>	<b>7,760</b>	<b>9,893</b>	<b>\$22,527,620</b>	<b>\$1,276</b>	<b>\$2,277</b>

Note that the information above does not include medical only claims and their associated costs.

## Hawaii

Hawaiian workers compensation law establishes a rebuttable presumption for every workers compensation claim, supported by strong case law:

- §386-85 Presumptions. In any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of substantial evidence to the contrary:
  - A. That the claim is for a covered work injury;
  - B. That sufficient notice of such injury has been given;
  - C. That the injury was not caused by the intoxication of the injured employee; and
  - D. That the injury was not caused by the willful intention of the injured employee to injure oneself or another.
- IMPACT: Workers compensation claims filed by health care providers, public safety employees, and occupations where extended contact with the general public is expected as part of employment will likely be compensable claims under current Hawaiian law, unless the employer can present substantial evidence that the illness was not acquired during the course of employment. The law can be found here:

[https://www.capitol.hawaii.gov/hrscurrent/Vol07\\_Ch0346-0398/HRS0386/HRS\\_0386-0085.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol07_Ch0346-0398/HRS0386/HRS_0386-0085.htm)

## Illinois

In early June, Governor Pritzker signed HB 2455 into law. The law creates a rebuttable presumption that any “COVID-19 first responder or front-line worker” that contracts COVID-19 on or after March 9, 2020 and on or before December 31, 2020 did so out of and in the course of employment and that the contraction is causally connected to the hazards or exposures of the employment.

- The term "COVID-19 first responder or front-line worker" includes first responders, all workers for health care providers, including nursing homes and rehabilitation facilities and home care workers, corrections officers, and any individuals employed by essential businesses and operations as defined in Executive Order 2020-10 dated March 20, 2020.
  - The lengthy list of essential businesses created in the Executive Order can be found here: <https://www2.illinois.gov/dceo/SmallBizAssistance/Documents/Essential%20Business%20Checklist3-22.pdf>
  - The law requires that employees encounter members of the general public or work in employment locations of more than 15 employees in order to be eligible for the presumption (i.e. home is not a place of employment, except for home care workers).
  - The law also requires an employee have a positive laboratory test for COVID-19 or COVID-19 antibodies.
    - For diagnoses prior to June 16, 2020, an employee may use a confirmed medical diagnosis by a licensed medical practitioner in lieu of a positive COVID-19 or COVID-19 antibody test.
- The law provides an explanation of evidence for a sound rebuttal, including but not limited to:
  - Demonstrating that an employee worked from home or was on leave for a period of 14 or more consecutive days immediately prior to the injury, disease or period of incapacity that resulted from exposure to COVID-19;
  - Enforcing, to the best of an employer’s ability, industry-specific workplace sanitation, social distancing, and health and safety practices based on updated guidance from the Centers for Disease Control and Prevention or Illinois Department of Public Health or was using a combination of controls and personal protective equipment to reduce the transmission of COVID-19 to all employees for at least 14 consecutive days prior to the employee’s injury, disease or period of incapacity that resulted from exposure to COVID-19; and
  - Proving that the employee was exposed to COVID-19 by an alternate source.
- The date of injury, disease or period of incapacity that resulted from exposure to COVID-19 is defined as the sooner of 1) the date that the employee was unable to work due to contraction of COVID-19 or 2) the date that the employee was unable to work due to symptoms that were later diagnosed as COVID-19.
- If an employee fails to qualify for the presumption, he/she may still file for compensation under the Workers’ Compensation Act.
  - Note that Illinois law before HB 2455 already provided a rebuttable presumption for firefighters, emergency medical technicians, emergency medical technician-intermediates, advanced emergency medical technicians, or paramedics for any blood borne pathogen, lung or respiratory disease or condition, heart or vascular disease or condition, hypertension, tuberculosis, or cancer resulting in any disability (temporary, permanent, total, or partial). However:
    - This applies only to individuals employed five years or more in the listed occupations.

- There are limitations based on the employer and job descriptions of certain first responders.
- It does not apply to healthcare workers that are not first responders.
- It does not apply to all the other listed occupations in the original emergency amendment
- Note that an employer receives a credit offsetting the cost of workers compensation benefits if the employee received compensation for sick leave or extended salary paid under the Emergency Family Medical Leave Expansion Act, Emergency Paid Sick Leave Act of the Families First Coronavirus Response Act, or any other federal law.
- The law also requires that any COVID-19 case increase not affect any employer's workers compensation insurance experience rating or modification. However, the law does allow for COVID-19 costs to be included in determining overall State loss costs.
- IMPACT: The law creates a presumption that any first responder or front-line employee who develops COVID-19 contracted the disease through the course of employment and are entitled to workers compensation benefits. This is a rebuttable presumption and may be contested if there is specific evidence that exposure was outside of employment. The popularity of the bill in both houses was likely driven by the broad scope coupled with clear guidelines on how to rebut the presumption. As written, the law promises that employers who fully document their adherence to sanitation guidelines will not be required to provide workers compensation benefits. However, it is important to realize that first responders that do not qualify for the presumption may still be eligible for benefits under existing Illinois law. The bill can be found here:  
<http://ilga.gov/legislation/fulltext.asp?DocName=&SessionId=109&GA=101&DocTypeId=HB&DocNum=2455&GAID=15&LegID=118463&SpecSess=1&Session=0>

Information regarding the now rescinded emergency amendment: The Illinois Workers Compensation Commission issued an emergency amendment on April 13, 2020 that created a rebuttable presumption for front-line workers who contract COVID-19, expanding the definition far beyond first responders and health care workers to include everything from grocery and pharmacy workers to hotel and funeral service employees.

- Illinois then expanded the presumption to include employees for newspapers, television, radio and other media services.
- Illinois defines an occupational disease as an illness or harmful condition which arises directly from employment or is aggravated by hazardous conditions in the workplace. These hazardous conditions must not be common to the general public. Illinois does have a section that defines rebuttable presumptions as respects certain diseases and conditions such as cancer, tuberculosis, etc. for firefighters and EMTs.
- The amendment would have been effective for 150 days, but it was not clear.
- IMPACT: The Illinois amendment potentially affected the largest number of employee classifications of all the jurisdictions on this list and has the potential to affect workers compensation costs for many more of our clients outside of public safety and healthcare with significant Illinois exposures. More importantly, the amendment did not specifically address removal from work during a quarantine period. The amendment addressed the compensability of workers compensation claims due to illness from COVID-19. The rebuttable presumption would have allowed any employee in the listed occupations who develops COVID-19 to file a worker's compensation claim where the burden of proof is on the employer (rebuttable presumption) to demonstrate that the disease was not the result of work-related exposure. The order and the complete list of occupations covered can be found here:

[https://www2.illinois.gov/sites/iwcc/news/Documents/15APR20-Notice\\_of\\_Emergency\\_Amendments\\_CORRECTED-clean-50IAC9030\\_70.pdf](https://www2.illinois.gov/sites/iwcc/news/Documents/15APR20-Notice_of_Emergency_Amendments_CORRECTED-clean-50IAC9030_70.pdf)

- On April 21, 2020, the Illinois Manufacturers' Association and Illinois Retail Merchants Association filed for a temporary restraining order on the emergency amendment.
- On April 23, 2020, a Sangamon County Circuit Court Judge entered a temporary restraining order blocking the emergency rule. The Illinois Workers' Compensation Commission was granted until April 30, 2020 to answer.
- On April 27, 2020, The Illinois Workers Compensation Commission withdrew the emergency amendment.

SB 0471 was signed into law on August 7, 2020. SB 0471 addresses compensation for disability caused by in the line of duty injuries for certain classes of public safety officers in Illinois who, due to Illinois law, are not eligible for workers compensation. SB 0471 extends the maximum period of disability for individuals out on disability due to line of duty injuries, but whose recovery period is lengthened due to the contraction of COVID-19. The bill, as passed, may be found at the following link:

<https://www.ilga.gov/legislation/BillStatus.asp?DocNum=471&GAID=15&DocTypeID=SB&LegId=116408&SessionID=108&GA=101>

## Kentucky

On April 9, 2020, Governor Beshear issued an order addressing workers compensation benefits for workers removed from the workforce due to exposure to the COVID-19 virus. The order includes first responders, health care workers, and other occupations (see point 3 on page 2 of the order). The order addresses wage replacement compensation during the period of removal for workers removed from the workforce by a physician due to occupational exposure to COVID-19. Employees removed from the workforce by a physician due to occupational exposure to COVID-19 are entitled to temporary total disability benefits during the period of removal regardless as to whether the claim is found to be compensable. Additionally, the 7-day waiting period for income benefits is waived, and benefits will be payable on the first day removed from work.

- In KY, occupational disease will be covered if there is a direct causal connection between the disease and employment.
- Employees in the select occupations are presumed to have been exposed due to employment.
- For all other Employees, there must be a causal connection between employment and COVID-19
- The order is in effect for the duration of the state of emergency in KY, or until rescinded by order or law.
- IMPACT: The order provides compensation benefits for workers displaced during the “removal period”, which possibly is analogous to the quarantine period. The order does not specifically address medical costs. Given that the order does not address the cost of claims if the exposure develops into disease, it is likely that current law and regulation would govern adjudication of claims filed by individuals who get sick. The cost impact is the additional wage replacement benefits paid due to elimination of the 7-day waiting period in KY for those workers who can establish a causal connection between their exposure and the workplace, and for the list of occupations where the order creates a presumed exposure. It is not clear how the treatment of the quarantine period in the order will translate into compensable workers compensation claims when quarantined employees develop COVID-19. It is likely that compensable claims will result. Additionally, it is not clear what the longer lasting impact of the order will be when, after it expires, claims for COVID-19 related illness continues to be filed. The order can be found here:

[https://governor.ky.gov/attachments/20200409\\_Executive-Order\\_2020-277\\_Workers-Compensation.pdf](https://governor.ky.gov/attachments/20200409_Executive-Order_2020-277_Workers-Compensation.pdf)

## Michigan

On March 18, 2020, Governor Whitmer issued an executive order (2020-125) which promulgated emergency rules that create a rebuttable presumption that first responders who develop COVID-19 are presumed to have developed the disease due to employment, provided they are quarantined at the direction of the employer due to confirmed or suspected COVID-19 exposure, receive a COVID-19 diagnosis from a physician, receive a presumptive positive COVID-19 test, or receive a laboratory-confirmed COVID-19 diagnosis. First responders covered under this provision include those working in health facilities or agencies, health care practitioners and professionals, paramedics, police officers, and firefighters (a full list is may be found in the order).

- Outside of the emergency rules, Michigan law provides for occupational disease but excludes ordinary diseases of life.

The presumption is strong and can only be rebutted if there are specific facts demonstrating that the employee was not exposed to COVID-19 at work.

The rule sunsets on 9/30/20, at which time it will be revisited.

On June 17, 2020, a second executive order (2020-128) was issued which expands the presumption to COVID-19 response employees, that is, employees whose job responsibilities require them to have regular or prolonged contact with COVID-19 in the course of their employment. On June 18<sup>th</sup>, another order was issued which clarifies terminology in the June 17<sup>th</sup> order.

The Michigan Supreme Court struck down executive order 2020-128 at the end of September. In response, the governor issued emergency rules on October 16, 2020, creating a rebuttable presumption for first response employees and health care employees. The presumption states that for purposes of the workers compensation, a COVID-19-first response employee who is confirmed as COVID-19 positive on or after March 18, 2020, either by physician or by test, shall be presumed to have suffered a work related injury. COVID-19 first response employee means an employee whose job responsibilities require them to have regular or prolonged contact with COVID-19 in the course of their employment, including:

- Ambulance operations
- County medical care facility
- Emergency response service-
- Home for the aged
- Hospice
- Hospital
- Nursing home
- Home health agency
- Visiting nurse association
- In person medical care: physician, physician assistant, licensed practical nurse, registered professional nurse, medical first responder, nurse, emergency medical technician, emergency medical technician specialist, paramedic, respiratory therapist, etc.
- Law enforcement officers

The emergency rules expire on March 20, 2021 and may be found at the following link:

[https://www.michigan.gov/documents/lara/2020-211\\_LE\\_-\\_Emergency\\_Rule\\_-\\_Workers\\_Disability\\_Compensation\\_Agency\\_General\\_Rules\\_705268\\_7.pdf](https://www.michigan.gov/documents/lara/2020-211_LE_-_Emergency_Rule_-_Workers_Disability_Compensation_Agency_General_Rules_705268_7.pdf)

## Minnesota

On April 8, 2020, Governor Walz signed into law legislation to provide worker compensation for first responders who contract COVID-19 on the job. H.F. 4537 provides a rebuttable presumption for a first responder who contracts COVID-19, confirmed by a laboratory test or diagnosed by a licensed physician, physician's assistant or advanced practice nurse if a test is not available. Covered workers include licensed peace officers; firefighters; paramedics; nurses; correctional officers and security counselors employed by the state or at a corrections, detention or secure treatment facility; emergency medical technicians; nurses or health care workers with direct or ancillary COVID-19 patient care; and those required to provide child care to first responders and covered health care workers.

- Outside of H.F. 4537, Minnesota law provides a rebuttable presumption that first responders who become ill due to communicable disease are presumed to have developed that disease if they were exposed during the course of employment outside of a hospital setting. The presumption is rebuttable if the employer or insurer can demonstrate substantial factors rebutting the presumption.
- H.F. 4537 does the following:
  - Specifically expands the presumption to include the virus.
  - Establishes two simple conditions for a compensable workers compensation claim:
    - The individual must be a member of the class of occupations addressed by the law (see list of occupations beginning on line 3.27 of the published law).
    - There needs to be a diagnosis of COVID-19, either by test or medical examination.
  - Makes it more difficult for an employer/insurer to rebut the claim: The employer/insurer must demonstrate that employment WAS NOT the source of the infection (i.e. rebuttable presumption).
- The law is effective immediately and sunsets on May 1, 2021.

IMPACT: Creates a rebuttable presumption of compensability for workers in the listed occupations who develop COVID-19. The law can be found here:

[https://www.revisor.mn.gov/bills/text.php?number=HF4537&type=bill&version=0&session=ls91&session\\_year=2020&session\\_number=0](https://www.revisor.mn.gov/bills/text.php?number=HF4537&type=bill&version=0&session=ls91&session_year=2020&session_number=0)

## Missouri

Governor Parson announced he has directed the Missouri Department of Labor and Industrial Relations to implement an emergency rule that will provide workers compensation benefits to first responders who contract COVID-19. The emergency rule will create a presumption that first responders who contract COVID-19 did so in the line of duty and allow them to make a claim under the Missouri Workers' Compensation law to cover the expenses incurred, according to a statement. The rule is effective April 22, 2020.

- Missouri law provides for workers compensation benefits for occupational disease. The law allows for an injury due to a communicable disease of life, but only if “the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability.” The “prevailing factor” is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.”
- Minus the Governor’s emergency rule, first responders would have to demonstrate that they caught the disease because of exposure at work. The Governor’s emergency rule creates a rebuttable presumption that a first responder who develops the disease was exposed at work.
  - By rebuttable presumption, the rule allows for subsequent investigation establishes “by clear and convincing evidence” that the claimant did not have virus, or that the source of exposure was not work related.
- The order does not affect health care workers (who are not first responders) or any other worker classification.
- The rule expires 2/1/2021.
- IMPACT: Creates a rebuttable presumption of compensability for workers in the listed occupations who develop COVID-19. There published rule can be found here:  
[https://labor.mo.gov/sites/labor/files/8\\_CSR\\_50-5.005\\_Emergency\\_Final.pdf](https://labor.mo.gov/sites/labor/files/8_CSR_50-5.005_Emergency_Final.pdf)

## New Hampshire

New Hampshire law provides for compensability for occupational disease that arose due to employment. On March 13, 2020, the governor issued Executive Order 2020-04 declaring a state of emergency due to COVID-19. On April 24, 2020, the governor issued emergency order #36 which creates a rebuttable presumption that a first responder who contracts COVID-19 contracted the disease due to exposure at work.

- The emergency order is in effect for the duration of the emergency declared in Executive Order 2020-04.
- IMPACT: The emergency order shifts the burden of proof from the claimant to demonstrate that the COVID-19 was contracted due occupational exposure to the employer to demonstrate that it was not. The order can be found here:

<https://www.governor.nh.gov/news-media/emergency-orders/documents/emergency-order-36.pdf>

On June 17, 2020, Emergency Order #53 added any member of the New Hampshire National Guard ordered into active state service pursuant to RSA 110-B:6 to the definition of first responders.

<https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/emergency-order-53.pdf>

## New Jersey

On September 14, 2020, SB2380 was signed into law. SB2380 creates a rebuttable presumption that COVID-19 infections contracted by essential employees are work-related for the purpose of employment benefits provided for work-related injuries and illnesses, including but not limited to, workers compensation benefits. This presumption may be rebutted by a preponderance of the evidence showing that the worker was not exposed to the disease. Additionally, this law provides that an essential employee's absence from work due to the employee contracting or being exposed to COVID-19 will be considered on duty time, and an employer is prohibited from charging the employee any paid leave for the absence.

Essential employee is defined by the law as:

- A public safety worker or first responder, including any fire, police or other emergency responders;
- An employee providing medical and other healthcare services, emergency transportation, social services, and other care services, including services provided in health care facilities, residential facilities, or homes;
- An individual whose job related functions require physical proximity to the public and are essential to the public's health, safety, and welfare. This includes transportation services, residential services (hotels, lodging, etc.), financial services, and the production, preparation, storage, sale, and distribution of essential goods such as food, beverages, medicine, fuel, and supplies for conducting essential business and work at home; or
- Any other employee deemed an essential employee by the public authority declaring the state of emergency. The following employees would be included in this definition:
  - grocery/food/pharmacy/medical supply store employees;
  - other retail functions;
  - construction; or
  - employees providing childcare services to essential employees.

The law is retroactive to March 9, 2020, the date of Governor Murphy's declaration of state of emergency with respect to the coronavirus disease 2019 pandemic and will remain in effect for the duration of the stage of emergency. The full text of the law may be found at the following link: [https://www.njleg.state.nj.us/2020/Bills/PL20/84\\_.HTM](https://www.njleg.state.nj.us/2020/Bills/PL20/84_.HTM)

## New Mexico

On April 23, 2020, the Governor issued Executive Order 2020-025. The order directs all state executive agencies to employ a presumption that certain agency employees and eligible volunteers who contracted COVID-19 suffered a compensable occupational disease under the New Mexico Occupational Disease Disablement Law.

- The presumption should be applied to all agency employees and eligible volunteers who contract COVID-19 within two weeks of providing direct assistance or care to COVID-19 patients, or within two weeks of working in any capacity inside a facility that provides direct assistance, care, or housing to COVID-19 patients.
- The term "eligible volunteer" means any volunteer or contractor temporarily assisting the State during the COVID-19 public health emergency who is otherwise eligible for compensation under the New Mexico Occupational Disease Disablement Law. Some examples of employees who should be afforded this presumption include but are not limited to emergency medical technicians and other first responders, volunteer and paid medical personnel, administrative and custodial staff at COVID-19-specific care centers, and law enforcement officers.
- The order also "encourages" local government employers and/or insurers to adopt the presumptions that this order requires of State employers and insurers.
- IMPACT: The order creates a presumption that state agency employees and eligible volunteers that provide direct assistance or care to COVID-19 patients and contract COVID-19 did so during the course of employment. The presumption appears to be conclusive and will remain in effect until the Governor rescinds it. The full text of the order may be found at the following link:  
<https://www.governor.state.nm.us/wp-content/uploads/2020/04/Executive-Order-2020-025.pdf>

## New York

Section 39 of New York workers compensation law states that an employee who becomes disabled or dies due “any and all occupational disease” contracted due to the nature of his employment, he or his dependents should receive benefits for the duration of his disablement or for his death.

- Paragraph 30 of the law allows for any disease in any employment.
- The resulting issue is whether COVID-19 is determined to be due to employment.

This is the same condition in almost all jurisdictions.

If these claims are filed, any litigation in the WC system would be over whether the contraction of COVID-19 is due to employment.

- On April 15, 2020 the Chair of the New York Workers Compensation Board issued a letter to insurance carriers and payers of workers compensation in New York. The key elements of the letter are as follows:
  - A. Being pro-active in distributing information about how to file a claim. Employees who develop COVID-19 during the course of their employment should be encouraged to file claims.
  - B. Informing your policyholder/employers that it is illegal under WCL § 120 to take any retribution or discriminatory act against an employee who asks for a claim form or indicates that he or she may file a claim.
  - C. Encouraging your policyholders to help their employees file claims.
  - D. Reviewing claims carefully and accepting liability whenever legally required.
  - E. Investigating the claim as quickly as possible, even if a medical report has not been received yet.
  - F. If you still aren't sure whether a claim is compensable, even with a medical report, consider using WCL § 21-a (payment without initially accepting liability), whenever possible, rather than disputing the claim.
  - G. If you do controvert a claim, please know that the Board will follow its Rocket-Docket procedures and resolve the claim quickly. No New Yorker should have to face a lengthy bureaucratic process in pursuit of workers' compensation benefits.
- IMPACT: It is likely that first responder and health care providers will be favored in disputes over compensability regarding COVID-19 related claims. It is possible that employees in other occupations that require consistent interaction with the general public and therefore potential exposure to the virus will also be favored in such disputes. At the same time, if there is evidence that the illness was not contracted through employment, claims can be denied. The letter can be found here:  
<http://www.wcb.ny.gov/content/main/TheBoard/Letter-from-Chair-Rodriguez-to-payers.jsp>

## North Dakota

On March 25, 2020 Governor Burgum signed Executive Order 2020-03. The order extends worker compensation coverage to first responders and health care providers who contract coronavirus on the job. The order covers an estimated 80,000 workers in the state. The executive order provides up to 14 days of medical and wage replacement benefits for first responders and health care workers who are quarantined. If workers test positive for COVID-19 and it is determined that they contracted the virus on the job, those employees are then eligible for full worker compensation benefits. The coverage is retroactive to begin March 13, 2020 — the date that the governor declared a state of emergency in North Dakota due to coronavirus.

- Outside of this executive order, North Dakota provides for occupational disease but excludes ordinary diseases of life. There are currently special provisions for certain occupations.
- The order ensures that anyone in the listed occupations who is quarantined or develops the disease is entitled to workers compensation benefits. Affected employees include public safety officers and health care workers.
- The order provides for benefits during the quarantine period and eliminates the 5-day waiting period.
- The order is effective for the duration of the state of emergency.
- The order also states that affected employees who test positive and can demonstrate that the exposure was work related will be eligible for workers compensation benefits.
- IMPACT: Aside from specifically identifying COVID-19 as a potential occupational disease, the order appears to only eliminate the waiting period for wage replacement benefits and provide those benefits during the quarantine period. The executive order may be found at the following link:  
<https://www.governor.nd.gov/sites/www/files/documents/executiveorders/Executive%20Order%202020-12%20WSI%20extension%20for%201st%20responders.pdf>

On July 28, 2020, the Governor signed Executive Order 2020-12.2, which extended the coverage of Executive Order 2020-03 to individuals the following classes of employees:

- A provider of treatment, care, programs or services to individuals with intellectual or developmental disabilities, licensed under North Dakota Century Code Chapter 25-16 or North Dakota Administrative Code Article 75- 04; and
- An employee of the Life Skills and Transition Center, as defined under North Dakota Century Code Chapter 25-04.

Coverage will extend to those employees who provide direct care and services to individuals with intellectual or developmental disabilities, if the employee is exposed to, or diagnosed with COVID-19 resulting from contact with an individual to whom services are being provided.

The executive order may be found at the following link:

<https://www.governor.nd.gov/sites/www/files/documents/Executive%20Order%202020-12.2.pdf>

## Oregon

On September 30, 2020 the Oregon Workers' Compensation Division adopted a new temporary rule, OAR 436-060-0141, in order to "promote appropriate and consistent processing of claims for COVID-19 or exposure to SARS-CoV-2."

- The rule requires that insurers conduct a "reasonable investigation" before denying any COVID-19 claim filed after September 30, 2020. A "reasonable investigation" has the following characteristics:
  - Investigating whether or not the nature of the worker's employment resulted in a likely exposure to COVID-19 or SARS-CoV-2;
  - Determining whether the worker did not work for a period of quarantine or isolation at the direction of a medical service provider, the Oregon Health Authority Public Health Division, a local public health authority as defined in ORS 431.003, or the employer, for purposes of discovering information that may be relevant to the compensability determination;
  - Obtaining a medical or other expert opinion if, before a compensability denial is issued, the worker tests positive for COVID-19 or a medical service provider diagnoses a presumptive case of COVID-19, the insurer is aware of the test results or presumptive diagnosis, and the source of the exposure is unclear; and
  - Determining whether medical services were required as a result of potential workplace exposure to COVID-19 or SARS-CoV-2, even if the worker ultimately did not test positive for COVID-19.
- If, as of Oct. 1, 2020, an insurer has reported to the director, as required by OAR 436-060-0011, five or more claims for COVID-19 or exposure to SARS-CoV-2, regardless of whether those claims have been accepted or denied, the director will audit the insurer's files for all denied claims for COVID-19 or exposure to SARS-CoV-2, for which the denial has become final by operation of law by the date of audit.
  - For claims filed before Oct. 1, 2020, the director's audit will focus on whether the insurer conducted a reasonable investigation as required by OAR 436-060-0140(1).
  - For claims filed on and after Oct. 1, 2020, the director's audit will focus on whether the insurer complied with the definition of reasonable investigation provided above.
  - The director retains the authority to audit additional insurers and claim files as the director determines appropriate.
  - Failure to comply with requirements subjects the insurer to civil penalties.
- The rule can be found in its entirety at the link below, which contains key definitions:  
[https://wcd.oregon.gov/laws/Documents/New\\_rules/WCD\\_15-2020TrackedChanges.pdf?utm\\_source=Sedgwick+Colleagues&utm\\_campaign=c39a33284e-EMAIL\\_CAMPAIGN\\_2020\\_03\\_04\\_06\\_30\\_COPY\\_01&utm\\_medium=email&utm\\_term=0\\_416abca461-c39a33284e-573017583](https://wcd.oregon.gov/laws/Documents/New_rules/WCD_15-2020TrackedChanges.pdf?utm_source=Sedgwick+Colleagues&utm_campaign=c39a33284e-EMAIL_CAMPAIGN_2020_03_04_06_30_COPY_01&utm_medium=email&utm_term=0_416abca461-c39a33284e-573017583)

## Puerto Rico

On June 1, 2020 the Governor of Puerto Rico signed into law Act No. 56-2020 (“Act 56”) to amend the Puerto Rico Workers’ Accident Compensation Act. The new law makes COVID-19 a compensable occupational illness for public and private-sector employees who contract the disease in the course of employment. This measure effectively creates a presumption that workers who are exposed to the public and contract COVID-19 did so through the course of employment and are eligible for workers compensation benefits.

- Puerto Rico has a compulsory workers compensation insurance system that covers employees’ work-related accidents or illnesses. This insurance, which is entirely employer-funded, is administered and can only be provided by the Puerto Rico State Insurance Fund Corporation (CSFE).
- Existing workers compensation law in Puerto Rico provided compensation to employees that contract specific occupational diseases in the course of certain operations (e.g. employees working at hospitals, clinics, and dispensaries, among others). Provided an employee working within the defined realms tests positive for an occupational disease, there is a presumption that “a causal relationship between the disease in the individual” exists “without reasonable doubt.”
- Act 56 extends this presumption to public and private employees working as:
  - Doctors,
  - Nurses,
  - Paramedics, and
  - Any other professional in the health in medical offices, hospitals, diagnosis and treatment centers or any another medical facility;
  - Laboratory employees;
  - Caregivers of senior centers;
  - State and municipal police, fire, rescue and emergency personnel; and
  - Any other personnel that the Administrator determines exposed to the virus contagion as a particular risk of its functions
- Act 56 also extends benefits to those employees who conclusively demonstrate, on a case by case basis, that the contagion with the virus occurred while carrying out activities inherent to their job.
- The law is effective retroactively to March 1, 2020. No termination date was listed.
- IMPACT: Act 56 extends Puerto Rico’s Workers Compensation Act’s presumption that occupational diseases are contracted on the job to healthcare workers, first responders, laboratory employees and caregivers that contract COVID-19. The presumption can also be extended to other professions, provided the Administrator determines that a particular employee was exposed to the virus as a particular risk of its functions. This potential expansion could apply to any and all workers who interact with the public during the pandemic. Further, if a worker is not covered under the presumption, he can still obtain benefits by proving that he contracted the virus in the course of his regular work. The order can be found here (in Spanish):

<https://noticiasmicrojuris.files.wordpress.com/2020/06/ley-56-2020.pdf>

## Utah

H.B. 3007 was passed on April 16, 2020 to create a rebuttable presumption to first responders who contract COVID-19 on the job.

- The law has the following highlighted provisions:
  - Defines terms
  - Establishes, under certain circumstances, a rebuttable presumption that a first responder who contracts COVID-19 contracted COVID-19 by accident during the course of performing the first responder's duties as a first responder.
  - Establishes a presumed date of accident for a first responder making a workers' compensation claim related to COVID-19.
  - Establishes an amount of benefits for a first responder who provides first responder services for minimal or no compensation or on a volunteer basis; and
  - Grants the Labor Commission rulemaking authority.
- First responder is defined as an emergency responder as defined in 29 C.F.R Part 826, Subpart C; or a health care provider as defined in 29 C.F.R. Part 826, Subpart C.
- An individual is diagnosed with COVID-19 if the individual, through a laboratory testing of a specimen the individual provides, tests positive for the virus that causes COVID-19 and is diagnosed with COVID-19 by a physician.
- Applies to a claim resulting from an accident arising out of and in the course of a first responder's employment or service on or after March 21, 2020 and before June 1, 2021.
- The date of accident is presumed to be:
  - The earlier of the day on which the first responder is diagnosed with COVID-19 and the first responder is unable to work because of a symptom of a disease that is later diagnosed as COVID 19.
  - Or the first responder's employment or service as a first responder terminates, if the first responder is diagnosed with COVID-19 within two weeks after the day on which the first responder's employment or service as a first responder terminates.
  - IMPACT: The law creates a presumption that first responders and healthcare workers who develop COVID-19 contracted the disease through the course of employment and are entitled to workers compensation benefits. This is a rebuttable presumption and may be contested if there is specific evidence that exposure was outside of employment. The bill can be found here:  
<https://le.utah.gov/~2020S3/bills/static/HB3007.html>
- On June 25, 2020, HB 5006 was signed into law, which modifies the definition of a first responder covered under UT's COVID-19 presumption and requires a positive COVID-19 test in order for a claimant to obtain workers compensation benefits. The law can be found at:

<https://le.utah.gov/~2020S5/bills/static/HB5006.html>

## Vermont

Senate Bill 342 creates a presumption for front line workers diagnosed with COVID-19 that the disease was contracted due to employment and is therefore compensable. Frontline workers are defined to include healthcare workers, public safety officers, grocery store workers, and others, including any worker whose employment places that worker at an elevated risk to contract COVID-19, similar to the other workers specifically listed.

- Additionally, the bill creates a presumption for other workers not listed as frontline workers where there is documented exposure during the course of employment.
- The presumptions may be rebutted if there is a preponderance of documented evidence that the disease was not contracted during the course of employment.
- The presumption is retroactive to March 1, 2020 and expires on January 15, 2021.
- IMPACT: The law creates a presumption that frontline workers who develop COVID-19 contracted the disease through the course of employment and are entitled to workers compensation benefits. The law also allows for non-frontline workers to file a compensable claim but requires documentation of exposure. This is a rebuttable presumption and may be contested if there is specific evidence that exposure was outside of employment. The bill can be found here:

<https://legislature.vermont.gov/Documents/2020/Docs/ACTS/ACT150/ACT150%20As%20Enacted.pdf>

## Washington

On March 5, 2020 Governor Inslee announced an executive directive to provide comp coverage for health care workers and first responders who are quarantined following exposure to the coronavirus. Under the clarified policy, the state Department of Labor and Industries will provide immediate benefits to these workers while quarantined. The benefits may include medical testing, treatment expenses if a worker becomes ill or injured, and time-loss payments for those who cannot work if they are sick or quarantined, according to a statement.

- The 3-day waiting period for income benefits is waived, and benefits will be payable on the first day removed from work.
- Labor and Industries has issued the following guidance on the compensability of COVID-19 claims: The Industrial Insurance Act allows for treatment of COVID-19 when work-related activity has resulted in probable exposure to the virus and certain criteria are met. In these cases, the worker's occupation must have a greater likelihood of contracting the disease because of the job (examples include first responders or health care workers). There must also be a documented or probable work-related exposure, and an employee/employer relationship. The following key criteria must be met:
  - Was there an increased risk or greater likelihood of contracting the condition due to the worker's occupation (such as a first responder or healthcare worker)?
  - If not for their job, would the worker have been exposed to the virus or contracted the condition?
  - Can the worker identify a specific source or event during the performance of his or her employment that resulted in exposure to the new coronavirus (examples include a first responder or healthcare worker who has treated a patient with the virus)?

If the above criteria are not met, it is not necessary to file a workers' compensation claim; however, a claim may still be filed if requested by the worker or if the provider is uncertain if the case meets the criteria.

- To receive benefits for a quarantine period, the employee must meet the above conditions AND the worker must have been quarantined by a public health officer or physician because of that exposure.
- The rules changes do not appear to have an expiration date.
- IMPACT: Aside from identifying COVID-19 as a potential occupational disease, the changes appear to only eliminate the waiting period for wage replacement benefits and provide those benefits during the quarantine period. More information can be found here:

<https://lni.wa.gov/agency/outreach/workers-compensation-coverage-and-coronavirus-covid-19-common-questions>

## Wisconsin

WI's Governor signed into law Act 185 that modified portions of the state's workers compensation law to allow first responders and healthcare workers to more easily file a claim for COVID-19. The law is effective April 15, 2020.

- Outside of Act 185, occupational disease is compensable in Wisconsin if the claimant establishes that employment was the sole source or a material contributing source of the disease.
- The law creates a rebuttable presumption that a first responder who develops COVID-19 and was exposed to individuals with COVID-19 during the course of employment, it is presumed that the disease was contracted through employment.
- First responders are defined as a volunteer or employed firefighter, law enforcement officer, medical provider who has regular, direct contact with, or is in close proximity to, patients or other members of the public requiring emergency services.
- There must be a specific diagnosis by a physician or a positive test result.
- This element of the law will end 30 days after the Governor terminates public health emergency.
- IMPACT: The law creates a presumption that first responders and healthcare workers who develop COVID-19 contracted the disease through the course of employment and are entitled to workers compensation benefits. This is a rebuttable presumption and may be contested if there is specific evidence that exposure was outside of employment. The law can be found here:  
<https://docs.legis.wisconsin.gov/2019/related/acts/185>

## Wyoming

On May 20, 2020, Governor Gordon signed SF 1002 into law. SF 1002 provides that for the period beginning January 1, 2020 through December 30, 2020, COVID-19 caused by the novel coronavirus and symptoms consistent with having contracted COVID-19 shall be considered an injury for purposes of the Wyoming Workers' Compensation Act and the nature of all employment for which coverage is provided by this act shall be presumed to increase the risk of contracting COVID-19.

- The law creates a rebuttable presumption that any employee who develops COVID-19 is presumed to have contracted the disease due to exposure through employment.
- The law further provides that no injury related to COVID-19 for which coverage is provided under this act and for which a claim was filed on or before December 30, 2020 shall be chargeable to an employer's experience rating.
- IMPACT: The law creates a presumption that any employee who develops COVID-19 contracted the disease through the course of employment and are entitled to workers compensation benefits. This is a rebuttable presumption and may be contested if there is specific evidence that exposure was outside of employment. The bill can be found here:

<https://wyoleg.gov/Legislation/2020/SF1002?specialSessionValue=1>

## FEDERAL ACTIVITY

To date, there have been approximately 40 proposed bills with the Congress addressing COVID-19 issues. Many of these bills address issues not directly related to benefits and compensation for workers who develop COVID-19. Only those bills (or laws, if enacted) directly addressing issues related to benefits and compensation for workers who develop COVID-19 are included in this section. Unless otherwise specified, details on the items in this section may be found at the following web address:

<https://www.congress.gov/search?q={%22source%22:%22legislation%22,%22congress%22:116}&searchResultViewType=expanded>

## ENACTED LEGISLATION AND REGULATORY CHANGES

### **S.3607 - Safeguarding America's First Responders Act of 2020**

Enacted August 14, 2020

This bill extends death and disability benefits under the Public Safety Officers' Benefits Program (PSOB) to public safety officers (e.g., law enforcement officers) and survivors of public safety officers who die or become injured as a result of COVID-19 (i.e., coronavirus disease 2019). The PSOB program provides death, disability, and education benefits to public safety officers and survivors of public safety officers who are killed or injured in the line of duty. For purposes of death benefits, this bill creates a general presumption that a public safety officer who dies from COVID-19 or related complications sustained a personal injury in the line of duty. For purposes of disability benefits, the bill creates a general presumption that COVID-19 or related complications suffered by a public safety officer constitutes a personal injury sustained in the line of duty.

### **Federal Employees Compensation Act Rule Changes**

The DOL modified the rules governing the adjudication of claims due to COVID-19 filed by federal workers, effectively creating a rebuttable presumption for high risk workers that the disease arose out of employment. This modification eliminates the requirement for a claimant to identify the exact time and place of exposure.

- The Federal Employees Compensation Act governs workers compensation claims filed by employees of the federal government. FECA is administered by the US Department of Labor (the DOL).
- High risk employees are described as “law enforcement, first responders and front-line medical and public health personnel, and among those whose employment causes them to come into direct and frequent in-person and close proximity contact with the public.”
- The modification also allows non-high-risk employees to file a claim, provided the claimant can provide evidence of the duration and length of his occupational exposure. This evidence may include information such as a description of job duties, which federal agency the employee worked for, and the location of the work.
- IMPACT: Creates a rebuttable presumption of compensability for high risk federal workers in the who develop COVID-19. A discussion may be found at:

<https://www.dol.gov/owcp/dfec/InfoFECACoverageCoronavirus.htm>

**PENDING LEGISLATION****HR 6207 Coronavirus Worker Relief Act**

In House Committee

The bill provides for unemployment benefits if the President issues an emergency declaration or major disaster declaration due to the coronavirus for a state or Indian tribe, the declaration shall be deemed to be a major disaster for the purpose of carrying out provisions regarding unemployment assistance. An individual in an area for which such a declaration is declared shall be eligible for unemployment assistance.

**HR 6220 Emergency Family and Medical Leave Expansion Act**

In House Committee

The bill provides for unemployment benefits for workers affected by the coronavirus. Employees would receive up to 12 weeks paid leave for a qualifying purpose during a public-health emergency with respect to the coronavirus (i.e., the virus that causes COVID-19). Specifically, an employee may use such leave if the employee is:

- ordered or recommended to self-quarantine by a government official or health care provider,
- caring for a family member who has been ordered or recommended to self-quarantine, or
- caring for the employee's child because the child's school or child-care provider is closed.

**HR 6379 Take Responsibility for Workers and Families Act**

In House Committee

This bill responds to the COVID-19 (i.e., coronavirus disease 2019) outbreak and its impact on the economy, public health, state and local governments, individuals, and businesses. The bill provides FY2020 supplemental appropriations for federal agencies to respond to the COVID-19 outbreak. The supplemental appropriations are designated as emergency spending, which is exempt from discretionary spending limits. In addition, the bill:

- expands paid sick days, family and medical leave, unemployment compensation, and food assistance programs;
- provides economic assistance payments of up to \$1,500 per individual;
- eliminates cost-sharing (e.g., deductibles, coinsurance, or copayments) for COVID-19 treatments and vaccines;
- requires health care facilities to implement a comprehensive infectious disease exposure control plan to protect health care workers;
- provides grants, loans, and other assistance to hospitals, small businesses, state and local governments, elementary and secondary schools, institutions of higher education, and airports;
- expands or establishes various tax credits; and
- establishes requirements for early voting and absentee voting.

The bill also modifies or expands a wide range of other programs and policies.

**HR 6656 Coronavirus Workers' Compensation for TSA Employees Act**

In House Committee

This bill entitles certain employees of the Transportation Security Administration who are diagnosed with COVID-19 during a specified period to federal workers' compensation benefits.

**HR 6909 Pandemic Heroes Compensation Act of 2020**

In House Committee

This bill allows essential workers and their family members to file claims and receive compensation for harm or death suffered as a result of COVID-19. A Special Master appointed by the Department of Justice must review claims submitted and determine if a claimant is eligible for compensation, the extent of the harm to the claimant, and the amount of compensation to be awarded.

**HR 6955 Essential Worker Pandemic Compensation Act of 2020**

In House Committee

Creates a program to provide full economic compensation to any essential COVID-19 frontline worker (or one or more representatives acting on behalf of a deceased essential COVID-19 frontline worker) who was seriously injured or died as a result of having COVID-19.

**HR 7031 Safeguarding America's First Responders Act of 2020**

In House Committee – Related Bill (S. 3607) Already Signed into Law

This bill extends death and disability benefits under the Public Safety Officers' Benefits Program (PSOB) to public safety officers (e.g., law enforcement officers) and survivors of public safety officers who die or become injured as a result of COVID-19 (i.e., coronavirus disease 2019). The PSOB program provides death, disability, and education benefits to public safety officers and survivors of public safety officers who are killed or injured in the line of duty. For purposes of death benefits, this bill creates a general presumption that a public safety officer who dies from COVID-19 or related complications sustained a personal injury in the line of duty. For purposes of disability benefits, the bill creates a general presumption that COVID-19 or related complications suffered by a public safety officer constitutes a personal injury sustained in the line of duty.

**HR 7341 Federal Workforce Health and Safety During the Pandemic Act**

In House Committee

This bill provides additional benefits and flexibilities for federal employees during the COVID-19 pandemic. Among other things, the bill

- allows federal employees to be reimbursed for the cost of child care or for the care of a relative who has COVID-19, if the employee is unable to provide such care due to work constraints;
- requires federal agencies to allow eligible employees to telework through December 31, 2020;
- allows federal employees who are unable to travel to, or perform work at, an approved worksite due to the pandemic to receive weather and safety leave; and
- establishes, and provides specified funds for, a pay differential for federal employees whose duties require a certain level of possible exposure to COVID-19.

**HR 7686 COVID-19 Essential Workers Compensation Fund Act of 2020**

In House Committee

Establishes a program to provide full compensation to any essential COVID-19 frontline worker who was seriously injured or died as a result of having COVID-19, and for other purposes.

**HR 7728 Benefits for Active Duty Servicemembers, the Reserve Components, and their Survivors Act of 2020**

In House Committee

Establishes presumptions of service-connection for members of the Armed Forces who contract COVID-19 under certain circumstances, and for other purposes.

**S. 3910 COVID-19 as a Presumptive Disease in Wildland Firefighters Act**

In Senate Committee

This bill entitles federal wildland firefighters who contract COVID-19 to federal workers' compensation benefits and also establishes certain testing and screening requirements for such firefighters during the wildfire season (May 15-November 15, 2020).

## **QUALIFICATIONS, ASSUMPTIONS, AND LIMITING CONDITIONS**

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