

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 the date of publication of this report. 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.

Enacted Legislation Since the February 22, 2021 Publication

- **AR:** On March 15, 2021, Arkansas' Governor signed HB1488 into law. This bill codified what the Governor's executive orders accomplished during the State of Emergency by classifying COVID-19 and SARS-CoV-2 as occupational diseases under the state's workers compensation law. This bill does not create a presumption, as per existing law, an employee would need to provide evidence that the occupational disease was contracted on the job in order to obtain benefits.
- **DC:** B24-0058 and companion bill B24-0059 were signed by the Mayor on February 26, 2021 and March 17, 2021 respectively. Each classifies COVID-19 as a compensable injury under workers compensation law, if contracted in the course and scope of employment. Neither creates a presumption.
- **VA:** H.B. 1985 was signed into law on March 31, 2021. The bill establishes a rebuttable presumption that COVID-19 causing the death or disability of health care providers who as part of the provider's employment are directly involved in diagnosing or treating persons known or suspected to have COVID-19 is an occupational disease compensable under the Workers' Compensation Act.

S.B. 1375 was approved by the Governor and establishes a rebuttable presumption that COVID-19 causing the death or disability of firefighters, emergency medical services personnel, law-enforcement officers, correctional officers, and regional jail officers is an occupational disease compensable under the Workers' Compensation Act.

- **WY:** SF 19 was signed into law on April 6, 2021 and extended the presumption set out in SF 1002 to March 31, 2022. It also clarified immunity from liability for health care providers.
- **Federal:** H.R. 1319 - American Rescue Plan Act of 2021 was enacted March 11, 2021. The new law creates a conclusive presumption that "covered employees" who are employed in the Federal service at any time during the period beginning on January 27, 2020, and ending on January 27, 2023 and contract COVID-19 during such period contracted the disease in the course of employment and are subject to full workers compensation benefits. The employee must carry out duties that require contact with patients, members of the public, or co-workers or include a risk of exposure to the novel coronavirus contracted.

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 April 14, 2021, 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	HB 1488 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. The modification put forth by HB 1488 was originally covered by a pair of executive orders but was codified on March 15, 2021.	3/11/20	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.
AZ	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> .	5/15/20	No Limit	All entities involved in processing and adjudicating workers compensation claims in Arizona.
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. SB 1159 was passed by the California legislature and is expected to be signed into law by the Governor. SB 1159 extends	3/19/20	1/1/2023	All occupations are affected by SB 1159.

	Relevant Legislation or Order	Effective Date	Sunset Date	Occupations Impacted
	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.			
CT	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.
DC	B24-0058 and companion bill B24-0059 classify COVID-19 as a compensable injury under workers compensation law, if contracted in the course and scope of employment. It is important to note that this is not a presumption, but merely an addition of COVID-19 to the list of covered diseases.	2/26/21	None.	All employees.
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.
HI	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	Current Law	None.	All occupations.

	Relevant Legislation or Order	Effective Date	Sunset Date	Occupations Impacted
	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.			
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. Amendments to HB 4276 extended this presumption, without change, through June 30, 2021.	3/9/20	6/30/21	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. Amendments to HB 4276 extended this change through June 30, 2021.	3/9/20	6/30/21	Certain classes of public safety officers not covered by the workers compensation system.
KY	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	3/6/20	Duration of State of Emergency.	First responders, healthcare workers, grocery workers, postal service workers, and childcare workers.

	Relevant Legislation or Order	Effective Date	Sunset Date	Occupations Impacted
	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.			
MI	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
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 childcare 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. On January 15, 2021, the Division of Workers' Compensation established a new rule, identical to the rule created by the Governor's with some clarifications, that expires on July 30, 2021	4/22/20	7/30/21	First responders.

	Relevant Legislation or Order	Effective Date	Sunset Date	Occupations Impacted
ND	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.
NH	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.
NJ	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
NM	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	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.

	Relevant Legislation or Order	Effective Date	Sunset Date	Occupations Impacted
	Disease Disablement Law. The Order also encouraged local governments and insurers to adopt similar presumptions.			
NY	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.
OR	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.
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.
UT	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
VA	H.B. 1985 establishes a rebuttable presumption that COVID-19 causing the death or disability of health care providers who as part of the provider's employment are directly involved in diagnosing or treating persons known or suspected to have	3/12/20	12/31/21	Healthcare workers that treat or diagnose COVID-19 during the course of employment.

	Relevant Legislation or Order	Effective Date	Sunset Date	Occupations Impacted
	COVID-19 is an occupational disease compensable under the Workers' Compensation Act.			
	S.B. 1375 establishes a rebuttable presumption that COVID-19 causing the death or disability of firefighters, emergency medical services personnel, law-enforcement officers, correctional officers, and regional jail officers is an occupational disease compensable under the Workers' Compensation Act.	7/1/20	12/31/21	Firefighters, law-enforcement officers, correctional officers, and regional jail officers
VT	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. SB342 expired on 1/15/21. The Governor signed into law SB9, which extends the presumption created by SB342 to all workers and extends the expiration date to 30 days after termination of the state of emergency declared in response to COVID-19. SB9 is retroactive to 1/15/21, the expiration date of SB342.	3/1/20	30 days after termination of the state of emergency declared in response to COVID 19.	All workers after 1/15/21. Before 1/15/21, only frontline workers, and any worker who provides documentation of contact with an individual with COVID-19 in the course of employment.
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. SF 19 extended the presumption set out in SF 1002 to March 31, 2022.	1/1/20	3/31/22	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, are no longer under consideration, or have not had any activity for over 6 months are removed from this list over the course of time. Bills in italics have been added since the prior update.

- AK** *HB 45 would create a rebuttable presumption that EMTs, firefighters, healthcare providers, paramedics, peace officers, childcare givers, grocery store clerks and teachers who contract COVID-19 did so in the course of employment and are eligible for workers compensation benefits as a result. The bill would be retroactive to November 15, 2020. An employer can rebut claims by providing “clear and convincing evidence” that the employee contracted COVID-19 outside of work. Of note, the initial wording of this legislation is broad enough to apply to future circumstances where the governor enacts a “condition of disaster emergency” under Alaska law. That is, if future contagious diseases bring about another disaster emergency, those diseases would also be covered under the new wording in the bill. The bill has been pre-filed and can be found here: <http://www.akleg.gov/basis/Bill/Text/32?Hsid=HB0045A>*
- CA** *SB 213 would create a rebuttable presumption that hospital employees that contract COVID-19 did so in the course of employment and are eligible for workers compensation benefits. The bill would not come into effect until January 1, 2023, when the presumption in SB 1159 sunsets. The bill can be found here https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB213*
- CT** *HB 6478 (and companion bills HB 6595 and SB 1002) would create a rebuttable presumption that any employee not working at home that contracted COVID-19 during the time period of the public health and civil preparedness emergency declared by the Governor (beginning March 10, 2020), during any extension of such time period, and during any new public health and civil preparedness emergency declared by the Governor as a result of a COVID-19 outbreak did so in the course of employment and is entitled to workers compensation benefits. Further, the bill would require that the Workers' Compensation Commission provide a detailed report on the first business day of each month on COVID-19 workers' compensation claims, beginning on July 1, 2021, and ending on January 1, 2023. The bill can be found here: <https://www.cga.ct.gov/2021/TOB/H/PDF/2021HB-06478-R00-HB.PDF>*
- FL** *HB 949 (and companion bills SB 1314 and SB 1422) would create a rebuttable presumption that any emergency rescue or public safety worker that contracts an infectious disease during a public health emergency and was not exposed, outside of the scope of his or her employment, to any person known to have the infectious disease, contracted the disease in the line of duty is eligible for workers compensation benefits. The bill can be found here: <https://www.flsenate.gov/Session/Bill/2021/949/BillText/Filed/PDF>*
- GA** *HB 700 (and companion bill SB 291) would modify Georgia Code to state that COVID-19 is not an ordinary disease of life and that essential workers who contract the disease in the course of employment are eligible for workers compensation benefits. This would not create a presumption. The bill can be found here: <https://www.legis.ga.gov/legislation/60416>*

IA H.F. 121 (companion bill SF 138) creates a rebuttable presumption for COVID related workers compensation claims if an employee can show that the employee was exposed to a person infected with COVID-19 or similar disease while in the workplace. The presumption would apply to all employees. The bill may be found here:

<https://www.legis.iowa.gov/legislation/BillBook?ga=89&ba=hf121>

MA S.D. 236 creates a rebuttable presumption that any frontline healthcare worker, working in a healthcare facility or in the community, who has symptoms of or otherwise becomes infected with or is suspected to be infected with COVID-19 that results in a period of hospitalization, quarantine, or requires self-quarantine measures as a result of being infected or coming into contact with someone who is infected with the COVID-19 virus, developed the disease due employment and is entitled to workers compensation benefits. Additionally, the waiting period for benefits is waived. The presumption would be in place for the duration of that state of emergency. The bill may be found here:

<https://malegislature.gov/Bills/192/SD236>

MD H.B. 765 creates a rebuttable presumption that certain first responders (firefighters, rescue squad members, advance life support unit members, police officers, sheriffs, deputy sheriffs, and correctional officers), certain health care workers and child care workers, who developed COVID-19 acquired the disease in the line of duty or course of employment and are therefore entitled to workers compensation benefits. The bill may be found here:

<https://mgaleg.maryland.gov/mgaweb/Legislation/Details/HB0765>

HB 1199 (and companion bill SB 813) would create a rebuttable presumption that certain covered employees who suffer from SARS-CovV-2 are presumed to have an occupational disease contracted in the line of duty or course of employment and are therefore eligible for workers compensation benefits, provided they can procure a positive test or the written documentation confirming the diagnosis. Covered employees include:

- Firefighters, police officers and other first responders
- Transit and airport authority employees
- Correctional officers and security counselors
- Childcare and education workers
- Essential workers, as defined by local, state or federal State of Emergencies
- Healthcare workers

The bill explicitly states that the presumption may be rebutted only if the employer or insurer shows the employment was not a contributing cause of the disease.

Specific categories of workers can be found in the full bill, here:

<https://mgaleg.maryland.gov/2021RS/bills/hb/hb1199F.pdf>

SB 812 is similar to HB 1199, but would not create a presumption for childcare and education workers or essential workers. The bill can be found here:

<https://mgaleg.maryland.gov/2021RS/bills/sb/sb0812F.pdf>

HB 1247 (and companion bill SB 725) is similar to HB 1199, but would not create a presumption for childcare and education workers, essential workers, or healthcare workers. It would also broaden the presumption to apply to specified government employees. The bill can be found here:

<https://mgaleg.maryland.gov/2021RS/bills/hb/hb1247F.pdf>

SB 756 is similar to HB 1199, but would not create a presumption for correctional officers and security counselors, childcare and education workers, or essential workers. The bill can be found here:

<https://mgaleg.maryland.gov/2021RS/bills/sb/sb0756F.pdf>

SB 860 would create a rebuttable presumption that certain public school employees are presumed to have an occupational disease that is compensable under workers' compensation law after a certain positive test or diagnosis for COVID-19. Note that this bill would apply to all claims filed between March 1, 2020 and July 31, 2022. The entire bill can be found here:

<https://mgaleg.maryland.gov/2021RS/bills/sb/sb0860F.pdf>

ME *LD 997 would create a rebuttable presumption that a condition of impairment of health caused by an infectious disease resulting in total or partial disability or death of a corrections officer has been suffered in the line of duty, unless it is shown otherwise. The bill can be found here:*

<http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP0735&item=1&snum=130>

MI *SB 161 would create a presumption that essential workers who are exposed to an infectious disease during a declared emergency and contract the disease are presumed to have done so in the course of business and are therefore eligible to workers compensation benefits.*

<http://www.legislature.mi.gov/documents/2021-2022/billintroduced/Senate/pdf/2021-SIB-0161.pdf>

MN HF 6, HF 37, SF 105, HF 2, SF 719 and HF 9 would 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=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=HF37&type=bill&version=0&session=ls92&session_year=2021&session_number=0

https://www.revisor.mn.gov/bills/text.php?number=HF2&type=bill&version=0&session=ls92&session_year=2021&session_number=0

https://www.revisor.mn.gov/bills/text.php?number=SF719&version=latest&session=ls92&session_year=2021&session_number=0

HF 1203 would extend the sunset date of the existing COVID-19 presumption created by HB 4537 from May 1, 2021 to May 1, 2022. This bill sits in a Senate Committee. The bill may be found at the following link:

https://www.revisor.mn.gov/bills/text.php?number=HF1203&type=bill&version=0&session=ls92&session_year=2021&session_number=0

HF 2253 (and companion bill SF 2143) would extend the sunset date of the existing COVID-19 presumption created by HB 4537 from May 1, 2021 to December 31, 2021. This bill sits in a Senate Committee. The bill may be found at the following link:

https://www.revisor.mn.gov/bills/text.php?number=HF2253&type=bill&version=1&session=ls92&session_year=2021&session_number=0

MO HB 2549 (and similar bill SB 339) would classify certain infectious diseases as occupational diseases and would create a rebuttable presumption that firefighters and certain first responders including emergency and 911 dispatchers that contract SARS or any other disease as identified in a declared state of emergency did so in the course of employment. The bill can be found here: <https://house.mo.gov/billtracking/bills211/hlrbillspdf/2549H.01I.pdf>

MT HB 0297 (companion bill LC 2451) creates a conclusive presumption that nurses employed in a healthcare setting who develop COVID-19 developed the disease due to exposure at work. If signed into law, the law would apply retroactively to March 12, 2020 and would expire March 12, 2030. <https://leg.mt.gov/bills/2021/billpdf/HB0297.pdf>

NE L.B. 441 adds a presumption for COVID-19 related WC claims filed by essential workers. The presumption is rebuttable if an employer can affirmatively prove that the employee contracted the claim outside of the workplace. Essential workers are defined to include individuals required to report to work, whose job responsibilities include contact with or work in proximity to or in the same space as the public or co-workers in the course of employment, and who performs essential functions for society to continue operating. The detailed list of workers includes occupations ranging from health care workers to postal workers. The bill may be found here: <https://nebraskalegislature.gov/FloorDocs/107/PDF/Intro/LB441.pdf>

NM S.B. 0261 creates a rebuttable presumption for firefighters that contract “a virus or disease that has been declared a pandemic by the president of the United States, the governor of New Mexico, the world health organization or the federal centers for disease control and prevention, including the coronavirus disease and other future qualifying pandemics” contracted the disease during the course of employment and are entitled to workers compensation benefits. The bill may be found here: <https://www.nmlegis.gov/Sessions/21%20Regular/bills/senate/SB0261.pdf>

HB 268 would create a rebuttable presumption that essential employees that contract COVID-19 in a workplace that does not comply with public health orders related to COVID-19 did so in the course of employment and are therefore eligible for workers compensation benefits. Note that in order to receive workers compensation benefits, the employee must establish that the employer did not strictly comply with the public health orders related to COVID-19 in effect at any time during the fourteen days prior to the diagnosis.

An essential employee is defined as any public safety employee, any school employee, any employee of any business declared to be an essential business pursuant to a public health order of the governor or the secretary of health, or any employee of a business that has been permitted to operate with limitations pursuant to a public health order of the governor or the secretary of health.

This bill would also prohibit workers compensation insurers from using COVID-19 claims data in their rating plans.

The bill has passed a committee, and can be found in its entirety here: https://www.nmlegis.gov/Sessions/21%20Regular/Amendments_In_Context/HB0268.pdf

NY S. 1241 (and companion bill A.6117) would define COVID-19 as an occupational disease under existing workers compensation law for nearly any person whose work requires them to come into

contact with other human beings. The bill would not create a presumption but would rather provide benefits that already exist for occupational diseases under existing workers compensation law. A link to the full text is included below.

https://nyassembly.gov/leg/?default_fld=%0D%0A&leg_video=&bn=S001241&term=2021&Summary=Y&Text=Y

A.B. 1560 (companion bill S.B. 1963) creates a rebuttable presumption for volunteer firefighters that contract COVID-19 contracted the disease during the course of employment and are entitled to workers compensation benefits. The bill, if it becomes law, would be effective for the duration of the state of emergency. The bill may be found here:

https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=S01963&term=2021&Summary=Y&Text=Y

S. 3725 would establish that in the event of a pandemic declared by the World Health Organization, an employer that executes a business plan that provides reasonable and adequate protection from the pandemic disease for all persons employed therein will not be liable for any worker who contracts the pandemic disease on the job. In order for the employer to be immune from liability, the following conditions must be met:

- the place possesses a completed business safety plan;
- the place complies with its business safety plan;
- the business safety plan reasonably protects persons employed therein and persons who frequent the place; and
- the owners or employers of the workplace are not otherwise grossly negligent.

The bill can be seen in its entirety here:

https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=S03725&term=2021&Summary=Y&Text=Y

OR SB 488 (companion bill HB 3025) would add exposure to or infection by SARS-CoV-2 to definition of occupational disease for purposes of workers' compensation. The bill would also create a presumptions of compensability for occupational disease or occupational injury that apply to subject worker's death, disability, impairment of health, loss of work time and expenses of medical treatment or services, including diagnostic or preventive medical treatment or services, as result of exposure to SARS-CoV-2 or COVID-19. The bill in its entirety can be found here:

<https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB0488/Introduced>

OK H.B. 2239 amends the state's workers compensation law to create a rebuttable presumption that first responders who acquire COVID-19 did so within the course and scope of their employment. The presumption would apply to any claim filed on or after the effective date of the act and to any claim filed earlier if it was denied and an appeal was filed with the Oklahoma Workers Compensation Commission. The legislation defines first responders as police officers, firefighters, emergency medical technicians and volunteer firefighters. If signed into law, the legislation would take effect immediately. The bill may be found here:

http://webserver1.lsb.state.ok.us/cf_pdf/2021-22%20INT/hB/HB2239%20INT.PDF

PA *HB 1078 would create a presumption that "an individual employed by a life-sustaining business or occupation" that contracts, has symptoms of, or is otherwise exposed to an infectious disease during a declaration of a disaster emergency, a declaration of an epidemic or a public health emergency by the Governor, or a pandemic contracted the disease in the course of employment and is eligible for workers compensation benefits for all medical costs related to infection or exposure. The bill*

defines an "individual employed by a life-sustaining business or occupation" as a front-line employee or other individual who is employed by or under contract with a life-sustaining business or entity and who is required to work during a public health emergency. Specific types of employees are listed in the bill, which can be found here:

<https://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=HTM&sessYr=2021&sessInd=0&billBody=H&billTyp=B&billNbr=1078&pn=1114>

- RI** H.B. 5264 creates a rebuttable presumption that disability or quarantine resulting from COVID-19 or any other viral infection classified by an executive order issued during a declared state of emergency is a compensable occupational disease arising out of and in the course of an employee's employment. The presumption applies to frontline, healthcare, and other essential employees. The bill may be found here:

<http://webserver.rilin.state.ri.us/BillText/BillText21/HouseText21/H5264.pdf>

HB 5474 would create a conclusive presumption that any public safety official or other enumerated employee, including essential state workers, who contract COVID-19 did so as a result of the performance of their duties and would be entitled to workers' compensation benefits. The specific occupations impacted include "any public safety official, including but not limited to" police, fire, EMS, medical facility workers, correctional officers, dispatchers, paramedics, pharmacists, pharmaceutical technicians, grocery or retail workers, essential state and municipal employees, public transportation employees, parcel and freight delivery employees, and truck drivers and utility workers.

The bill would further prohibit any report of injury or claim relative to a disability related to the COVID-19 virus or the identity of any claimant from being reported to the Immigration and Naturalization Service.

This bill would take effect upon passage. The entire bill can be found here:

<http://webserver.rilin.state.ri.us/BillText/BillText21/HouseText21/H5474.pdf>

- SC** HB 3192 would establish a presumption that a first responder, health care 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, health care providers, and correctional officers required to isolate due to COVID-19 if certain conditions are met. The bill can be found at the following link:

https://www.scstatehouse.gov/sess124_2021-2022/bills/3192.htm

- TN** *SB 995 adds to those acquired infectious diseases for which an emergency rescue worker is given a presumption to have a disability suffered in the line of duty a virus or other communicable disease for which a pandemic has been declared by the World Health Organization or the federal centers for disease control and prevention, and for which the governor has declared a state of emergency. This bill has passed the Senate and the House and awaits the Governor's signature. The bill can be read here:*

<https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=SB0995>

- 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/HB000341.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/HB000471.htm>

SB 107, HB 3816 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/SB001071.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>

H.B. 1498 (companion bill SB 527) creates a rebuttable presumption that a detention officer, firefighter, peace officer, or emergency medical technician who contracts a disease that is the basis for a disaster declared by the governor for all or part of the state and dies or is totally or partially disabled as a result of the disease contracted the disease during the course and scope of employment as a detention officer, firefighter, peace officer, or emergency medical technician. Note that the senate companion bill differs from the house bill in that the senate bill does not include detention officers. The bill may be found here: <https://capitol.texas.gov/tlodocs/87R/billtext/pdf/HB014981.pdf#navpanes=0>

SB 612 would create a rebuttable presumption that school employees who suffer from COVID-19 on or after 2/1/20 contracted the disease during the course and scope of employment and are entitled to workers compensation benefits. The entire bill can be found here: <https://capitol.texas.gov/tlodocs/87R/billtext/html/SB006121.htm>

SB 433 and SB 439 would create a conclusive presumption that nurses who suffer from COVID-19 on or after 2/1/20 contracted the disease during the course and scope of employment and are entitled to workers compensation benefits. The entire bill can be found here: <https://capitol.texas.gov/tlodocs/87R/billtext/html/SB004331.htm>

SB 463 would create a conclusive presumption that firefighters, peace officers, or emergency medical technicians who contract a disease that is the basis for a disaster declared by the governor contracted the disease during the course and scope of employment and are therefore entitled to workers compensation benefits. The entire bill can be found here: <https://capitol.texas.gov/tlodocs/87R/billtext/html/SB004631.htm>

WAS.B. 5190 provides health care workers with presumptive benefits during a public health emergency. <http://lawfilesex.t.leg.wa.gov/biennium/2021-22/Pdf/Bills/Senate%20Bills/5190.pdf>

WI: AB 31 would establish a rebuttable presumption that an injury caused to a critical worker by COVID-19 during the period beginning on the effective date of the bill and ending on December 31, 2021, is presumed to be caused by the individual's employment. The presumption requires a diagnosis or positive test for COVID-19 and may be rebutted by specific evidence that the injury was caused outside of employment. Under the bill, the secretary of health services determines which workers are considered critical workers during the specified period. The bill can be found here: <https://docs.legis.wisconsin.gov/2021/related/proposals/ab31>

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_20-35.pdf

On March 15, 2021, Arkansas' Governor signed HB1488 into law. This bill codified what the Governor's executive orders discussed earlier accomplished during the State of Emergency: that is, the bill classifies COVID-19 and SARS-CoV-2 as occupational diseases under the state's workers compensation law.

- This bill does not create a presumption, as per existing law, an employee would need to provide evidence that the occupational disease was contracted on the job in order to obtain benefits.
- This bill also amends existing law to clarify that workers compensation remains as the exclusive remedy to workplace injuries for employees who are asked to perform work whereby exposure to COVID-19 and/or SARS-CoV-2 is possible, likely or certain.
- The bill is retroactive to March 11, 2020 and is in effect for claims filed through May 1, 2023.
- The bill can be found here:
<https://www.arkleg.state.ar.us/Bills/FTPDocument?path=%2FBills%2F2021R%2FPublic%2FHB1488.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>

District of Columbia

B24-0058 and companion bill B24-0059 were signed by the Mayor on February 26, 2021 and March 17, 2021 respectively. Each classifies COVID-19 as a compensable injury under workers compensation law, if contracted in the course and scope of employment.

- IMPACT: When these acts become law, they will not create a presumption as existing law requires the employee to contract the disease “in the course of and within the scope of employment.” Instead, they will merely classify COVID-19 as a compensable injury under workers compensation law. The acts can be found here:

https://lims.dccouncil.us/downloads/LIMS/46426/Signed_Act/B24-0058-Signed_Act.pdf

https://lims.dccouncil.us/downloads/LIMS/46427/Signed_Act/B24-0059-Signed_Act.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 publishes a monthly report on statewide COVID-19 WC. The most recent report, as well as older reports, may be found at:

<https://www.myfloridacfo.com/Division/WC/PublicationsFormsManualsReports/Reports/>

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. In early 2021, amendments to HB4276 extended this presumption to apply to cases contracted through June 30, 2021.

- 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.

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

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 18th, another order was issued which clarifies terminology in the June 17th 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

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

The original COVID-19 presumption rule, 8 CSR 50-5.00, which became effective April 22, 2020, expired on February 1, 2021. On January 15, 2021, the Missouri Division of Workers' Compensation adopted Emergency Rule 8 CSR 50-5.007, which replaces the expiring original rule. The new rule is a duplicate of the expiring rule, with some additional clarifications. The official title of the Rule is: “Evidence of Occupational Disease Exposure for First Responders.” The rule may be found here:

<https://www.sos.mo.gov/CMSImages/AdRules/main/EmergenciesforInternet/8c50-5.007IE.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

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-&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>

Senate Bill 9 extends the presumption for frontline workers created by Senate Bill 342 to all workers. The bill is retroactive to January 15, 2021 and expires 30 days after termination of the state of emergency declared in response to COVID 19. Senate Bill 9 was signed into law by the Governor. The bill may be found here:

<https://legislature.vermont.gov/Documents/2022/Docs/BILLS/S-0009/S-0009%20As%20Passed%20by%20Both%20House%20and%20Senate%20Official.pdf>

Virginia

H.B. 1985 establishes a rebuttable presumption that COVID-19 causing the death or disability of health care providers who as part of the provider's employment are directly involved in diagnosing or treating persons known or suspected to have COVID-19 is an occupational disease compensable under the Workers' Compensation Act.

- The bill provides that the COVID-19 virus is established by a positive diagnostic test for COVID-19 and signs and symptoms of COVID-19 that require medical treatment.
- The bill provides that such presumption applies to any death or disability occurring on or after March 12, 2020, caused by infection from the COVID-19 virus, provided that for any such death or disability that occurred on or after March 12, 2020, and prior to July 1, 2020, either of the following criteria must be met, and on or after July 1, 2020, and prior to December 31, 2021, both of the following criteria must be met:
 - The claimant received a positive diagnosis of COVID-19 from a licensed physician, nurse practitioner, or physician assistant after either a presumptive positive test or a laboratory-confirmed test for COVID-19 and
 - The claimant presented with signs and symptoms of COVID-19 that required medical treatment.
- The bill provides that such presumptions do not apply to any person offered by his employer a vaccine for the prevention of COVID-19 unless the person is immunized, or the person's physician determines in writing that immunization would pose a significant risk to the person's health.
- The presumption can be rebutted by “a preponderance of competent evidence to the contrary.”
- The bill was signed into law on March 31, 2021.
- IMPACT: The bill creates a presumption that health care workers who come into direct contact with COVID-19 during the course of employment and contract COVID-19 did so in the course of employment and are eligible for workers compensation benefits. The presumption is rebuttable, but the bill requires a preponderance of evidence to overcome a presumption and will likely serve as just cause for all healthcare workers exposed to COVID-19 on the job to be eligible for benefits, should they contract COVID-19. The bill may be found here:
<https://lis.virginia.gov/cgi-bin/legp604.exe?211+ful+HB1985EH1+pdf>

Further, S.B. 1375 establishes a rebuttable presumption that COVID-19 causing the death or disability of firefighters, emergency medical services personnel, law-enforcement officers, correctional officers, and regional jail officers is an occupational disease compensable under the Workers' Compensation Act.

- The bill provides that such presumption applies to any death or disability occurring on or after July 1, 2020 but prior to December 31, 2021, caused by infection from the COVID-19 virus.
- The claimant must have received a diagnosis of COVID-19 from a licensed physician, after either a presumptive positive test or a laboratory confirmed test for COVID-19 and presented with signs and symptoms of COVID-19 that required medical treatment.
- IMPACT: The bill creates a rebuttable presumption that certain first responders and public safety personnel contracting COVID-19 did so in the course of employment and are eligible for workers compensation benefits. The bill can be found here:
<https://lis.virginia.gov/cgi-bin/legp604.exe?212+sum+SB1375>

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>

On April 6, 2021 SF 19 was signed into law and extended the presumption set out in SF 1002 to March 31, 2022. It also clarified immunity from liability for health care providers. The bill can be found here:

<https://wyoleg.gov/Legislation/2021/SF0019>

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>

H.R. 1319 - American Rescue Plan Act of 2021

Enacted March 11, 2021

The bill creates a conclusive presumption that “covered employees” who are employed in the Federal service at any time during the period beginning on January 27, 2020, and ending on January 27, 2023 and contract COVID–19 during such period contracted the disease in the course of employment and are subject to full workers compensation benefits. The employee must carry out duties that require contact with patients, members of the public, or co-workers or include a risk of exposure to the novel coronavirus contracted.

PENDING LEGISLATION**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.

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