

## **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 Nebraska legislature introduced LB 441 which would create a rebuttable presumption that an essential worker who contracts COVID-19 and otherwise qualifies for workers' compensation is presumed to have suffered from an accident arising out of and in the course of his or her employment.
- The New York Assembly introduced a bill, A 2127, that would create a presumption for the purpose of workers' compensation that treatment rendered by a medical provider for COVID-19 was done so on an emergent basis and therefore does not require prior authorization.
- The North Dakota Assembly introduced a bill, HB 1433, which 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.
- The Oregon House introduced HB 3025 which would create 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. The bill is similar to SB 488 but removes the sunset provision.
- The Vermont bill, S 9, was passed by the Senate and introduced in the House. The bill would extend the presumption that frontline workers who are diagnosed with COVID-19 and other workers who have a documented exposure to COVID-19 while working are entitled to workers' compensation for the disease for 30 days after the termination of Vermont's state of emergency declaration in response to COVID-19. The previous deadline was January 15, 2021.

\* 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
<b>Minnesota</b>	<a href="#"><u>HF 37 / SF 105 / HF 2</u></a>	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"> <li>• Teachers or school administrators employed by a school district, charter school, or nonpublic school.</li> <li>• 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.</li> <li>• 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.</li> </ul>	Applies retroactively for employees who contracted COVID-19 on or after July 15, 2020 and prospectively until July 30, 2021.
<b>Nebraska</b>	<a href="#"><u>LB 441</u></a>	Introduced (January 15, 2021)	Creates a rebuttable presumption that an essential worker who otherwise qualifies for workers' compensation is presumed to have suffered from an accident arising out of and in the course of his or her employment if he or she is: <ul style="list-style-type: none"> <li>• confirmed as COVID-19 positive on or after March 13, 2020, either by physician or by test,</li> </ul>	<ul style="list-style-type: none"> <li>• Peace officers.</li> <li>• Firefighters.</li> <li>• Members of an emergency rescue team.</li> <li>• Emergency management workers.</li> <li>• On-call members of a life support agency.</li> <li>• State or local government employees that are required to work within the secured perimeter of a penal institution.</li> </ul>	Applies both prospectively and retroactively to March 13, 2020.

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			<ul style="list-style-type: none"> <li>• has COVID-19 listed as the cause of death on the essential worker's death certificate, or</li> <li>• is quarantined at the direction of the employer due to suspected COVID-19 exposure or the display of any COVID-19 symptoms.</li> </ul>	<ul style="list-style-type: none"> <li>• Employees of a youth rehabilitation and treatment center.</li> <li>• Employees of a regional center.</li> <li>• Food processing employees who are employed in a meatpacking operation.</li> <li>• Public or private school employees.</li> <li>• Grocery store employees.</li> <li>• Public works, utilities, or garbage disposal employees.</li> <li>• Truck drivers.</li> <li>• Mortuary or funeral home employees.</li> <li>• Childcare employees.</li> <li>• Postal service employees.</li> <li>• Any other individuals employed by an essential or life sustaining business or occupation.</li> </ul>	
<b>New York</b>	<a href="#">A 2127</a>	Introduced (Jan. 14, 2021)	Created a rebuttable presumption that, for the purpose of workers compensation, treatment rendered by a medical provider for COVID-19 was done on an emergent basis and therefor does not require prior authorization.	<ul style="list-style-type: none"> <li>• Medical providers.</li> </ul>	Applies prospectively.
<b>North Dakota</b>	<a href="#">HB 1433</a>	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	<ul style="list-style-type: none"> <li>• Essential workers.</li> </ul>	Applies retroactively to claims filed after March 24, 2020 and prospectively

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			connected to the hazards or exposures of the essential worker's employment.		through July 31, 2023.
<b>Oregon</b>	<a href="#">SB 488</a> / <a href="#">HB 3025</a>	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"> <li>• Public safety personnel.</li> <li>• Peace officers.</li> <li>• Medical services providers.</li> <li>• Employees of a retail store, including a grocery store.</li> <li>• Employees of a public, private or charter school.</li> <li>• Employees of a child care facility, who cares for the dependent of another essential worker.</li> <li>• Agricultural workers.</li> <li>• Janitorial worker who provides services in specified locations, buildings or facilities.</li> <li>• 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.</li> <li>• Employees whose work place has less than 10 employees work</li> </ul>	<p>Applies prospectively until the 180th day following the expiration or termination of the Governor's March 8, 2020, declaration of emergency. <b>(This sunset provision only appears in the Senate bill.)</b></p> <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>

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				at the work site and two or more employees at the work site have tested positive or presumptively positive for COVID-19.	
<b>Vermont</b>	<a href="#">S 9</a>	Introduced in the Senate (Jan. 12, 2021); Amended and passed by the Senate (Jan. 15, 2021); Introduced in the House (Jan. 15, 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"> <li>• Frontline workers.</li> <li>• Other workers who had a documented exposure to COVID-19 while working.</li> </ul>	Applies both retroactively and prospectively to January 15, 2021.
<b>Virginia</b>	<a href="#">HB 1985</a>	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"> <li>• 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.</li> </ul>	Applies both prospectively and retroactively to January 1, 2020.
	<a href="#">SB 1342/</a> <a href="#">HB 2207</a>	Introduced in Senate (Jan. 12, 2021); Introduced in House (Jan. 13, 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"> <li>• Firefighters.</li> <li>• Law-enforcement officers</li> <li>• Correctional officers.</li> </ul>	Applies retroactively to those who contracted COVID-19 on or after March 12, 2020 and prospectively until December 31, 2021.

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	<a href="#">SB 1375</a>	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"> <li>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.</li> </ul>	Applies retroactively to those who contracted COVID-19 on or after March 1, 2020 and prospectively to those who meet the criteria of the bill.