Covid-19 Layoffs and Impacts on Benefits
As of 4.28.20

State	Contact	Response
Alabama	Michael I. Fish mfish@fishnelson.com	In Alabama, indemnity is owed for the duration of temporary disability unless work is available that can accommodate any temporary restrictions. It does not matter why the work is not available. If it is not available, then TTD is owed.
Alaska	Michelle Meshke mmeshke@akwcdefense.com	In Alaska an employee is entitled to temporary disability benefits until they reach medical stability or are released to return to work. If the employer is unable to offer light duty to an injured worker for any reason, including a Covid-19 related layoff, they are eligible for temporary disability benefits until medical stability.
Arkansas	Scott Zuerker rsz@lcahlaw.com	In Arkansas, a claimant who has suffered a scheduled injury is to receive temporary total or temporary partial disability benefits during his healing period or until he returns to work regardless of whether claimant is actually incapacitated from earning wages. In the case of unscheduled injuries, TTD is appropriate only during the time period, during the healing period, in which the clamant suffers a total incapacity to earn wages. In the event of layoff, it is our position that unquestionably TTD should be paid by the employer if the claimant has a scheduled injury. Even with an unscheduled injury, we feel that TTD would be owed to a claimant working light duty that is laid off due to the COVID Crisis. Although not entirely on point, the Arkansas Supreme Court has affirmed an award of TTD where a claimant working light duty based upon restrictions for an unscheduled injury was terminated for "gross misconduct" on the basis the claimant accepted the employment offered him and was later terminated not by his choice, but at the option of the employer. See *Tyson Poultry, Inc. v. Narvaiz*, 2012 Ark. 118, 388 S.W.3d 16. It should also be noted that Arkansas provides that, unless the claim is controverted, no TTD shall be payable to an injured employee with respect to any week for which the injured employee receives unemployment insurance benefits under the Arkansas Employment Security Law or the unemployment insurance law of any other state. If a claim for temporary total disability is controverted and later determined to be compensable, temporary total disability shall be payable to an injured employee with respect to any week for which the injured employee receives unemployment benefits but only to the extent that the temporary total disability otherwise payable exceeds the unemployment benefits.
California	Ericka Dunn edunn@hannabrophy.com	In California, an injured worker is entitled to temporary disability benefits, total or partial, until they are physically able to return to regular work, the employer is able to accommodate of the are medically determined to be permanent and stationary. The total amount of said benefits depends on the date of injury. If an injured worker is totally temporarily disabled, they are entitled to TTD, regardless of Covid 19-although there is some argument that off sets might be available if said employee avails themselves of Covid 19 governmental relief funds. Where temporary modified work is

		unavailable because of Covid 19, for example for non-essential business closure AND the ER can establish that modified work was available and offered but for the shut-down, then the EE is arguably NOT entitled to TTD. Rather they might be entitled to TPD, or a rate based on the modified work made available, but for the shut-down, rather than the full TTD rate.
Colorado	Kim Starr kim.starr@ritsema-lyon.com	An award of TTD benefits is mandated by the Act if: (1) the injury or occupational disease causes disability; (2) the injured employee leaves work as a result of the injury; and (3) the temporary disability is total and lasts for more than three regular working days' duration. *Section 8-42-103(1)(a), C.R.S. 2004*; *§ 8-42-105(1), C.R.S. 2004*; *PDM Molding, Inc. v. Stanberg, 898 P.2d 542 (Colo. 1995).* Temporary partial disability benefits are calculated based on the difference between the claimant's average weekly wage at the time of the injury and the average weekly wage during the continuance of temporary partial disability. Section 8-42-106(1), C.R.S. 2002; *Platte Valley Lumber, Inc. v. Industrial Claim Appeals Office,* 870 P.2d 634 (Colo. App. 1994). The term "disability" as it is used in workers' compensation connotes two elements. The first element is "medical incapacity" evidenced by loss or restriction of bodily function. The second element is loss of wage-earning capacity as demonstrated by the claimant's inability "to resume his or her prior work." *Culver v. Ace Electric, 971 P.2d 641 (Colo. 1999); Hendricks v. Keebler Co.,* W.C. No. 4-373-392 (June 11, 1999). Disability may be evidenced by the complete inability to work, or by restrictions which impair the claimant's ability effectively and properly to perform his or her regular employment. *Ortiz v. Charles J. Murphy & Co., 964 P.2d 595 (Colo. App. 1998); Ricks v. Industrial Claim Appeals Office, 809 P.2d 1118 (Colo. App. 1991).* It has been held that if a temporarily disabled employee is laid off from modified employment for economic reasons, the subsequent wage loss remains causally connected to the industrial injury and the claimant is entitled to TTD benefits. This is true because a "worker who is disabled because of a job related injury is often significantly restricted from obtaining new employment." *J.D. Lunsford v. Sawatsky, 780 P.2d 76, 77 (Colo. App. 1989).* Under *Sawatsky,* if an injured worker has restriction in place and is laid off or offered reduced hours due to the Covid-19 outbreak, the injured worker is likely entitled to temporary total or temporary partial disability benefits until the claimant is released to full duty with no restrictions or placed at maximum medical improvement.
Florida	Robert J. Grace rgrace@bbdglaw.com	Arguments can be made both ways as to whether TPD benefits would continue if an employee is laid off due to Covid-19. Some employers argue that the loss of earnings is unrelated to the on the job injury and due to events outside the control of that employer. The claimant's bar will argue that the claimant is willing to work within their restrictions and due to no fault of their own they cannot. However, circumstances outside the control of the employer has never really been a defense to the payment of TPD in Florida. The courts probably will look to decisions involving "misconduct" to guide them. Case law has held that a for cause termination or even a termination for very good reasons is not a defense to the payment of

		TPD unless the termination rises to the level of "misconduct' which is statutorily defined and is a very high threshold. It is therefore plausible that the courts may find that while there was good reason for the Covid-19 layoff, it will not bar the payment of TPD. TPD is offset by unemployment benefits and it would be expected that a claimant would apply for them although they cannot be forced to do so.
Georgia	Nathan Levy nlevy@lsfslaw.com	In Georgia, if an employee has suffered a work-related accident and continues to work in a light duty capacity but are ultimately part of a layoff or reduction in force, they can still maintain eligibility for indemnity benefits. In order to meet the burden of demonstrating an ongoing impairment in earning capacity, the employee must demonstrate that they have undertaken a diligent but unsuccessful search for suitable light duty employment. These 'job search' cases are very common in the Georgia system and require evidence of a real effort to find restrictive duty work after a layoff or reduction in force.
Hawaii	Kenneth Goya kenneth.goya@hawadvocate.com	There is a split of authority among the defense attorneys whether temporary total disability (TTD) or temporary partial disability (TPD) benefits should be terminated if the injured worker is laid off or cannot be accommodated with modified duty by the employer due to COVID-19. Our position is that TTD or TPD should not be terminated unless the employee decides to retire. The contrary position is that benefits may be terminated because the reason for the termination of benefits is related to COVID-19, which affect the employees at large, not just employees on workers' compensation status. Our position is that if a claimant is on TTD status, TTD should continue to be paid. If the claimant is on TPD status, the benefits should be paid as TTD because the employer can no longer offer modified duty and the employee is on full disability status. If the employer does not believe that TTD or TPD benefits are warranted, the indemnity benefits should be paid, but under protest, as advance payments against the claimant's entitlement to future permanent disability benefits. Each party reserves their respective rights for the State Department of Labor to later decide whether the wage loss payments were appropriate, or are to be considered advance payments against the claimant's permanent disability benefits. This is the safer and more equitable route to take rather than terminating TTD or TPD benefits due to COVID-19.
Idaho	Alan Gardner agardner@gardnerlaw.net	
Illinois	Robert Maciorowski rmaciorowski@msulaw.com	In Illinois, if an employee is in a healing period, and subject to temporary restrictions, the employee would be entitled to temporary total disability benefits if they are layed off due to the coronavirus. The basis for same is that with restrictions they are unable to find gainful employment elsewhere.
Indiana	Diana Wan dlwann@wmlaw.com	Indiana requires TTD benefits paid as long as the employee has restrictions which prevent the employee from performing work of the same kind or character as that at which he was employed at the time of injury. Whether being fully accommodated with restrictions or partially and receiving TPD, if he is unable to work he is entitled to TTD. The question becomes, what if he prefers unemployment

		because the weekly benefit is more?
Iowa	Steven Durick steved@peddicord.law	In Iowa, if the employer is not able to offer work within a Claimant's temporary medical restrictions then temporary total disability/healing period benefits will be owed. Thus, if the employer is unable to offer the Claimant work due to a facility or plant closure/layoff as a result of Covid-19, the Claimant is entitled to temporary total disability/healing period benefits.
Kansas	Kim Martens Kim@martensworkcomplaw.com	In Kansas, temporary total disability exists when the employee, on account of the injury, has been rendered completely and temporarily incapable of engaging in any type of substantial and gainful employment. A release issued by a health care provider with temporary restrictions for an employee may or may not be determinative of the employee's actual ability to be engaged in any type of substantial and gainful employment, provided that if there is an authorized treating physician, such physician's opinion regarding the employee's work status shall be presumed to be determinative. Where the employee remains employed with the employer against whom benefits are sought, an employee shall be entitled to temporary total disability benefits if the authorized treating physician imposed temporary restrictions as a result of the work injury which the employer cannot accommodate. A refusal by the employee of accommodated work within the temporary restrictions imposed by the authorized treating physician shall result in a rebuttable presumption that the employee is ineligible to receive temporary total disability benefits. If the employee has been terminated for cause or voluntarily resigns following a compensable injury, the employer shall not be liable for temporary total disability benefits if the employer could have accommodated the temporary restrictions imposed by the authorized treating physician but for the employee's separation from employment. **An employee shall not be entitled to receive temporary total disability benefits for those weeks during which the employee is also receiving unemployment benefits. So far during the COVID-19 crisis, many employees on temporary restrictions as a result of a work injury are choosing to go on unemployment benefits during a company layoff because the weekly money received from unemployment compensation is greater than what the worker could recover under workers compensation temporary total compensation benefits**.
Kentucky	Doug Jones djones@joneshowardlaw.com	Please see below a link to Kentucky Governor Beshear's Executive Order, dated April 9, 2020 ("Order"). This Order states: 1. "An employee removed from work by a physician due to occupational exposure to COVID-19 shall be entitled to temporary total disability payments...during the period of removal even if the employer ultimately denies liability for the claim. In order for the exposure to be "occupational," 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;" [**Note 1:** This would necessitate a note/report from a physician

		stating the employee was removed from work due to occupational exposure, and addressing the above referenced causal connection between the work activity and COVID-19.] [**Note 2:** The Order mandates that upon receipt of the above referenced physician note/report, TTD benefits are then owed, even "if the employer ultimately denies liability." Numerical paragraph 1. of the Order does not address how or when an employer shall deny liability. Developments as to a subsequent denial will have to be monitored going forward.] 2. KRS 324.040(1), which provides no TTD benefits are owed for the first seven (7) days, unless the worker is off for more than two (2) weeks **is suspended** and **TTD shall be paid from the first day the employee is removed from work.** 3. It shall be **presumed** that removal of certain workers from work by a physician is due to occupational exposure to COVID-19. The Order enumerates employees that shall have a presumption of causation. (See numerical paragraph 3.). [**Note 3:** This section of the Order does not make any reference to an employer that "ultimately denies liability," but that appears to be addressed in numerical paragraph 5, discussed below.] [**Note 4:** This section of the Order that presumes causation includes military, National Guard and postal service workers. To the extent that servicemen, servicewomen and postal workers are Federal employees, he or she should not be eligible for Kentucky workers' compensation benefits.] 4. This Order applies to all carriers and self-insureds. 5. "Payment by the employer or its payment obligor pursuant to this Order does not waive the employer's right to contest its liability for the claim or other benefits to be provided." [**Note 5:** This section of the Order does not specify how or when an employer shall contest liability. This necessitates monitoring of future developments.] https://governor.ky.gov/attachments/20200409_Executive-Order_2020-277_Workers-Compensation.pdf
Maine	Elizabeth Smith esmith@verrilldana.com	In Maine, if an employee is performing accommodated work and then is laid off due to economic effects of COVID-19, the employee *may* be entitled to workers' compensation benefits at least for partial incapacity, depending on the factual situation. Our unemployment system allows unemployment for people who are only partially medically able to work so the analysis may turn on whether the partial recovery of work capacity is such that the employee should get partial incapacity benefits and partial unemployment benefits, or whether the employee is so limited in work capacity that 100% partial benefits are due. The factual analysis will involve determining whether the employee's position was furloughed because it was not an essential job to the employer, or whether the entire work force was furloughed, in which

		case, I think the employee would have a harder time proving an entitlement to workers' compensation versus unemployment. However, if the employee was furloughed because of a COVID-19 reason, such as diminished immune system, or need to provide childcare or care for someone diagnosed with COVID-19, unemployment benefits under FFCRA would be the correct compensation, not workers' compensation. From a benefit standpoint, the employee would likely earn more on unemployment, but due to the sophistication needed for the analysis, I suspect that more employees will seek 100% partial benefits, at least at the outset. The final question is whether an employer/insurer may offset against the FFCRA unemployment benefit as wage replacement. I asked Board legal counsel for an opinion, but he just said he didn't know.
Michigan	James Ranta James.Ranta@crh-law.com	In Michigan, the issue has arisen regarding the payment of wage loss benefits for claimants who were previously being accommodated in a favored work position with light duty restrictions and are now unable to work due to COVID-19 closures. Pursuant to Section 301(9)(e) of the Michigan Workers' Disability Compensation Act, if an individual has been employed in a favored capacity for fewer than 100 weeks and loses his/her job through no fault of his/her own, that individual is entitled to a resumption of workers' compensation benefits based upon the wages established at the time of the alleged work injury. Thus, we recommend that employers/carriers resume payment of wage loss compensation during any period when the employer is unable to accommodate light duty restrictions as a result of issues related to COVID-19. The Director of the Michigan Workers' Disability Compensation Agency has also loosened the requirement that a claimant receiving benefits must perform a "good faith" job search while Michigan is under Governor Whitmer's stay-at-home Order, and ordered that failure to perform job search activities cannot jeopardize his or her right to benefits while the Order is in effect. The Order was initially issued by the Governor on March 24, 2020.
Minnesota	Parker Olson parker.olson@cwk-law.com	In Minnesota, for wage loss benefits to be awarded, there must be a causal connection between an employee's inability to work at the pre-injury wage and the work injury. In other words, the work injury must be a substantial contributing factor to the employee's ongoing disability and work restrictions. In Minnesota, if an independent cause or disability supersedes or severs the causal connection between an employee's inability to work and the claimed work injury, then that new event or cause can be a complete bar to all benefits claimed. This is where the issues with COVID-19 come into play. Below are some common examples and analyses of each under Minnesota law. **Example One:** An employee has an accepted injury, and is working in a light duty position with work restrictions. There is no ongoing wage loss. The entire company shuts down due to the COVID-19 mandate, temporary partial disability benefits can cease on the theory that without employment TPD is not owed. Temporary total disability arguably also would not be payable also under this situation because there is no causal connection between the off-work status of the employee and the disability (note that this is probably different if the

		injured employee is deemed "non-essential" due to the work restrictions). Ultimately, this is a big area for dispute in Minnesota however, because employees who previously received TTD, returned to work, and then are laid off or terminated due to reasons other than misconduct before reaching 90 days past MMI are entitled to TTD per Minn. Stat. 176.101, Subd. 1(e)(1). On the other hand, employers and insurers in Minnesota can distinguish this situation and attempt to argue and rely on the case of *Taylor v. George A. Hormel & Co.,* which denied a claim for wage loss in a situation where all workers were subject to a company wide roll back. The distinction can be argued that when an entire company is under a government mandate to shut down due to a global pandemic, that this is a different situation entirely than an employee being laid off due to economic hardships. There likely will be case law that develops from this current situation. **Example Two**: An employee has an accepted claim and is given work restrictions, which cannot be accommodated by the company. The employee is receiving TTD and the company shuts down for COVID-19. Benefits will likely continue in this scenario barring some other defense. Employee's work injury is still a substantial, contributing factor to the wage loss because the employer would not have been able to accommodate anyway even if it remained open. **Example Three**: An employee has an accepted claim and is working in a light duty role with restrictions. The company remains open, but the employee voluntarily takes a leave of absence due to fear of working and contracting COVID-19. It is likely that no wage loss benefits would be owed under this situation because the injury is not a substantial, contributing factor to the pending TTD – rather it is employee's personal comfort and voluntary decision to miss time. This may depend on the specifics of the work duties and restrictions however – if the employee was able to directly link the restrictions to being around possible infected people. For example, if an employee was suffering from an ongoing claim after inhaling chemical fumes while cleaning hotel rooms. Perhaps those restrictions on the lungs would preclude the person from being around any high-traffic or risky environments thereby bringing this case into more of an Example Two situation. Each case will be a case-by-case analysis. **Example Four**: An employee has been given work restrictions and is ready to return to the employer with those restrictions, but the employer has already closed due to COVID-19. This is a grey area. On one hand, you have an argument that the employee's disability is no longer a substantial, contributing factor to the disability because he/she is able to return to the job that was available before the shutdown. On the other hand, since there is no job to return to, the employee can argue that the work injury has still not allowed a return to work because there has been no actual job offer. One option may be to pursue an opinion by the treating physician or other expert that opines that the employee would have been able to complete all the required duties within the restrictions. It could also be argued that the employee must be performing an adequate job search, which may require an amendment to the rehabilitation plan. If wage loss is discontinued, the unemployment situation in this scenario is also tricky because of the restrictions and lack of work since the injury. In any event, this will be an area for dispute by both sides for the foreseeable future and is definitely requires a case-by-case analysis.

Missouri	Katherine E. Anderson kanderson@simongrouppc.com	Some employers are closing their doors due to temporary laws or by choice, and therefore some employees that were offered light-duty within their restrictions no longer have that option. Therefore, this would open the employer up to TTD/TPD exposure when there was none. Also when a claimant is off work by an authorized treating physician and that doctor releases the claimant to return to work with restrictions but the employer is closed, TTD would continue until either the employer brings the claimant back to work light-duty or the claimant is returned to work full duty. Once a claimant is released back to work full duty, TTD would cease and the claimant would need to seek other benefits such as unemployment if the employer remains closed. Also unfortunately while doctors' offices currently remain open, we have seen some delay in treatment and if an employee is on restrictions and the employer is no longer open to accommodate those restrictions the length of time a claimant is entitled to TTD may increase due to this delay in treatment.
Nebraska	Paul Larson paul@lkwfirm.com	In Nebraska, if an employee is subject to temporary restrictions and the employer is either unable to offer or otherwise fails or refuses to offer accommodations of such restrictions, the employee is entitled to temporary disability benefits. This applies in the same manner to the COVID situation. If an employee is laid off due to a plant shut-down as a result of the COVID-19 crisis, the employee is entitled to temporary total disability benefits. The reason why the employer refuses or fails to accommodate the restrictions is irrelevant to the determination of benefits.
New Hampshire	Meg Sack Meg@Bernard-Merrill.com	Where a claimant is on a fixed partial rate (TPD) at the time of a COVID-19 related layoff, the carrier should keep the claimant on the fixed partial rate. Any request by the claimant to reinstate TTD benefits should be denied. The basis for the denial is that carriers are not obligated to pay lost time benefits when the loss of earnings is not attributable an injury. Typical examples are retirement or a lay-off due to a downturn in the economy. Appeal of Gelinas 142 N.H. 250 (1997), citing Appeal of Normand 137, N.H. 617 (1993) (lost earnings due to general business conditions not compensable) Likewise, where a claimant's wages vary from week to week at the time of a COVID-19 related layoff, the carrier should close out the varying rates partial and put the claimant on a fixed rate partial based on fair average of prior weeks' partial payments. Any request for reinstatement should be denied, with a Memo of Denial, filed within 21 days of any claim for TTD. Where a claimant has returned to work with restrictions, is earning the pre-injury wages, and is receiving no weekly indemnity payments at the time of the lay-off, the carrier has the option of filing a Memo of Denial if the claimant requests reinstatement of TTD benefits. There may be instances where voluntarily placing the claimant on TTD is appropriate. The parties may be able to agree to the Diminished Earning Capacity (DEC) Rate. However, obtaining approval from the NH Department of Labor is advised since the DEC Rate is an administrative remedy. The filing of Memos of Denial are likely to result in Requests for Hearing to reinstate TTD benefits. It remains to be seen how the

		Department of Labor will rule on these "layoff" cases. These scenarios may present opportunities for settlement.
New Jersey	Nicholas Dibble ndibble@capehart.com	In New Jersey if an employee is recovering from a work place injury and unable to work he or she is entitled to temporary total disability benefits if the employee is either unable to work or, if the injured worker has been placed on light duty restrictions, if the employer is unable to accommodate the restrictions for any reason. Therefore, if the employee is laid off due to his or her place of employment closing as a result of Covid-19 the injured worker is still entitled to temporary total disability benefits.
New York	Ronald E. Weiss rweiss@hwcomp.com	In New York, if a claimant had been working with temporary restrictions due to his compensable injury (and is thus only partially disabled)and is laid off due to conditions related to the COVID 19 crisis, he would be entitled to benefits at a partial disability rate determined by the Board, i.e. 25 %, 50% 75% of the Total Disability rate. The determination of the appropriate rate would be based largely on the extent of the claimant's restrictions related to the compensable injury. An argument may be raised that the lack of any other job opportunities during the COVID crisis would render the otherwise partially disabled claimant totally disabled on an industrial basis and entitled to benefits at the total rate, but at this point such a claim has not been adjudicated as valid.
North Carolina	Bruce Hamilton BHamilton@teaguecampbell.com	While the North Carolina Industrial Commission has not yet issued any decisions specifically related to COVID-19, there are prior cases that have considered whether a claimant is entitled to indemnity benefits when their disability is the result of economic conditions. In general, when a claimant's disability is due to an economic downturn, rather than a work-related injury, indemnity benefits are not owed. *See* Segovia v. J.L. Powell & Company, 167 N.C.App. 354 (2004) and Medlin v. Weaver Cooke Constr., LLC, 367 N.C. 414, 760 S.E.2d 732 (2014). Whether a claimant is entitled to indemnity benefits following layoffs due to COVID-19 will largely depend on whether the claimant was already out of work and receiving TTD benefits, or whether he was able to continue working within his restrictions prior to the outbreak. If an employer was able to accommodate claimant's work restrictions until claimant was laid off due to company-wide layoffs as a result of COVID-19, an argument can be made that claimant's disability is not related to a work injury, but is rather due to economic conditions as a result of a worldwide pandemic. In other words, but for the pandemic, claimant would be able to continue working. In an accepted claim, it is generally claimant's burden to prove their entitlement to indemnity benefits. In order to meet that burden, a claimant must show (1) that he was incapable after his injury of earning the same wages he had earned before his injury in the same employment, (2) that he was incapable after his injury of earning the same wages he had earned before his injury in any other employment, and (3) that his incapacity to earn was caused by his injury. *See* Hilliard v. Apex Cabinet Co., 305 N.C. 593, 290 S.E.2d 682 (1982). In Medlin v. Weaver Cooke Constr., LLC, 367 N.C. 414, 760 S.E.2d 732 (2014), the North Carolina Supreme Court stated, "Because the focus is on earning capacity, broad economic conditions, as well as the circumstances of particular markets and

		occupations, are undoubtedly relevant to whether a claimant's inability to find equally lucrative work was because of a work-related injury. Whether in a boom or bust economy, a claimant's inability to find equally lucrative work is a function of both economic conditions and his specific limitations. *Both* factors necessarily determine whether a specific claimant is able to obtain employment that pays as well as his previous position; the Commission makes this determination based on the evidence in the individual case." 367 N.C. at 422-423, 760 S.E.2d at 737-738 (emphasis added). Therefore, if an injured worker is out of work due to COVID-19, and not as a result of his work-related injury, an argument can be made that they are not entitled to TTD benefits. However, if an employer was unable to accommodate claimant's work restrictions prior to the outbreak and claimant was already out of work receiving TTD benefits, it would be much more difficult to argue that claimant's disability is only due to the economic crisis. Therefore, claimant would likely be entitled to ongoing TTD benefits regardless of the layoffs. Similarly, in cases where a claimant had returned to work but was working reduced hours and receiving TPD benefits, they would likely be entitled to ongoing TPD benefits following company-wide layoffs because their wage-earning capacity is not solely the result of the economy. Rather, their wage-earning capacity is the result of both their work injury and the current economic crisis. Another issue that has arisen is when an employer remains open and has not instituted mass layoffs, but they are unable to continue accommodating a claimant's light duty position. If most non-injured employees are able to continue working their regular jobs, but an injured employee's restrictions are no longer able to be accommodated, it would be more difficult to argue that the claimant's disability is strictly due to economic conditions since only the injured worker's work status is affected. In that case, TTD benefits would likely need to be initiated.
Oklahoma	John Valentine john@lottvalentine.com	In Oklahoma, an injured employee is entitled to temporary total disability if the treating physician finds they are unable to perform their job. They are also entitle to temporary total disability if the treating physician places them on restrictions and the employer is unable to accommodate a position within the same restrictions. If an employee were furloughed due to Covid-19, and they were already on temporary total disability, those benefits would continue. If the employer were to close down their business completely, the employee would have the option to switch to unemployment benefits rather than receive TTD benefits. Title 85A section 49 states, "…No compensation for temporary total disability shall be payable to an injured employee for any week for which the injured employee receives unemployment insurance benefits…" Therefore, the employee has the option to determine which benefits they wish to receive, either temporary total disability or unemployment.
Oregon	James S. Anderson JSA@cumminsgoodman.com	We are unaware of any special treatment for COVID-19 layoffs in Oregon. If an injured worker who is on modified duty and is receiving TPD is subject to a layoff they will be entitled to TTD. If the worker has returned to modified duty at full hours and full pay and is then subject to layoff, their TTD rate should be $0 under *Vivanco*.

South Dakota	Laura K. Hensley lkhensley@boycelaw.com	In South Dakota, in determining what benefits are due, our statutes and case law focus on the reason the employee isn't working. In short, if a claimant is receiving TTD and the business shuts down, that person would continue to get TTD benefits. If a claimant is back to work with restrictions and not receiving TTD because they are not ordered completely off work, the TTD benefits do no resume after the business shuts down because that does not change the medical restrictions for the individual and whether they are released to work. However, if a claimant is receiving TPD because they are working limited hours or the employer can only accommodate them for a portion of time and the business shuts down, the claimant will still get TPD for the corresponding amount of hours that they were unable to work when the employer was still open. If a claimant is released back to work, even with restrictions, but the employer was able to accommodate the restrictions and the claimant was making their full wage and then the employer shuts down, that person would not be entitled to TTD or TPD benefits.
Tennessee	Fred Baker fbaker@wimberlylawson.com	If an employer implements layoffs due to COVID-19, it could result in liability for temporary disability benefits for employees with a pending WC claim. The various scenarios would play out as follows: - If the employee has already been placed at MMI, then no liability for temporary disability benefits - If the employee is not yet at MMI, then it depends on the medical/work status per authorized treating physician: * If the employee was already taken completely out of work due to work injury, then the employer already owed temporary disability and will continue to owe those benefits * If the employee was on full duty status with no restrictions, then the employer will not owe temporary disability benefits * If the employee was on temporary work restrictions that employer could accommodate but-for sending the employee home due to COVID-19, then the employer would owe temporary disability benefits since we are no longer able to provide work to the employee
Texas	Erin Shanley eshanley@slsaustin.com	The question will be whether the employee's off work status is due to the work injury (as opposed to another reason). If the work injury is a cause of the inability to earn his/her pre-injury wages, then the employee may be able to show disability (and entitlement to TIBs). The work injury doesn't have to be the "sole" cause of the inability to earn pre-injury wages for an employee to be entitled to TIBs; it need only be "a" cause. It's a fact issue, and the employee holds the burden of proof. In the case of a worker who was back at modified duty work earning his/her pre-injury wages, we would argue that he does *not* have disability. This is because the reason for his off-work status is the layoff/business closure/quarantine, not his work injury. For cases in which the employee has returned to modified duty but is only earning partial wages, it's less clear whether TIBs are due. Every case is different, and we urge your claims professionals to contact us if there is a question regarding whether TIBs are due for a particular claim.
Utah	Ford Scalley bud@scalleyreading.net	In Utah, a worker on TPD who is laid off due to the virus , would then be entitled to TTD until that worker reached MMI or found other work.

Vermont	Keith J. Kasper kjk@mc-fitz.com	1. Rule 12.1410 states that an employer may discontinue temporary disability benefits if an injured worker fails or refuses to comply with medical treatment recommendations. Rule 6.1900 (dealing with IME attendance) states that if an injured worker refuses, without good cause, to submit himself to an examination, his right to prosecute his workers compensation claim shall be suspended until such refusal or obstruction ceases. Under the current circumstances of COVID 19 (i.e., people recommended to stay in their homes, nonessential businesses being closed, people told not to congregate in groups more than 10 people) I do not believe the Vermont DOL would approve a request to discontinue an injured workers's temporary disability benefits based on their concern/refusal to go to the doctors based on contamination fears with COVID 19. 2. If an injured worker was being paid TPD benefits at the time of the employment shut down, I believe a reasonable argument can be made that the injured worker is entitled to ongoing TPD benefits only (as the same rate prior to the employment shut down) and not TTD benefits. The rationale here is that the work injury did not cause the total disability and that the injured worker was working (light duty prior to the shut down). I do want to be clear that the Vermont DOL may find the injured worker entitled to TTD even in this scenario especially if they begin a good faith work search. However, I do believe this is a reasonable position to take. If the injured worker had a light duty work release at the time of the shut down, but had not returned to work (either part time or full time), I believe that the injured worker will be entitled to temporary disability benefits (at the temporary total disability rate) similar to the situation where an injured worker had a light duty release but the employer is unable to accommodate. You certainly could request a good faith job search in this scenario but even that may be tricky given the current economic climate with the COVID 19. Assuming the employer would have been able to accommodate light duty work if not for the COVID 19 shut down, perhaps an argument could be made that the injured worker is not entitled to temporary disability benefits. However, I doubt the Vermont DOL would approve a request to discontinue benefits under this scenario. 3. Even with a full duty work release (either with our without permanent restrictions), I do not believe that the employer will be able to discontinue temporary disability benefits assuming the injured worker was not working at the time of the shut down. Again, a full duty work release by itself does not terminate temporary disability benefits. You would need either a return to work, medical end result, or some other reason to justify termination. On a side note, if an injured worker has a full duty work release, I would be following up with their treating physician (in writing, copying the injured/attorney), to see if the injured worker has reached medical end result so that a Form 27 can be filed.
Virginia	Lynn Fitzpatrick	If an employee is working in a light duty capacity as a result of a workers' compensation claim and there is a layoff due to the

	lfitzpatrick@fandpnet.com	economic downturn or government-mandated closure, it is not likely that the employee would be entitled to TTD. Presently the Virginia Workers' Compensation Commission has precedent standing for the proposition that a general furlough is a sufficient defense against disability for a partially disabled employee.
Washington	James S. Anderson JSA@cumminsgoodman.com	Washington's Department of Labor and Industries has now confirmed its position is that COVID-19 layoffs will not be treated differently than any other layoff of an injured worker who was not yet at mmi and able to return to regular work. In Washington the worker will be entitled to time loss if their light duty or employment ends as a result of COVID-19
West Virginia	H. Dill Battle III hdbattle@spilmanlaw.com	In West Virginia, temporary total disability is an inability to return to substantial gainful employment requiring skills or activities comparable to those of one's previous gainful employment during the healing or recovery period after injury. An employee is not entitled to receive temporary total disability benefits after he or she (1) has reached maximum degree of improvement, (2) has been released to return to work, or (3) has actually returned to work. W. Va. Code § 23-4-7a(e). Temporary total disability benefits will be paid only for those periods during which the employee is being treated by a physician who certifies the employee as not having reached maximum degree of medical improvement. "'Maximum medical improvement' means a condition that has become static or stabilized during a period of time sufficient to allow optimal recovery, and one that is unlikely to change in spite of further medical or surgical therapy." W. Va. C.S.R. § 85-20-3.9. In West Virginia, if an employee is performing accommodated work and then is laid off due to economic effects of COVID-19, the employee is not entitled to workers' compensation benefits, depending on the factual situation. When an employee is receiving temporary partial rehabilitation benefits because the light duty job pays less than the pre-injury job, the employee's temporary partial rehabilitation benefits do not continue and temporary total disability benefits are not reopened because the employee was laid off as part of a COVID-19 full workforce layoff and not due to the compensable injury. If there is evidence a claimant has a permanent disability and he or she is released to return to work but cannot due to COVID-19 restrictions, the employer can start non-awarded partial (NAP) benefits paid at the permanent partial disability rate until the entry of a PPD award. Given the COVID-19 limitations on completing IME examinations, starting the NAP benefits before the examination is conducted and a PPD award is issued is encouraged in the regulations and statute. There is not much risk to the employer or its insurer because the related rule allows the responsible party to cease paying NAP if it concludes that the amount of non-awarded partial disability benefits paid will likely exceed the expected partial disability award.
Wisconsin	Douglas Feldman dfeldman@lindner-marsack.com	In Wisconsin if an employee is in a healing period and subject to temporary restrictions, they are entitled to temporary disability benefits if the employer does not offer to accommodate the restrictions for any reason. Therefore, if the employee is laid off due to the plant shuttering as a result of the Covid19 crisis the employee is absolutely entitled to Temporary total disability benefits. The reason why the employer cannot or will not accommodate the restrictions is irrelevant to the determination.

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