

State Legislative Action on Presumption of Workers' Compensation Eligibility

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

* This tracker focusses on the 2021 legislative session. You can access the 2020 legislative session tracker [here](#).

* We will provide weekly updates documenting any relevant new bills and the current procedural posture of the existing legislation. This week's actions include:

- The Virginia House passed HB 2207, a bill that would create a rebuttable presumption that any firefighter, law-enforcement officer or correctional officer who contracts COVID-19 has an occupational disease suffered in the line of duty.
- The Maryland House introduced a bill, HB 765, that would create a rebuttable presumption that specified essential workers who contract COVID-19 have a compensable occupational disease that was suffered in the line of duty or course of employment.
- The Montana House introduced a bill, HB 297, that would create a conclusive presumption that a nurse who contracts COVID-19 contracted a compensable occupational disease arising out of and in the course of employment if he or she was exposed to COVID-19 in the course of employment.
- The Oklahoma House introduced a bill, HB 2239, that would create a rebuttable presumption for compensation under Oklahoma's workers' compensation law that a first responder who test positive for COVID-19 contracted it in the course and scope of employment.
- The Rhode Island House introduced a bill, HB 5264, that would create a rebuttable presumption that – for health care workers, public safety workers, essential workers and transportation workers – disability or quarantine resulting from COVID-19 or any other viral infection, during a declared state of emergency by executive order due to COVID-19 or other viral infection, is a compensable occupational disease arising out of and in the course of an employee's employment.
- The Wisconsin Assembly introduced a bill, AB 31, that would create a rebuttable presumption for compensation under Wisconsin's workers' compensation law that an injury caused to a critical worker by COVID-19 was caused by the individual's 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.

State	Bill	Procedural Posture	Presumption of Compensability	Applicable Employees	Other Provisions
Hawaii	HB 1224 / SB 1415	Introduced (Jan. 27, 2021)	Creates a rebuttable presumption for compensation under Hawaii’s workers’ compensation law that, for an employee who contracts COVID-19, the contraction was proximately caused by an employer’s failure to maintain adequate workplace protections against exposure to COVID-19.	<ul style="list-style-type: none"> • Everyone. 	Applies prospectively.
Iowa	HF 121 / SF 138	Introduced (Jan. 21, 2021)	Creates a rebuttable presumption that if an employee can show that they were exposed to a person infected with COVID-19 or a similar disease while in the workplace, the employee’s infection is an occupational disease for which an employer is liable for compensation under the Iowa occupational disease law.	<ul style="list-style-type: none"> • Employees who can show that they were exposed to a person infected with COVID-19 or a similar disease while in the workplace. 	Applies prospectively.
Maryland	HB 765	Introduced (Jan. 29, 2021)	Creates a rebuttable presumption that specified essential workers who contract COVID-19 have a compensable occupational disease that was suffered in the line of duty or course of employment.	<ul style="list-style-type: none"> • Firefighters. • Rescue squad members. • Advanced life support unit members. • Police officers. • Sheriffs and deputy sheriffs. • Correctional officers. • Health care workers. • Child care workers. 	Applies prospectively.

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Minnesota	HF 37 / SF 105 / HF 2	Introduction and referred to the House Labor, Industry, Veterans and Military Affairs Finance and Policy Committee (Jan. 11, 2021)	Creates a rebuttable presumption that teachers, school administrators and other employees who provide student-related services who contract COVID-19, are presumed to have an occupational disease arising out of and in the course of employment.	<ul style="list-style-type: none"> Teachers or school administrators employed by a school district, charter school, or nonpublic school. Contract employees that provides student-related services throughout the school year to a school district, charter school, or nonpublic school, including paraprofessionals, student support services personnel, school bus drivers, school nutrition staff, and custodial staff. Any other person employed by the school district, charter school, or nonpublic school or providing services to students under a contract with the school district, charter school, or nonpublic schools. 	Applies retroactively for employees who contracted COVID-19 on or after July 15, 2020 and prospectively until July 30, 2021.
Montana	HB 297	Introduced (Feb. 3, 2020)	Creates a conclusive presumption that a nurse who contracts COVID-19 contracted a compensable occupational disease arising out of and in the course of employment if he or she was exposed to COVID-19 in the course of employment as a nurse.	<ul style="list-style-type: none"> Registered professional nurses. Licensed practical nurses. 	Applies retroactively to March 12, 2020 and prospectively to March 12, 2030.
Nebraska	LB 441	Introduced (January 15, 2021)	Creates a rebuttable presumption that an essential worker who otherwise qualifies for workers' compensation is presumed to have	<ul style="list-style-type: none"> Peace officers. Firefighters. 	Applies both prospectively and retroactively to March 13, 2020.

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			<p>suffered from an accident arising out of and in the course of his or her employment if he or she is:</p> <ul style="list-style-type: none"> • confirmed as COVID-19 positive on or after March 13, 2020, either by physician or by test, • has COVID-19 listed as the cause of death on the essential worker's death certificate, or • is quarantined at the direction of the employer due to suspected COVID-19 exposure or the display of any COVID-19 symptoms. 	<ul style="list-style-type: none"> • Members of an emergency rescue team. • Emergency management workers. • On-call members of a life support agency. • State or local government employees that are required to work within the secured perimeter of a penal institution. • Employees of a youth rehabilitation and treatment center. • Employees of a regional center. • Food processing employees who are employed in a meatpacking operation. • Public or private school employees. • Grocery store employees. • Public works, utilities, or garbage disposal employees. • Truck drivers. • Mortuary or funeral home employees. • Childcare employees. • Postal service employees. • Any other individuals employed by an essential or life sustaining business or occupation. 	
New York	<u>A 2127</u>	Introduced (Jan. 14, 2021)	Created a rebuttable presumption that, for the purpose of workers compensation, treatment rendered by a medical provider for COVID-	<ul style="list-style-type: none"> • Medical providers. 	Applies prospectively.

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			19 was done on an emergent basis and therefor does not require prior authorization.		
North Dakota	HB 1433	Introduced (Jan. 18, 2021)	Creates a rebuttable presumption that an essential worker's exposure to and contraction of COVID-19 arose out of and in the course of employment and is presumed to be causally connected to the hazards or exposures of the essential worker's employment.	<ul style="list-style-type: none"> Essential workers. 	Applies retroactively to claims filed after March 24, 2020 and prospectively through July 31, 2023.
Oklahoma	HB 2239	Introduced (Feb. 1, 2021)	Creates a rebuttable presumption for compensation under Oklahoma's workers' compensation law that a first responder who test positive for COVID-19 contracted it in the course and scope of employment.	<ul style="list-style-type: none"> Peace officers and reserve peace officers. Firefighters and volunteer firefighters. Emergency medical technicians. 	Applies prospectively.
Oregon	SB 488 / HB 3025	Introduced in the Senate (Jan. 11, 2021); Introduced in the House (Jan. 21, 2021)	Creates a rebuttable presumption that essential workers who contract COVID-19, are presumed to have an occupational disease arising out of and in the course of employment.	<p>An employee who, at an employer's direction, must or may work at the subject worker's regular or temporarily assigned work site during a period in which a declaration of a state of emergency issued by the Governor is in effect and works in one of the following occupations:</p> <ul style="list-style-type: none"> Public safety personnel. Peace officers. Medical services providers. 	Applies prospectively until the 180th day following the expiration or termination of the Governor's March 8, 2020, declaration of emergency. (This sunset provision only appears in the Senate bill.)

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				<ul style="list-style-type: none"> • Employees of a retail store, including a grocery store. • Employees of a public, private or charter school. • Employees of a child care facility, who cares for the dependent of another essential worker. • Agricultural workers. • Janitorial worker who provides services in specified locations, buildings or facilities. • Employees whose workplace has more than 10 employees working at the work site and 10 percent or more of the employees at the work site have tested positive or presumptively positive for COVID-19. • Employees whose work place has less than 10 employees work at the work site and two or more employees at the work site have tested positive or presumptively positive for COVID-19. 	<p>Applies to compensation claims that were submitted and were pending but for which compensability was not yet determined before the effective date of this Act.</p>
<p>Rhode Island</p>	<p>HB 5264</p>	<p>Introduced (Jan. 29, 2021)</p>	<p>Creates a rebuttable presumption that for specified employees' disability or quarantine resulting from COVID-19 or any other viral infection, during a declared state of emergency by executive order due to COVID-19 or other viral infection, is a compensable occupational disease arising out of</p>	<p>Applies to the following employees if they have direct or indirect contact with persons with COVID-19 or other viral infections as classified by executive order during a declared state of emergency:</p> <ul style="list-style-type: none"> • Licensed health care workers and direct support 	<p>Applies prospectively.</p>

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			and in the course of an employee’s employment.	<p>professionals employed in a health care, congregate care, home care or long-term care setting.</p> <ul style="list-style-type: none"> • Public safety workers. • Essential workers (any employee whose employment is necessary for the continued health and safety of the community). • Transportation workers. • Any other class of employees designated by an executive order of the governor issued during a declared state of emergency. 	
Texas	<u>SB 433 / SB 439</u>	Introduced (Jan. 25, 2021)	Creates a presumption of compensability for nurses who have contracted COVID-19 during employment on or after February 1, 2020 and which results in disability or death.	<ul style="list-style-type: none"> • Nurses. 	Applies retroactively and prospectively to February 1, 2020.
Vermont	<u>S 9</u>	Passed by the Senate (Jan. 15, 2021); passed by the House (Jan. 21, 2021)	Extend the rebuttable presumption that certain workers who are diagnosed with COVID-19 are entitled to workers’ compensation for the disease from January 15, 2021 until 30 days after the termination of Vermont’s state of emergency declaration in response to COVID-19.	<ul style="list-style-type: none"> • Frontline workers. • Other workers who had a documented exposure to COVID-19 while working. 	Applies both retroactively and prospectively to January 15, 2021.

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Virginia	HB 1818	Introduced (Jan. 6, 2021)	Creates a rebuttable presumption for salaried and volunteer emergency medical services personnel that their death or disability from respiratory disease, hypertension or heart disease, and cancer will be presumed to be an occupational disease, suffered in the line of duty.	<ul style="list-style-type: none"> Salaried and volunteer emergency medical services personnel. 	Applies prospectively.
	HB 1985	Introduced (Jan. 11, 2021)	Creates a rebuttable presumption that any health care provider who as part of the provider's employment is directly involved in diagnosing or treating persons known or suspected to have COVID-19, are presumed to have an occupational disease suffered in the line of duty.	<ul style="list-style-type: none"> Any health care provider who as part of the provider's employment is directly involved in diagnosing or treating persons known or suspected to have COVID-19. 	Applies both prospectively and retroactively to January 1, 2020.
	SB 1342/ HB 2207	Introduced in Senate (Jan. 12, 2021); Introduced in House (Jan. 13, 2021); Passed in the House (Feb. 4, 2021)	Creates a rebuttable presumption that any firefighter, law-enforcement officer or correctional officer who contracts COVID-19 is presumed to have an occupational disease suffered in the line of duty.	<ul style="list-style-type: none"> Firefighters. Law-enforcement officers Correctional officers. 	Applies retroactively to those who contracted COVID-19 on or after March 12, 2020 and prospectively until December 31, 2021.
	SB 1375	Introduced (Jan. 13, 2021)	Creates a rebuttable presumption that any firefighter who contracts COVID-19 is presumed to have an occupational disease suffered in the line of duty.	<ul style="list-style-type: none"> Firefighters. If the firefighter was hired after January 1, 2021, s/he must have undergone a preemployment physical examination and found to be free of COVID-19. 	Applies retroactively to those who contracted COVID-19 on or after March 1, 2020 and prospectively to

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					those who meet the criteria of the bill.
Wisconsin	<u>AB 31</u>	Introduced (Feb. 3, 2021)	Creates a rebuttable presumption for compensation under Wisconsin’s workers’ compensation law that an injury caused to a critical worker by COVID-19 was caused by the individual's employment.	<ul style="list-style-type: none"> Critical workers (as determined by the Wisconsin Secretary of Health Services under the authority granted in 323.19 (3p)). 	Applies prospectively through December 31, 2021.