

State Legislative Action on Presumption of Workers' Compensation Eligibility

* In recent weeks, state legislatures have introduced bills seeking to establish presumptive eligibility for workers' compensation claims in response to the novel coronavirus (COVID-19) outbreak.

* We will provide daily updates documenting any relevant new bills and the current procedural posture of the existing legislation. Today, actions include:

- California referred an amended bill to the Senate Committee on Labor, Public Employment and Retirement to define “injury” for a hospital employee to include infectious diseases and respiratory diseases, and create rebuttable presumptions that these injuries arose out of and in the course of the employment.

* Most states that have introduced legislation establishing presumptive eligibility for workers' compensation claims follow this general framework:

- Provides a presumption of compensability—that may be refuted by affirmative evidence—that a covered employee contracted COVID-19 during the course of employment;
- Defines the contours of who qualifies as an eligible employee (e.g., peace officers, health care providers, food service workers, etc.); and
- Clarifies the duration of the application of the provisions.

Not every state has followed this model and some states deviate in important respects (e.g., application to all future pandemics, etc.). * If you operate in a state and notice that we have not included the most up-to-date legislative developments, please let us know.

Workers' Compensation Legislation

State	Bill	Procedural Posture	Presumption of Compensability	Applicable Employees	Other Provisions
Alaska	SB 241	ENACTED (Apr. 10, 2020)	<p>Yes. Provides that an employee who contracts COVID-19 is conclusively presumed to have contracted an occupational disease arising out of and in the course of employment if, during the public health disaster emergency declared by the governor on March 11, 2020:</p> <ul style="list-style-type: none"> • Is an applicable employee; • Is exposed to COVID-19 in the course of their employment; and • Receives a (1) COVID-19 diagnosis by a physician, presumptive positive COVID-19 test result, or (2) laboratory confirmed COVID-19 diagnosis. 	<ul style="list-style-type: none"> • Firefighters. • Emergency medical technicians. • Paramedics. • Peace officers. • Health providers. 	
California	AB 664	Passed Assembly (May 13, 2019), amended to account for COVID-19 in the Senate (Apr. 17, 2020)	<p>Yes. Creates a conclusive presumption that exposure/contracting of a communicable disease—including COVID-19—that is the subject of a state or local declaration of a state of emergency issued after January 1, 2020, arose out of and in the course of employment.</p> <p>Applies when applicable employees are directed to enter into quarantine by a licensed health care professional, a public health officer or agent, or employer.</p>	<ul style="list-style-type: none"> • Active firefighting members (whether volunteers, partly paid, or fully paid of certain fire departments). • Peace officers. • Health care employees who provide direct patient care in an accurate care hospital. • Fire and rescue services coordinators who work for the Office of Emergency Services. 	<p>Applies retroactively to injuries that occurred prior to the declaration of California's state of emergency.</p> <p>Defines the contours of the compensation that must be covered (e.g., full hospital, surgical, medical treatment, disability, indemnity, and death benefits, etc.).</p>

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	SB 1159	Amended, referred to Committee on Rules (Apr. 22, 2020)	<p>Yes. Provides that an “injury,” for the purposes of the state’s workers’ compensation law, that develops or manifests itself while a critical worker is employed is presumed to arise out of and in the course of the employment.</p> <p>Defines injury to include illness or death resulting from COVID-19 if all of the following circumstances apply:</p> <ul style="list-style-type: none"> • The injury develops or occurs during a period in which a critical worker is in the service of an essential critical infrastructure employer. • The injury is confirmed by a positive laboratory test or, if a laboratory test was not available, as diagnosed and documented by the critical worker’s physician based on the employee’s symptoms. • The injury results in hospitalization or significant lost time beyond the critical worker’s work shift at the time of injury of at least [X] days due to the illness. <i>Note, the number of days is not provided in the legislation.</i> <p>Provides that the presumption is disputable and may be controverted by other evidence.</p>	<ul style="list-style-type: none"> • A public or private sector employee who is employed to combat the spread of COVID-19. 	Provides no specified end date for the application of these protections.
	SB 893	Amended and re-referred to the Senate Committee on	<p>Yes. Provides that an “injury,” for hospital employees that develops or manifests itself while employed is presumed to arise out of and in the course</p>	Hospital employees who provide direct patient care in an acute care hospital (i.e., a health facility as defined in subdivision (a) or (b) of Section 1250 of the Health and	Addresses other workers’ compensation issues unrelated to COVID-

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		Labor, Public Employment and Retirement (Apr. 29, 2020)	<p>of the employment.</p> <p>Defines “injury” to a hospital employee to include infectious disease when any part of the disease or infection develops or manifests itself during a period of the person’s employment with the hospital.</p> <p>For an infectious disease (defined to include COVID-19), the presumption is rebuttable by other evidence, but, unless rebutted, the appeals board shall presume the infectious disease arose out of and in the course of the employment.</p> <ul style="list-style-type: none"> For respiratory diseases, (defined to include COVID-19) this presumption shall be extended to a hospital employee following termination of employment for a period of three calendar months for each full year of employment, but not to exceed 120 months, beginning with the last date actually worked in the specified capacity. The respiratory disease that develops or manifests in a hospital shall not be attributed to a disease that existed before that development or manifestation. 	Safety Code.)	<p>19.</p> <p>The compensation that is awarded for an infectious disease (defined to include COVID-19) shall include, but not be limited to, full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by the workers’ compensation laws of this state.</p>
Louisiana	SB 475	Introduced (Mar. 31, 2020)	Yes. Provides that every essential worker who is disabled because of the contraction of COVID-19—or the dependent of an essential worker whose death is caused by COVID-19—will be entitled to workers’ compensation the same as if the essential worker received personal injury by accident arising out of and in the course of	<ul style="list-style-type: none"> Persons working in public safety, government, disaster response, health care, or private business as designed and deemed necessary or critical for response to the COVID-19 pandemic by their employer or by virtue of their official commission. 	Details the requirements to file a claim.

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Massachusetts	HB 4949	Reported and referred to the Committee on Labor and Workforce Development (Apr. 6, 2020)	<p>Yes. Clarifies that, in any claim for compensation where the employee has been diagnosed with COVID-19, it will be prima facie evidence that:</p> <ul style="list-style-type: none"> • The employee was performing their regular duties at the time of contracting COVID-19; • The claim comes within the provisions of the state’s workers’ compensation laws; and • Sufficient notice of the injury has been given. 	<ul style="list-style-type: none"> • Emergency medical technicians. • Emergency room and urgent care medical personnel. • Emergency room and urgent care non-medical staff. 	
Minnesota	HF 4537 SF 4458	ENACTED (Apr. 14, 2020)	<p>Yes. Clarifies that an employee who contracts COVID-19 is presumed to have an occupational disease arising out of and in the course of employment if:</p> <ul style="list-style-type: none"> • The employee qualifies as an applicable employee; • The employee’s contraction of COVID-19 was confirmed by a positive laboratory test or, if a laboratory test is not available for the employee, as diagnosed and documented by the employee’s licensed physician, licensed PA, or licensed APRN, based on the employee’s symptoms. <p>Provides that the presumption is only rebuttable if the employer or insurer shows that the employment was not a direct cause of the disease.</p>	<ul style="list-style-type: none"> • Firefighter. • Paramedic. • Nurse or health care worker, correctional officer, or security counselor employed by the state or a political subdivision at a corrections, detention, or secure treatment facility. • Emergency medical technician. • A health care provider, nurse, or assistive employee employed in a health care, home care, or long-term care setting, with direct COVID-19 patient care or ancillary work in COVID-19 patient units. • Workers required to provide child care to first responders and health care workers under the state executive orders. 	Requires a copy of the positive laboratory test or the written documentation of the physician’s, PA’s, or APRN’s diagnosis to be provided to the employer or insurer.

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New York	AB 10239	Introduced; referred to the Governmental Employees Committee (Apr. 8, 2020)	<p>Yes. Provides that any “condition of impairment of health caused by, or naturally and proximately related to, COVID-19, resulting in partial or total disability or death to any member,” where such member is exposed to or comes into contact with COVID-19 and tests positive for COVID-19 will be presumptive evidence that such disability or death:</p> <ul style="list-style-type: none"> • Was the natural and proximate result of an accident not caused by such member’s own willful negligence; and • Was incurred in the performance and discharge of duty, <p>unless the contrary can be proved by competent evidence.</p>	<ul style="list-style-type: none"> • Members of the New York State Employees’ Retirement System. • Members of the New York State and Local Police and Fire Retirement System. • Members of the Coordinated-escalator Retirement Plan. • Members of the Coordinated Retirement Plan. 	Renders this effective for employees who contract COVID-19 on/after the day following final enactment, with a sunset on May 1, 2021.
	SB 8117A	Amended and recommitted to the Senate Committee on Local Government (Apr. 8, 2020)	<p>Yes. Declares that if applicable employees are exposed or come into contact with COVID-19 and test positive for COVID-19, it will then be presumptive evidence that any disability or death arising from COVID-19 was</p> <ul style="list-style-type: none"> • Caused by the natural and proximate exposure, not caused by the individual’s own negligence; and • Was incurred in the performance and discharge of duty and proximate result of an accident, <p>unless the contrary can be proven by competent evidence.</p>	<ul style="list-style-type: none"> • Law enforcement (e.g., sheriff, undersheriff, corrections officers, etc.). • Any paid officer or member of an organized fire company or fire department. • Emergency medical technician, advanced emergency medical technicians, or paramedics. • Probation officers or peace officers employed by the unified court system. • Members of the regional state park police, policy officers employed by other state or local agencies. • Fire inspectors, fire marshals, troopers, trooper investigators, etc. 	Creates a new section of the state’s workers’ compensation law to ensure that all essential employees—at private and public institutions—will have medical treatment covered if they contract COVID-19.

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Ohio	HB 573	Introduced (Mar. 23, 2020)	Yes. Provides that COVID-19 contracted by an employee who was required to work outside of their home during the state of emergency declared on March 9, 2020 constitutes a presumption, which may be refuted by affirmative evidence, that COVID-19 was contracted in the course of and arising out of the employee's employment outside of their home.	<ul style="list-style-type: none"> • Every person in the service of the state, or of any county, municipal corporation, township, school district, etc. • Off-duty peace officers. • Off-duty firefighters. • Off-duty first responders, emergency medical technicians, etc. • Every person in the service of any person, firm, or private corporation. • Every person who performs labor or provides services pursuant to a construction contract. • Every person who operates a vehicle or vessel in the performance of services for on behalf of a motor carrier transporting property. <i>See</i> OHIO REV. STAT. § 4123.01. 	Applies only to claims arising during the period of the emergency declared on March 9, 2020 and to claims arising during the 14-day period after that emergency ends.
	HB 571	Introduced (Mar. 23, 2020)	Yes. Provides that COVID-19 contracted by an applicable employee during the emergency declared on March 9, 2020 constitutes a presumption, which may be refuted by affirmative evidence, that COVID-19 was contracted in the course of and arising out of the employee's employment.	<ul style="list-style-type: none"> • Peace officer. • Firefighter. • Emergency medical worker. 	Applies only to claims arising during the period of the emergency declared on March 9, 2020 and to claims arising during the 14-day period after that emergency ends.
	HB 605	Introduced (Apr. 10, 2020)	Yes. Provides that COVID-19 contracted by an applicable employee during the emergency declared on March 9, 2020 constitutes a presumption, which may be refuted by affirmative evidence, that COVID-19 was contracted in the course	<ul style="list-style-type: none"> • An employee of a retail food establishment. • An employee of a food processing establishment. 	Applies only to claims arising during the period of the emergency declared on March 9, 2020.

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			of and arising out of the employee’s employment.		
Pennsylvania	HB 2396	Introduced; referred to the Labor and Industry Committee (Apr. 13, 2020)	<p>Yes. Provides that an individual employed by a life-sustaining business or occupation who is required to work who contracts, has symptoms of, or is otherwise exposed to an infection disease—including COVID-19 or any other novel virus or infectious disease during the declaration of a disaster emergency, the declaration of an epidemic or a public health emergency by the governor, or a pandemic—which results in a period of hospitalization, quarantine, isolation, or other control measures due to infection or exposure will establish a presumption that the individual’s medical condition or inability to work is work-related hazardous duty.</p> <p>Clarifies that an individual with an established presumption of work-related hazardous duty will be eligible and qualified for workers’ compensation for all medical costs related to infection or exposure.</p>	<ul style="list-style-type: none"> • First responders, including law enforcement officers, firefighters, emergency medical technicians, and other individuals who are considered first responders. • Correction officers. • Emergency services dispatchers. • Ambulance drivers. • Retail workers, including restaurant, food services, and grocery store workers; cashiers; and other support staff. • Food and agriculture workers. • Medical, health care, and public health workers, including doctors, nursing professionals, physician assistants, paramedics, and other support staff. • Pharmacists and any cashiers/other support staff. • Home health care workers. • Public utility workers. • Employees of state or local government. • Trash collectors. • Warehouse workers. • Any other individual employed by a “life-sustaining business or occupation” who is required to work during a public health emergency. 	Clarifies that a “life-sustaining business or occupation” is based on the list of businesses or occupations, as designated by the governor, that perform or conduct a range of vital operations, functions, and services that are essential to assisting the state in protecting people and their communities, while ensuring continuity of functions critical and essential to public health and safety.
Utah	HB 3007	ENACTED (Apr. 22,	Yes. Provides that a first responder who claims to have contracted COVID-19 during the performance of their duties as a	<ul style="list-style-type: none"> • Emergency responder. • Health care provider. 	Requires a first responder who makes a claim to provide a

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		2020)	<p>first responder, is presumed to have contracted COVID-19 by accident during the course of performing the first responder’s duties as a first responder if they are diagnosed with COVID-19:</p> <ul style="list-style-type: none"> • On or after March 21, 2020; and • While employed or serving as a first responder or if the first responder’s employment/service as a first responder terminates between March 21, 2020 and May 31, 2020, within two weeks after the day on which the first responder’s employment or service terminates. <p>Clarifies that an individual will be diagnosed with COVID-19 if the individual:</p> <ul style="list-style-type: none"> • Through laboratory testing of a specimen the individual provides, tests positive for the virus that causes COVID-19; or • Is diagnosed with COVID-19 by a physician. 		copy of the positive laboratory test or the written documentation of a physician’s diagnosis to the first responder’s employer or insurer.
Vermont	SB 342	Passed Senate (Apr. 27, 2020)	<p>Yes. Provides that the disability or death of a front-line worker resulting from COVID-19 will be presumed to be compensable, provided that the front-line worker receives a positive laboratory test or a diagnosis by a licensed healthcare provider for COVID-19 between March 1, 2020 and January 15, 2021. <u>For non-front-line workers</u>, provides death or disability may still be presumed compensable, if the employee receives a positive laboratory test or diagnosis for</p>	<ul style="list-style-type: none"> • Firefighter. • Law enforcement officer. • Ambulance service, emergency medical personnel, first responder service, and volunteer personnel. • A worker in a health care facility or in an institution or office where health care services are provided by licensed healthcare professionals. • Correctional officer. • A worker in a long-term care facility or residential care facility. 	Grants the Commissioner of Labor temporary authority to amend or waive certain requirements and deadlines under the workers’ compensation laws.

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			<p>COVID-19 between March 1, 2020 and January 15, 2021 and either:</p> <ul style="list-style-type: none"> • Had documented occupational exposure in the course of employment to an individual with COVID-19; or • Performed services at a residence or facility with residents/employees who (1) were present at the time services were performed and (2) either had COVID-19 at that time or were diagnosed with COVID-19 within a reasonable period of time after the services were performed. <p>Provides that the presumption of compensability may be rebutted if it is shown by a preponderance of the evidence that the disease was caused by non-employed-related risk factors/exposure.</p>	<ul style="list-style-type: none"> • A childcare provider that is required to provide childcare to the children of other front-line workers. • An employee of a pharmacy or a grocery store. • A home health care worker or personal care attendant. • A worker performing services that the Commissioner determines place the worker at a similarly elevated risk of being exposed to or contracting COVID-19 as the other occupations listed. 	
Wisconsin	AB 1038	ENACTED (Apr. 15, 2020)	<p>Yes. Where an injury to an applicable employee is found to be caused by COVID-19 during the public health emergency declared on March 12, 2020—and ending 30 days after the termination of the order—and where the employee has been exposed to persons with confirmed cases of COVID-19 in the course of employment, the injury is presumed to be caused by the individual’s employment.</p> <p>Permits an injury claimed to be rebutted by specific evidence that the injury was caused by exposure to COVID-19 outside of the applicable employee’s work for the</p>	<ul style="list-style-type: none"> • An employee of or volunteer for an employer that provides firefighting, law enforcement, or medical treatment of COVID-19, and who has regular, direct contact with, or is regularly in close proximity to, patients or other members of the public requiring emergency services, within the scope of the individual's work for the employer. 	Requires an injury claim to be accompanied by a specific diagnosis by a physician or by a positive COVID-19 test.

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			employer.		