

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 June 16, 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 June 9, 2020 Edition

The following updates, listed by relevant section, have been included since the prior version of this document was released on June 9, 2020:

- **Enacted Legislation, Executive Orders, and Regulatory Directives**
 - AR: a new Executive Order classifies COVID-19 or any respiratory condition resulting from acute respiratory syndrome coronavirus 2 (SARS-CoV-2) as an occupational disease
 - FL: included data from the Division of Workers Compensation 2020 COVID-19 Report
 - PR: new law effectively creating a presumption that COVID-19 was contracted on the job for first responders, healthcare workers, caregivers and other occupations exposed to COVID-19.
 - US FECA: amendments by the DOL create a rebuttable presumption for high risk federal workers (law enforcement, and other front-line workers, for example) that the disease arose out of employment.
- **Pending Legislation and Other Activity**
 - CA: SB 1159 expected to be reviewed by the Senate Appropriates Committee this week
 - CO: SB 216 narrowly passed the Senate Finance Committee, but was postponed by the Senate Committee on Appropriations
 - KS: Governor stated intent to use federal money to cover high-risk workers that contract COVID-19 but have their workers compensation claims denied
 - US: H.R. 6909 would provide for the establishment of a COVID-19 Compensation Fund

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 June 16, 2020, the date this report was published. Updates will be published periodically.

	Relevant Legislation or Order	Effective Date	Sunset Date	Occupations Impacted
AK	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.
AR	<p>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.</p> <p>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.</p>	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.
CA	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.	3/19/20	7/5/20	All occupations.

	Relevant Legislation or Order	Effective Date	Sunset Date	Occupations Impacted
FL	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.
HI¹	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.	Current Law	None.	All occupations.
IL	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.

¹ 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.

	Relevant Legislation or Order	Effective Date	Sunset Date	Occupations Impacted
KY	Governor's order provides 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.
MI	Governor's order created a rebuttable presumption for employees who develop COVID-19 are presumed to have developed the disease due to employment.	3/18/20	9/30/20	First responders and healthcare workers.
MN	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.
MO	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.
ND	Governor's order provides workers compensation wage replacement (indemnity) and medical benefits for workers quarantined due to COVID-19 exposure. The 5-day waiting period for indemnity benefits was also suspended. The order also identifies COVID-19 as an occupational disease. However, employees must still prove that the exposure was work related to be eligible for workers compensation benefits beyond the quarantine period.	3/13/20	Duration of State of Emergency.	First responders and healthcare workers.
NH	Emergency order #36 creates a rebuttable presumption for first responders who contract COVID-19.	3/13/20	Duration of State of Emergency.	First responders.
NY	Existing law provides benefits to any worker who contracts "any and all occupational disease" due to the	4/15/20	None.	Likely first responders and healthcare workers will be favored during

	Relevant Legislation or Order	Effective Date	Sunset Date	Occupations Impacted
	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.			the claim adjudication process, but other occupations could be affected as well.
PR	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.
US FECA	New procedures promulgated by the DOL effectively create a rebuttable presumption for high risk federal employees covered under the Federal Employees Compensation Act (FECA) that COVID-19 arose out of employment.	3/31/20	None given.	High risk employees, including first responders and healthcare professionals
UT	HB 3007 creates a rebuttable presumption for first responders and healthcare workers who contract COVID-19.	3/21/20	6/1/21	First responders and healthcare workers.
WA	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.
WI	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.
WY	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.

CA As noted above, Governor Newsom issued an executive order on May 6, 2020 that creates a rebuttable presumption that any employee who contracts COVID-19 did so while working, thereby making a COVID-19 workers compensation claim a compensable workplace injury. The order is summarized in the prior chart and discussed in greater detail later in this document. The following is additional legislative activity California.

- A.B. 196 creates a conclusive presumption for certain employees who are employed in an occupation or industry deemed essential in the Governor’s Executive Order of March 19, 2020 (Executive Order N-33-20) and who develop COVID-19, that the disease arose out of and in the course of the employment and is therefore a compensable workers compensation claim; further, the bill extends that presumption following termination of service for a period of 90 days, commencing with the last date actually worked. The full bill can be read here:
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB196
- A.B. 664 would define “injury,” for certain state and local firefighting personnel, peace officers, certain hospital employees, and certain fire and rescue services coordinators who work for the Office of Emergency Services to include being exposed to or contracting, on or after January 1, 2020, a communicable disease, including coronavirus disease 2019 (COVID-19). The bill would create a conclusive presumption, as specified, that the injury arose out of and in the course of the employment. The full bill can be read here:
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB664
- S.B. 1159 would, until an unspecified date, define “injury” for a critical worker to include illness or death that results from exposure to coronavirus disease 2019 (COVID-19) under specified circumstances. The bill would create a rebuttable presumption that an injury that develops or manifests itself while a critical worker is employed arose out of and in the course of the employment. Critical worker is defined as a public sector or private sector employee who is employed to combat the spread of COVID-19. Specified circumstances are still being defined, but include: 1) COVID-19 is contracted in the service of an essential critical infrastructure employer, 2) the injury is confirmed by a positive laboratory test or documented by a physician based on symptoms, and 3) the injury results in hospitalization or significant lost time beyond the critical worker’s work shift at the time of injury. This bill has passed a senate committee and will be reviewed by the Senate Appropriations Committee on 6/18/20, after having been voted to the suspense file. The bill can be read in full at the following link:

http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB1159

The California Workers Compensation Institute recently evaluated the need for a rebuttable presumption of compensability for much of the workforce, as well as compared S.B. 1159 to Governor Newsom’s Executive Order. The study found that “even before the Order was signed, and while the ongoing debate over additional presumptions of coverage continues, the California workers’ compensation system was already evaluating and adjudicating compensability consistent with the Order.” The full study can be found here:

<https://www.cwci.org/document.php?file=4538.pdf>

- A.B. 2447 would ensure that private sector emergency medical service providers who contract with the government would be entitled to a presumption that post-traumatic stress disorder arose out of the workers’ employment, and therefore is a compensable condition. This bill can be read in full at the following link:

http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB2447

- A proposed amendment to S.B. 893 would have created a rebuttable presumption that hospital employees contracted novel coronavirus (COVID-19) out of and in the course of the employment. However, this bill did not pass the senate and was voted down. This presumption would have been extended to a hospital employee following termination of employment for a period of three calendar months for each full year of employment, but not to exceed 120 months, beginning with the last date worked in the specified capacity. The entire bill can be read in detail here:

http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB893

Outside of new legislation or an additional executive order, existing case law in California (Bethlehem Steel Company v. IAC) states that for a contracted disease to be compensable, it must “be shown that the disease contracted was not merely a hazard of the community but that the employee was subjected to some special exposure in excess of that of the commonalty.” It is therefore likely that first responder and health care providers will be favored in disputes over compensability regarding COVID-19 related claims that occurred prior to March 19, 2020. It is possible that employees in other occupations that require consistent interaction with the general public and are therefore exposed to the virus will also be favored in such disputes.

- CO** SB 216, introduced to the Senate on 6/2/20, would provide that an **essential worker** who works outside of the home contracts COVID-19, the contraction is presumed to have arisen out of and in the course of employment; and a compensable accident, injury, or occupational disease. The presumption may be overcome by clear and convincing evidence of specific causation establishing that the essential worker’s contraction of COVID-19 did not arise out of or in the course of the essential worker’s employment.

“Essential worker” means the following employees required to work outside of the employee’s home – first responders, corrections officers, medical, health care and public health workers, home health care workers, commercial cleaning workers, nursing home workers, utility workers and in home service technicians, construction or maintenance workers, workers at residential care or residential living facilities, food processing and agricultural workers, grocery store workers, drivers and operators, airline employees.

An essential worker is considered to have contracted COVID-19 if the worker tests positive for the virus that causes COVID-19, is diagnosed with COVID-19 by a licensed physician or has COVID-19 listed as the cause of death on the worker's death certificate.

The bill passed the Senate Finance Committee but was postponed by the Senate Committee on Appropriations on 6/10/20, thereby indefinitely delaying its acceptance.

KS The governor requested a rule extending a presumption of compensability for workers compensation COVID-19 related claims to **first responders, health care employees and other essential workers**. The request was made to the state Secretary of Labor. However, the state's attorney general said that only the state legislature has the constitutional authority to change workers compensation law. In Kansas, the attorney general must review all new rules and regulations.

On June 5, 2020, the Kansas legislature introduced three new bills that would have amended workers compensation law regarding occupational diseases to provide certain presumptions for compensation for COVID-19 with respect to **all employers**:

- SB 1 would have defined COVID-19 as an occupational disease for **all workers that come into** On June 5, 2020, the Kansas legislature introduced three new bills that would amend workers compensation law regarding occupational diseases to provide certain presumptions for compensation for COVID-19 with respect to **all employers: contact with or work in proximity to or in the same space as the public or co-workers**. The bill also would have created a rebuttable presumption that the COVID-19 disease arose out of and in the course of the employment in which the employee was engaged under such employer and was contracted while the employee was so engaged, and that the employment was the prevailing factor in causing the COVID-19. The bill would have also created a rebuttable presumption that the COVID-19 was the sole cause or the prevailing factor of any resulting disability, disablement, impairment or death. The bill would have been effective retroactively to January 1, 2020 and expired on May 1, 2021.

The bill died in the Senate Committee on Commerce.

- HB 2018 and HB 2007 would establish an identical presumption as outlined in SB 201, with identical effective and expiration dates. Both have been referred to the Committee on Commerce, Labor and Economic Development.

Both bills died in a House committee.

After the above bills died in the legislature, the Kansas Governor stated an intent to use federal money to cover high-risk workers that contract COVID-19 but have their workers compensation claims denied. The state is expected to receive \$1.2 B in federal grants for funding COVID-19 relief. The Governor was granted the discretion, with approval of the state Finance Council to spend this federal funding.

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.

<http://www.legis.la.gov/legis/ViewDocument.aspx?d=1168160>

MA H.D. 4949 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**.

<https://malegislature.gov/Bills/191/HD4949>

- H.D. 5050 and S.B. 2732 (previously S.D. 2924) are similar bills that create a rebuttable presumption that an employee who develops COVID-19 developed the disease due to employment. Applies only to **employees of the state or political subdivisions** within the state.

S.B. 2732 is now in the Joint Committee.

<https://malegislature.gov/Bills/191/HD5050>

<https://malegislature.gov/Bills/191/SD2924>

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.

- 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.
- 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.

MN The Minnesota Senate passed S.B. 4564, which would create a coronavirus relief fund with stipulations that such funds would help state government organizations cover workers compensation costs related to COVID-19, among other needs generated by the pandemic.

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.

- 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.

NJ A3999/S2380 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 bill 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. The bill defines "essential employee" as (1) an employee who is essential in support of gubernatorial or federally declared statewide emergency response and recovery operations; or (2) an employee in the public or private sector with duties and responsibilities, the performance of which is essential to the public's health, safety, and welfare. The bill will be retroactive to March 9, 2020, the date of Governor Murphy's declaration of state of emergency with respect to the coronavirus disease 2019 pandemic. The bill was introduced on May 4th, 2020 and passed by the Senate on May 14th, 2020. It is in the Assembly Labor Committee.

A3998 provides supplemental benefit payments to the dependents of essential employees who died in the course of employment due to the contraction of COVID-19. The supplemental benefits are intended to mirror COLA benefits in place for dependents of public safety workers killed in the line of duty and would be paid from the state's Second Injury Fund. "Essential employee" is defined as an employee in the public or private sector who, during a state of emergency, is a public safety worker or first responder, is involved in providing medical and other healthcare services, performs functions which involve physical proximity to members of the public and are essential to the public's health, safety, and welfare, or any other employee deemed an essential employee by the public authority declaring the state of emergency. The bill applies to deaths after March 1, 2020. The bill was introduced on May 4, 2020 and is now referred to the Assembly Labor Committee.

NY S. 8266 seeks 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. S. 8266 does not address compensability, rather, it appears 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 this bill would have if enacted into law. The bill is in committee. A comparable bill is in committee in the assembly (A. 101401). Note that NY is included in the prior list of states where there have already been actions implemented due to COVID-19.

OH HB 606 would create a rebuttable presumption that specific employees who contract COVID-19 contracted the virus in the course of and arising out of employment. This presumption applies only to employees of **retail food establishments and food processing establishments, peace officers, firefighters, emergency medical workers, and corrections officers** that contracted the coronavirus between March 9, 2020 (date of issuance of Executive Order 2020-01D) and December 31, 2020. The bill has passed the House and currently sits in the Senate Judiciary Committee.

Current OH law deems occupational diseases contracted in the course of employment as compensable injuries under workers compensation. However, most communicable diseases like COVID-19 do not result in a compensable injury, as the risk of contracting the diseases are not in a greater degree or a different manner than the general public. However, if an employee's job poses a special hazard or risk to contract COVID-19 in the workplace, a claim can be found compensable, even without presumption regulation.

At least six other bills have been introduced in the Ohio House and Senate that would alter workers compensation law to make COVID-19 an occupational disease. All these bills still sit in committees, and none have passed either legislature.

PA 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.

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 was introduced in the House on 4/13/20 and referred to House Labor and Industry Committee.

US S.3607, which passed the U.S. Senate, would extend benefits under the Public Safety Officers' Benefits program (PSOB) to **law enforcement, firefighters and other first responders** (local, state and federal) that contract COVID-19 by creating a presumption that the resulting injury from the disease was sustained in the line of duty by the officer.

Benefits under PSOB include death and disability benefits. The requirement to receive disability benefits is for the first responder to be "medically retired from service and ... permanently and totally disabled." As a result, the disability benefits appear likely to arise strictly due to COVID-19 exposure.

The answer to the question of whether these benefits would apply in addition to WC costs varies by jurisdiction. For example, Illinois' HB 2455 clearly states that employers obtain a "credit offsetting the cost of workers compensation benefits if the employee received compensation" from any "federal law."

The presumption would apply to first responders in a line of duty action or activity between January 1, 2020 and December 31, 2021.

H. R. 6909 would provide for the establishment of a COVID-19 Compensation Fund. The purpose of the fund is to provide for the cost of economic and non-economic damages to essential workers who contracted COVID-19. Essential worker is defined to be any employee determined to be essential during the response to the COVID-19 pandemic, as defined by local, state, territorial, tribal, or federal guidance. Collateral sources of compensation will offset any sums payable under this act.

The bill provides for a level of compensation for economic and non-economic damages suffered by essential workers who contracted COVID-19, net of any sources of collateral compensation. The bill leaves the determination of compensation and administration of the fund to a special master.

The bill has not been voted on.

VT 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. The bill passed the senate and is now in committee in the house.

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 sanitorium 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_20-35.pdf.

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.

- To be entitled to this presumption, an employee must show:
 - A. The employee was diagnosed with or tested positive for COVID-19 within 14 days of performing work at the employee's place of employment and under the employer's direction.
 - B. The work day at issue was on or after March 19, 2020.
 - C. The place of employment at issue was not the employee's place of residence.
 - D. When the employee was diagnosed with COVID-19, the diagnosis was done by a California board-certified physician and confirmed by further testing within 30 days of the initial diagnosis.
- The Law Offices of Mullen & Filippi created a helpful Presumption Flowchart which helps determine compensability. The chart can be found here: <https://www.mulfil.com/files/COVID-Presumptive-Claims-Flowchart.pdf>
- Further, the California Department of Industrial Relations created a helpful FAQ page concerning Governor Newsom's order, here: <https://www.dir.ca.gov/dwc/Covid-19/FAQs.html>
- The Executive Order will be in effect for 60 days from its issuance, or until July 5, 2020.
- IMPACT: The order creates a rebuttable presumption that any employee required to work at their employer's location who contracts COVID-19 and meets the criteria listed above contracted the disease due to employment. The order therefore switches the burden of proof from the employee having to demonstrate that he/she contracted the disease due to work to the employer having to demonstrate that the employee did not contract the disease due to work. Note that California is a relatively liberal jurisdiction with respect to the compensability of claims related to communicable disease. The primary difference is the order, by switching the burden of proof, greatly increases the likelihood of a finding of compensability even if the employer followed all protocols to prevent infection. Note that the order is effective retroactively from March 19, 2020 only through July 5, 2020. The shortened window of the order compared to original expectations led the WCIRB to reduce its mid-range estimate of expected costs due to the order to be \$1.1B to \$1.2B, for all insured and self-insured workers compensation programs combined. However, the WCIRB cost estimates do not account for the downturn in total claims as a result of the economic slowdown in CA and beyond. The order can be found here:

<https://www.gov.ca.gov/wp-content/uploads/2020/05/5.6.20-EO-N-62-20-text.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 May 31, 2020. The report may be found at:

<https://www.myfloridacfo.com/Division/WC/PublicationsFormsManualsReports/Reports/COVID-19-Dashboard-June-1-2020.pdf>

Highlights of the report include:

- 3,807 WC COVID-19 claims were reported through May 31, 2020 in Florida.
 - 33 were reported in January and February;
 - 1,923 in March, 1,558 in April, and 300 in May, illustrating the decline in claim incidence.
- The table below summarizes the claims experience through May 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	1,418	785	633	856,484	604	1,353
Self-Insurer Private	822	187	635	721,127	877	1,136
Self-Insurer Government	1,567	746	821	1,853,732	1,183	2,258
TOTAL	3,807	1,718	2,089	3,431,343	901	1,643

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

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

- 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.

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 continue to be filed. The order can be found here:

https://governor.ky.gov/attachments/20200409_Executive-Order_2020-277_Workers-Compensation.pdf

Michigan

On March 18, 2020, Governor Whitmer issued an executive order 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 (1 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.
- IMPACT: Creates a rebuttable presumption of compensability for workers in the listed occupations who develop COVID-19. The order can be found here:
https://www.michigantownships.org/downloads/workers_disability_compensation_agency_covid19_first_responder_er_684245_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

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

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>

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. Conducting an investigation into 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 an executive order that 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 can be found here:

<https://www.governor.nd.gov/sites/www/files/documents/executiveorders/Executive%20Order%202020-12%20WSI%20extension%20for%201st%20responders.pdf>

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>

United States Federal Employees Compensation Act

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>

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. Note that this bill is still moving through the legislative process and has not yet been presented to the Governor for signature.

- 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>.

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 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>.

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