



Oregon

Kate Brown, Governor

Department of Consumer and Business Services

Workers' Compensation Division

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May 27, 2020

Representative Paul Holvey, Chair
House Interim Committee on Business and Labor
Via email

Dear Chair Holvey:

You asked the Workers' Compensation Division (WCD) for information about two items: 1) data about reported workers' compensation claims related to COVID-19; and 2) other states' presumption laws related to COVID-19.

Workers' Compensation Claim Data

We receive some reports of workers' compensation claims, except for accepted nondisabling claims (where only medical services were provided) and City of Portland Fire and Police Disability and Retirement claims (covered by a separate system). Insurers must report a claim to the division within 14 days of acceptance or denial.

The data is for claims where COVID-19 is specifically listed in claim documents reported *as of May 19, 2020*. About 75% of reported claims were accepted as disabling claims; the rest were denied.

	DISABLING	NON-DISABLING	TOTAL
ACCEPTED	212	(not reported)	212
DENIED	29	45	74
TOTAL	241	45	286

The division tracks claims by whether they are filed for COVID-19 exposure or the disease itself. Most claims reported so far have been for exposure. The table below shows both accepted and denied claims.

	DISABLING	NON-DISABLING	TOTAL
DISEASE	72	1	73
EXPOSURE	169	44	213
TOTAL	241	45	286

We also capture the industry where the worker is employed, as classified by North American Industry Classification System (NAICS). The vast majority of claims are in health care industry, which includes assisted living facilities. The next highest industry is public entities.

NAICS CODE	DESCRIPTION	COUNT
23	Construction	2
31-33	Manufacturing	5
45	Retail	1
48	Transportation and Warehousing	3
51	Information	1
56	Administrative and Support and Waste Management and Remediation Services	3
61	Educational Services	7
62	Health Care and Social Assistance	238
92	Public Administration	25
99	Unclassified Establishments	1
	Total	286

Presumptions in Other States

You also requested information about workers' compensation presumption laws in other states. Generally, a presumption shifts the burden of proof to support a workers' compensation claim. The attached tables outline the most recent available information we have about other states that enacted a presumption, with the caveat that the information changes daily.

We also included a list of other state actions that expanded compensability or benefits for COVID-19, without adoption of a presumption. The list includes hyperlinks to relevant information and law.

Please let us know if you have any questions.

Sincerely,



Sally Coen
Acting Administrator
Workers' Compensation Division

STATE PRESUMPTIONS RELATED TO COVID-19

Prepared by Oregon Workers' Compensation Division as of May 21, 2020

State & Method	Who it applies to	What is needed to trigger it?	Rebutting the Presumption	Effective Date
Alaska ¹ Legislation	Emergency response and health care employees <ul style="list-style-type: none"> • Firefighters • EMT's • Paramedics • Peace officers • Health care providers 	<ol style="list-style-type: none"> 1. Exposed to COVID-19 in the course of employment and 2. Receives a <ol style="list-style-type: none"> a. COVID-19 diagnosis by a physician, b. presumptive positive COVID-19 test result, or c. lab-confirmed COVID-19 diagnosis. 	Conclusive presumption (cannot rebut)	SB 241 was signed by the governor on 4/9/2020 but is retroactive to 3/11/2020 Only applies during the public health disaster emergency declared by the governor on 3/11/2020, as extended by the Act
California Governor's executive order	Workers	Any COVID-19 related illness of an employee shall be presumed to arise out of and in the course of employment if all of this is satisfied: <ol style="list-style-type: none"> 1. Employee tested positive for or was diagnosed with COVID-19 within 14 days after a day that the employee performed labor or services at the employees place of employment at the employer's direction; 2. The day in (1) above was on or after March 19, 2020; 3. The employee's place of employment referenced in (1) and (2) was not the employee's home or residence; and 	Presumption can be disputed and may be controverted by other evidence, but unless so controverted, Workers' Compensation Appeals Board is bound to find in accordance with it.	Effective 5/6/2020, applying to dates of injury occurring through 7/5/2020.

¹ [Bulletin 20-05](#) outlines the presumption

State & Method	Who it applies to	What is needed to trigger it?	Rebutting the Presumption	Effective Date
California, continued		<p>4. If (1) is satisfied with a diagnosis, the diagnosis was done by a physician with a California licensed physician and surgeon license and the diagnosis is confirmed by further testing within 30 days of the date of the diagnosis.</p> <p>An accepted COVID-19 related illness is eligible for all benefits applicable under the workers' compensation laws of the state. Paid sick leave benefits specifically available in response to COVID-19 must be used and exhausted before any temporary disability is due and payable. No waiting period for temporary disability. (See order for more details on what temporary disability is due.)</p>		
Florida CFO Directive	<p>"Frontline State Employee" includes:</p> <ul style="list-style-type: none"> • First responders (including law enforcement officers, firefighters, EMTs and paramedics) • Corrections officers • 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 it • 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 	Tested positive for COVID-19 through a reliable method	Preponderance of the evidence that a Frontline State Employee contracted COVID-19 outside his or her scope of employment as a state employee	<p>Eff. 3/30/2020</p> <p>Expires when it is rescinded by the CFO or superseded by an Executive Order of the Governor</p>

State & Method	Who it applies to	What is needed to trigger it?	Rebutting the Presumption	Effective Date
<p>Illinois (repealed)</p> <p>Emergency Rule</p>	<p>First Responders and Front-Line Workers</p> <ul style="list-style-type: none"> • Police • Fire personnel • EMT’s • Paramedics • First responders • Health care providers engaged in patient care • Correction officers • Crucial personnel identified under specified headings an Exec. Order 2020-10 – essentially workers of essential businesses and operations except for media 	<p>The injury or period of incapacity resulted from exposure to the COVID-19 virus during a COVID-19-disaster proclamation</p>	<p>Rebuttable</p>	<p>REPEALED ON 4/27/2020 after legal challenges were filed.</p> <p>Eff. 4/16/2020</p> <p>Only applied during a COVID-19-related state of emergency and it was only effective for a maximum of 150 days</p>
<p>Michigan (first rule, superseded)</p> <p>Emergency rule</p>	<p>Specified first responders, including certain</p> <ul style="list-style-type: none"> • Health care workers, • Police officers, • Firefighters, • Patrol officers, • On-call members of certain fire departments, • Volunteer civil defense workers, • EMT’s, and • Ambulance drivers 	<p>First responder meets one of the following:</p> <ul style="list-style-type: none"> • Is quarantined at the direction of the employer due to confirmed or suspected COVID-19 exposure. • Receives a COVID-19 diagnosis from a physician. • Receives a presumptive positive COVID-19 test • Receives a laboratory-confirmed COVID-19 diagnosis 	<p>Not rebuttable</p>	<p>Eff. 3/18/2020</p> <p>Superseded by new emergency rule on 3/30/2020</p>
<p>Michigan (second rule)</p> <p>Emergency rule</p>	<ul style="list-style-type: none"> • Persons working in ambulance operations, advanced mobile emergency care services, county medical care facilities, emergency services, emergency medical services, homes for the aged, hospices, hospitals, or nursing homes • Persons working in a home health agency or visiting nurse association. 	<p>Diagnosed with COVID-19, whether by a physician or as a result of a test.</p>	<p>“Unless proven otherwise” the claim is compensable</p>	<p>Eff. 3/30/2020</p> <p>Expires 9/30/2020</p>

State & Method	Who it applies to	What is needed to trigger it?	Rebutting the Presumption	Effective Date
Michigan (second rule) continued	<ul style="list-style-type: none"> • Physicians, PA's, nurse, EMT's, paramedics, and respiratory therapists • Police officers, including state police • Firefighters • On-call members of a life support agency • Members of emergency rescue team • Correctional officers 			
Minnesota Legislation	<ul style="list-style-type: none"> • Police officers; • Firefighters; • Paramedics; • Emergency medical technicians; • Nurses, health care workers, correctional officers, and security counselors employed by the state or a political subdivision at a corrections, detention, or secure treatment facility; • Health care providers, nurses, and assistive employees 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; and • Workers required to provide child care to first responders and health care workers under specified Executive Orders. 	A positive lab test for COVID-19 or, if a laboratory test was not available, a documented diagnosis by the employee's licensed physician, licensed physician's assistant, or licensed APRN, based on the employee's symptoms.	The employer/insurer may rebut the presumption by showing that employment was not a direct cause of the disease.	Eff. 4/8/2020 ² Sunsets 5/1/2021

² Workers who are not covered by the bill, or who contracted COVID-19 before today, may still file a claim for an injury or occupational disease, but, in those claims, the worker has the burden of proof.

State & Method	Who it applies to	What is needed to trigger it?	Rebutting the Presumption	Effective Date
Missouri Emergency rule	First responders, defined as: <ul style="list-style-type: none"> • Law enforcement officers • Firefighters • EMT's 	Contracted or is quarantined for COVID-19. Includes situations where the First Responder is quarantined at the direction of the employer due to suspected COVID-19 exposure, or the display of any COVID-19 symptoms, or receives a presumptive positive COVID-19 test, or receives a COVID-19 diagnosis from a physician, or receives a laboratory-confirmed COVID-19 diagnosis.	If subsequent medical determination establishes by clear and convincing evidence that the First Responder did not actually have COVID-19, or contracted or was quarantined for COVID-19 resulting from exposure that was not related to the First Responder's employment.	Adopted 4/8/2020 Eff. 4/22/2020 but allows for retroactive application. Expires when the state of emergency ends or when the emergency rule expires (2/1/2021)
New Hampshire Governor's emergency order	"First Responders" which includes any individual covered by the definition of "Emergency response/public safety worker" as set forth in RSA 281-A:2 V-c. As such, it is: <ul style="list-style-type: none"> • Call, volunteer, or regular firefighters • Law enforcement officers certified under RSA 106-L • Certified county corrections officers • Rescue or ambulance workers including ambulance service, emergency medical personnel, first responder service, and volunteer personnel 	Positive lab test for COVID-19, and having the case reported to Department of Health and Human Services	Rebuttable – prima facie presumption that exposure and infection were occupationally related	Signed 4/24/2020 and in effect for the duration of the State of Emergency declared in 2020-04

State & Method	Who it applies to	What is needed to trigger it?	Rebutting the Presumption	Effective Date
New Mexico Governor’s executive order	<p>All agency employees and 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.</p> <p>The order provides some examples of employees who should be afforded this presumption:</p> <ul style="list-style-type: none"> • EMT’s • Administrative and custodial staff at COVID-19 specific care centers • Law enforcement officers <p>Encourages local government employers or insurers to adopt the presumptions.</p>	<p>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 in a facility that provides direct assistance, care, or housing to COVID-19 patients</p>	<p>Not explicitly stated</p>	<p>Eff. 4/23/2020, in effect until rescinded by the Governor</p>
Utah Legislation	<p>“First responders” defined as:</p> <ul style="list-style-type: none"> • Emergency responders as defined in 29 C.F.R Part 826, Subpart C • Health care providers as defined in 29 C.F.R Part 826, Subpart C 	<p>A positive lab test for COVID-19 and a diagnosis of COVID-19 by a physician if the diagnosis is made while employed or serving as a first responder; or if the first responder’s employment or service terminates, within two weeks from that termination. Presumption will not apply if the first responder refuses examination or fails to be diagnosed with COVID-19.</p> <p>Death benefits are only payable if a claimant establishes by competent evidence that death was a consequence of or a result of COVID-19.</p> <p>Special provision about responsibility for volunteers and first responders with more than one entity.</p>	<p>Preponderance of the evidence</p>	<p>Eff. 4/22/2020</p>

State & Method	Who it applies to	What is needed to trigger it?	Rebutting the Presumption	Effective Date
Wisconsin Legislation	First responders (an employee or volunteer for an employer that provides firefighting, law enforcement, medical or other emergency services, and who has regular direct contact with, or is regularly in close proximity to, patients with COVID-19, or other members of the public requiring emergency services within the scope of the individual's work for the employer.)	COVID-19 diagnosis by a physician or a positive COVID-19 test	Rebuttable with specific evidence the injury was caused by something outside of the first responder's work for the employer	Eff. 4/17/2020 during the Public Health Emergency proclaimed by the Governor and ending 30 days after that order ends

Other state action that expands **compensability** or **benefits** for COVID-19:

[Arkansas](#): Governor issued an **executive order** broadening the standards of compensability, allowing some workers to obtain compensable COVID claims if they are diagnosed with the condition from exposure at work:

- **First responders** (fire, law enforcement, emergency response, emergency medical professionals, and others who in an early stage of an incident are responsible for the protection and preservation of life, property, evidence, and the environment);
- **Front-line healthcare workers** (those who treat, diagnose, care, or mitigate COVID-19, assess or care for an individual with a confirmed or suspected case of COVID-19, or are otherwise determined to mitigate COVID-19 consistent with the order; and
- **Arkansas National Guard Soldiers and Airmen on Stat Active Duty**
- What must be shown? **Worker must demonstrate** a causal connection between their diagnosis of COVID-19 and exposure to COVID-19 as a result of their employment or occupation. Claims due to exposure must be incurred in employment and not due to exposure outside the line of duty.
- Effective date: Executive order signed [4/13/2020](#) (more narrow than above) and [4/21/2020](#), but effective as of the date of the 20-03 Executive Order (3/11/2020). Automatically expires when state of emergency is terminated or at some other time as the Governor may direct in subsequent Executive Order.

[Kentucky](#): Governor issued an [executive order](#) relating to temporary total disability (TTD) entitlement only. [Commissioner provided guidance](#) on 4/15/2020.

- An employee removed from work by a physician due to occupational exposure to COVID-19 shall be entitled to TTD during the period of removal, even if the claim is ultimately denied.
- For there to be exposure, there must be a causal connection between the conditions under which the work is performed and COVID-19, and which can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment.
- Removal from work by a physician presumed occupational for healthcare employees, first responders, corrections officers, military, National Guard, domestic violence shelter workers, child advocacy workers, rape crisis center staff, Department of Community Based Services workers, grocery workers, postal service workers, and childcare workers.
- Commissioner clarified TTD benefits payable under the order are subject to offset from FMLA and unemployment benefits.
- Commissioner also explained the employer may not deny benefits without a good faith basis for denial. For example, if a grocery worker's spouse tests positive for COVID-19 and the worker is removed from work solely due to that exposure, the employer may deny the claim since the evidence rebuts the presumption that the exposure was occupational.

[North Dakota](#): [3/25/2020 Executive Order 2020-12](#) expanded workers' compensation coverage so it includes COVID-19 for first responders, front line health care workers, firefighters, peace officers, correctional officers, court officers, law enforcement officer, EMT, or individual trained and authorized by law or rule to render emergency medical assistance or treatment. On [4/16/2020 Executive Order 2020-12.1](#) extended workers' comp coverage to funeral directors and funeral home workers. Eligibility requires a positive COVID-19 test, and that the worker demonstrate that the infection resulted from work-related exposure.

[Washington](#): Policy from Labor and Industries (L&I):

- If work activities result in a probable exposure to the virus and certain criteria are met, COVID-19 may be compensable. The worker's occupation must have a greater likelihood of contracting the disease because of the job. Examples are noted as first responders or health care workers.
- In addition, [L&I reported](#) it will accept claims of health care workers and first responders who are quarantined after being exposed to COVID-19 on the job, but this specific benefit is time-limited, and no benefits will be paid after quarantine ends unless the worker develops COVID-19.