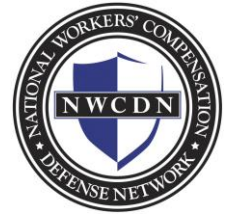


**Covid-19  
Presumption of Healthcare Workers  
As of 05.24.21**



State	Contact	Resource
Alabama	Michael I. Fish <a href="mailto:mfish@fishnelson.com">mfish@fishnelson.com</a>	Alabama has not enacted any legal presumptions and I am not aware of any on the horizon.
Alaska	Michelle Meshke <a href="mailto:mmeshke@akwcdefense.com">mmeshke@akwcdefense.com</a>	<p>Alaska has adopted a statute regarding the presumption of compensability for healthcare workers and first responders.</p> <p><a href="https://labor.alaska.gov/wc/bulletins/20-05.pdf">https://labor.alaska.gov/wc/bulletins/20-05.pdf</a></p> <p>The requirements are that the employee (1) is employed as a firefighter, emergency medical technician, paramedic, peace officer, or health care provider; (2) is exposed to COVID-19 in the course of employment; and (3) receives (A) a COVID-19 diagnosis by a physician; (B) presumptive positive COVID-19 test result; or (C) laboratory-confirmed COVID-19 diagnosis.</p> <p>It is retroactive to 3/11/2020.</p>
Arkansas	Laura Pearn <a href="mailto:ljp@lcahlaw.com">ljp@lcahlaw.com</a>	<p>In June, Governor Hutchinson signed Executive Order 20-35, which extended the provisions of E.O. 20-22 to all workers in the State of Arkansas. Specifically, the Order states “requiring an employee to perform work when the employer has knowledge that, within the normal course and scope of the employee’s job performance, exposure to SARS-CoV-2, or COVID-19, or any other disease, health condition, or threat caused by SARS-CoV-19, or by any virus mutating from SARS-CoV-19 is possible or likely is not intentional conduct that would remove the employer from the protections of the Workers’ Compensation Law, §11-9-101”. Further, the Order establishes SARS-CoV-2, or COVID-19 as occupational diseases under §11-9-601. As with any occupational disease in Arkansas, the employee must meet all requirements of proof for an occupational disease, including a causal connection between employment and the disease.</p> <p>This subsequent Order, expanding Workers’ Compensation provisions to all workers, effectively eliminates the distinction between healthcare workers and first responders and all other workers, thereby decreasing the likelihood that front-line healthcare workers would be successful in overcoming the exclusive remedy provision of the statute to bring suit in tort.</p>
California	Rick Foley <a href="mailto:rfoley@hannabrophy.com">rfoley@hannabrophy.com</a>	Rebuttable presumption for all workers that don’t work from home. Has some catches but this basically makes almost all cases in California industrial. I don’t see how you rebut that presumption in most cases. At least not with our judges et al.
Colorado	Kim Starr	The Colorado legislature failed to pass any COVID-19

	<a href="mailto:kim.starr@ritsema-lyon.com">kim.starr@ritsema-lyon.com</a>	presumption in the 2020 session.
Delaware	Maria Paris Newill <a href="mailto:mnewill@hfdel.com">mnewill@hfdel.com</a>	No legislation and not aware of any movement to enact legislation.
Florida	Robert Grace, Jr. <a href="mailto:rgrace@bbdglaw.com">rgrace@bbdglaw.com</a>	Florida has not enacted any sort of presumption for health care workers. Our legislature is currently not in session although it is possible when they are in session again that such legislation could be proposed.
Hawaii	Blaine Fujimoto <a href="mailto:blaine.fujimoto@hawadvocate.com">blaine.fujimoto@hawadvocate.com</a>	So far Hawaii has not enacted any WC legislation regarding COVID-19.
Illinois	Robert Maciorowski <a href="mailto:RMaciorowski@rusinlaw.com">RMaciorowski@rusinlaw.com</a>	In Illinois a health care worker has a rebuttable presumption that their contractor of COVID 19 is work related. The employer can overcome this presumption if it can show that the employee was working from home fourteen days prior to diagnosis; that the employee was exposed outside of the work place or that the employee recently traveled. Once the rebuttable presumption is rebutted the burden then shifts to the health care worker to prove by a preponderance of the evidence that he contracted the virus in the course of his or her employment. In most cases awards have been limited to the cost of medical and lost time with no permanent disability being awarded.
Indiana	Diana Wann <a href="mailto:diana.wann@jacksonkelly.com">diana.wann@jacksonkelly.com</a>	No on all counts for Indiana .
Iowa	Lee Hook <a href="mailto:Lee@Peddicord.law">Lee@Peddicord.law</a>	No legislation and not aware of any movement to enact legislation.
Kansas	Kim Martens <a href="mailto:Kim@martensworkcomplaw.com">Kim@martensworkcomplaw.com</a>	Kansas does not currently have a COVID-19 presumption for healthcare workers. Kansas' Governor recently voiced support for possibly initiating an "executive order" enacting a presumption for healthcare workers and first responders diagnosed with work exposure to COVID-19. However, the general consensus was that such a change in Kansas law must, to be constitutional, be enacted by the Kansas legislature and not by the executive branch via executive order. It is anticipated that the Kansas legislature will, in 2021, take of the issue of a COVID-19 presumption for healthcare workers and first responders under the Kansas Workers Compensation Act.
Kentucky	Doug Jones <a href="mailto:djones@joneshowardlaw.com">djones@joneshowardlaw.com</a>	The answer to your presumption question, as you posed, is no. And we know of no such legislation currently being contemplated in KY. The only exception in Ky is the Executive Order issued by the Gov, noting a presumption of work-relatedness for healthcare workers, first responders, grocery workers and certain other "presumptive classes" of employees relating only to Temporary Total Disability (TTD) benefits owed during a quarantine period ordered by a physician. There are no other presumptions in Ky related to COVID-19 claims.
Louisiana	Sidney W. Degan, III <a href="mailto:sdegan@degan.com">sdegan@degan.com</a>	Louisiana Senator Glen Womack has introduced Senate Bill No. 475 to provide guidance on workers' compensation claims filed by "essential workers." <u>Senate Bill No. 475 has not yet become a law.</u> That said, it provides some guidance on the types of issues

		<p>we will likely encounter moving forward. The second reading of the Bill occurred on May 4, 2020, and it was referred to the Committee on Labor and Industrial Relations.</p> <p>In summary, the Bill provides workers' compensation coverage for "essential workers" who are disabled after contracting COVID-19. The Bill defines "essential workers" as "persons working in public safety, government, disaster response, health care, or private business as designated and deemed necessary or critical for response to the COVID-19 pandemic by their employer or by virtue of their official commission." The Bill also provides the prescriptive periods for these claims.</p>
Massachusetts	<p>Thomas O'Reilly  <a href="mailto:TOReilly@cmopc.com">TOReilly@cmopc.com</a></p>	<p>Bills are pending but nothing has been enacted as of yet in Massachusetts.</p>
Michigan	<p>James Reiter  <a href="mailto:James.Reiter@crh-law.com">James.Reiter@crh-law.com</a></p>	<p>On June 18, 2020, Governor Gretchen Whitmer issued Executive Order 2020-128, which sought to clarify her previous statements and directives regarding workers' disability compensation eligibility in the State of Michigan for employees who have been confirmed as positive for the novel coronavirus (COVID-19). This Executive Order officially replaced the Emergency Rules for "first response" employees, which the Department of Labor &amp; Economic Opportunity previously filed with the Secretary of State on March 30, 2020.</p> <p>With Executive Order 2020-128, Governor Whitmer has clarified and expanded the traditionally understood definition of a "first response employee" during the COVID-19 era. Under the new Order, the term "first response employee" has been replaced by "COVID-19 response employee." A "COVID-19 response employee" is now defined as "an employee whose job responsibilities require them to have regular or prolonged contact with COVID-19 in the course of their employment."</p> <p>For the purposes of Executive Order 2020-128, the following individuals are presumed to be "COVID-19 response employees":</p> <ul style="list-style-type: none"> <li>➤ Any person who is required to report to work in one or more of the following workplaces: an "ambulance operation," a "county medical care facility," an "emergency response service," a "home for the aged," a "hospice," a "hospital," a "nursing home," or a "home health agency," as those terms are defined in the Public Health Code, MCL 333.1001 <i>et seq.</i>;</li> <li>➤ A person working as a physician, physician assistant, licensed practical nurse, registered professional nurse, medical first responder, nurse, emergency medical technician, paramedic, or respiratory therapist who is required to provide in-person medical care to patients;</li> <li>➤ A law enforcement officer or motor carrier officer, to the extent that the officer is required to report to work and interact with the general public;</li> </ul>

		<ul style="list-style-type: none"> <li>➤ A firefighter or other member of an emergency rescue team;</li> <li>➤ A volunteer civil defense worker or on-call member of a life support agency, to the extent that the individual is required to report to work; and</li> <li>➤ Any state or local government employee who is required to work within the secured perimeter of a penal institution, including but not limited to correctional facilities, jails and detention centers.</li> </ul> <p>For the purposes of determining workers’ disability compensation eligibility, any “COVID-19 response employee” who has been confirmed as COVID-19 positive on or after March 18, 2020, either by physician or by test, shall be presumed to have suffered a compensable, work-related “personal injury,” as that term is defined in Section 401(2)(b) of the Workers’ Disability Compensation Act, MCL 418.401(2)(b). <b>This presumption of compensability remains subject to rebuttal by specific facts to the contrary.</b></p> <p>The provisions of Executive Order 2020-128 will remain in effect until the termination of any currently or subsequently declared states of emergency and/or disaster which may arise out of the COVID-19 pandemic.</p>
Minnesota	Parker Olson <a href="mailto:parker.olson@cwk-law.com">parker.olson@cwk-law.com</a>	<p>The Minnesota Legislature passed a bill which has been enacted into law, that provides certain employees the benefit of a presumed occupational disease under Minnesota workers’ compensation if they contract COVID-19. Specifically, employees working in first responder or healthcare occupations will be presumed eligible for workers’ compensation benefits if they either test positive for COVID-19 or are diagnosed by a licensed physician, physician’s assistance, or APRN without a test. In the situations where a test has not been done, a copy of the written documentation of the diagnosis shall be provided to the Employer and Insurer. The following occupations fall into this presumption:</p> <ul style="list-style-type: none"> <li>Firefighter</li> <li>Paramedic</li> <li>Nurses or Healthcare Worker</li> <li>Correctional Officer/Security Counselor at Minnesota Correctional Facilities</li> <li>Emergency Medical Technician</li> <li>Healthcare provider, nurse, or assistant employed with home care or long-term setting</li> <li>Workers required to provide child care to first responders and health care workers</li> </ul> <p>In summary, if an employee shows that he or she works within one of these occupations and either tests positive for or is diagnosed with COVID-19, the burden of proof will shift to the employer and insurer to rebut the presumption. Employers and insurers will still be able to show that the employment was not</p>

		<p>a direct cause of the disease, however it will be much more difficult to prevail on a denial of liability when one of these types of employees contract COVID-19.</p> <p>To note, the date of injury in these situations shall be the date the employee is no longer able to work due to a diagnosis of COVID-19 or due to the symptoms later diagnosed as COVID-19, whichever occurs first.</p>
Missouri	<p>Katherine E. Anderson  <a href="mailto:kanderson@simongrouppc.com">kanderson@simongrouppc.com</a></p>	<p>In Missouri, Governor Parson has issued an Order that presumes that first responders who test positive for COVID-19 contracted it in the course and scope of their employment. First responders that contract or are quarantined due to exposure to COVID-19 will be covered under workers' compensation as an occupational disease. First responders are defined to include law enforcement officers, public safety officers, firefighters, and emergency medical technicians. It 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, receives a presumptive positive COVID-19 test, receives a COVID-19 diagnosis from a physician, or receives a laboratory-confirmed COVID-19 diagnosis.</p>
Nebraska	<p>Paul Larson  <a href="mailto:paul@lkwfirm.com">paul@lkwfirm.com</a></p>	<p>The State of Nebraska has not proposed or enacted any legislation in regard to Covid-19.</p>
New Hampshire	<p>Kevin Stuart  <a href="mailto:Kevin@Bernard-Merrill.com">Kevin@Bernard-Merrill.com</a></p>	<p>In New Hampshire the Governor ordered a COVID-19 presumption, effective 3/13/2020, for "Emergency response/public safety worker" who are <i>"call, volunteer, or regular firefighters; law enforcement officers certified under RSA 106-L; certified county corrections officers; emergency communication dispatchers; and rescue or ambulance workers including ambulance service, emergency medical personnel, first responder service, and volunteer personnel."</i> The presumption lasts as long as the State of Emergency, which presently runs through 5/31/2020. There is no presumption in NH for health care workers, other than those classified as emergency response/public safety workers.</p>
New Jersey	<p>Nicholas Dibble  <a href="mailto:ndibble@capehart.com">ndibble@capehart.com</a></p>	<p>In New Jersey, the legislature created a rebuttable presumption of compensability for all COVID-19 claims filed by essential employees who perform functions pertaining to and involving interactions with the public during the ongoing public health emergency.</p>
New York	<p>Susan Duffy  <a href="mailto:sduffy@hwcomp.com">sduffy@hwcomp.com</a></p>	<p>In New York, there is no presumption. A proposed amendment establishing exposure to the coronavirus as an occupational disease for an expansive number of employees did not advance out of the Labor Committee during the recent legislative session. Although not a presumption, the WCB is accepting a positive COVID-19 test as satisfactory prima facie medical evidence for a case to proceed beyond the pre-hearing conference even though it does not contain a history of injury (exposure to the virus at work) and is not a report of a physician.</p>
North Carolina	<p>Bruce Hamilton</p>	<p>In North Carolina we have two bills that have been filed. Each</p>

	<a href="mailto:BFHamilton@teaguecampbell.com">BFHamilton@teaguecampbell.com</a>	would create a presumption. One is limited only to governmental First Responders and healthcare workers. The second is for all essential workers, which is pretty broad. Business and industry are putting up a fight arguing that the presumption is not necessary. To date, neither of the bills was passed by the legislature. We expect either or both bills to get refiled in 2021.
Oklahoma	John Valentine <a href="mailto:john@lottvalentine.com">john@lottvalentine.com</a>	Oklahoma has not enacted a presumption for Covid-19. There have been discussions in the legislature regarding a possible presumption for first responders, but nothing is gaining traction. We do not expect any legislation this session from the legislature regarding a presumption for first responders or healthcare workers exposed to Covid-19. This year's legislative session adjourns May 29, 2020. The Governor could call for a special session to address the issue, but there does not appear to be political support for a change in Oklahoma law regarding a presumption for Covid-19 exposure.
Oregon	Matthew F. Denley <a href="mailto:MFD@cumminsgoodman.com">MFD@cumminsgoodman.com</a>	There is no current presumption for healthcare workers re Covid-19. There are rumors of such a presumption percolating through the legislature, but nothing concrete.
Pennsylvania	Kevin Connors <a href="mailto:kconnors@connorsodell.com">kconnors@connorsodell.com</a>	Pa. has enacted legislation adopting a rebuttable presumption of compensability for essential workers, including health care workers, that the contraction of Covid-19 is compensable, although I am unaware of specific litigation on this point, given our litigation procedures and claim protocols.
Rhode Island	Linda Oliveira <a href="mailto:LOliveira@cmopc.com">LOliveira@cmopc.com</a>	Rhode Island has not passed any legislation or regulation to address the compensability of COVID-19 for any workers. At this time there is no legislation pending.
South Carolina	Nick Haigler <a href="mailto:nhaigler@robinsongray.com">nhaigler@robinsongray.com</a>	SC has pending legislation to find COVID-19 cases presumed compensable for first-responders and medical personnel, but it has not passed as of yet.
South Dakota	Laura K. Hensley <a href="mailto:lhensley@boycelaw.com">lhensley@boycelaw.com</a>	South Dakota has not enacted legislation with a presumption for healthcare workers. There was some discussion of attempting to enact legislation, but nothing has come to fruition.
Tennessee	Fred Baker <a href="mailto:fbaker@wimberlylawson.com">fbaker@wimberlylawson.com</a>	Tennessee has no specific COVID-19 statutory presumption for healthcare workers. However, effective April 13, 2021, Tennessee enacted a limited presumption for emergency rescue workers, which provides that an emergency rescue worker who suffers a condition or impairment that is caused by an infectious disease, is presumed to have a disability suffered in the line of duty, unless the contrary is shown by a preponderance of the evidence. To qualify, the "infectious disease" must be either the human immunodeficiency virus, the Hepatitis C virus, or one that has been recognized as a pandemic by the World Health Organization (WHO) or U.S. Centers for Disease Control and Prevention (CDC), and for which the Governor declared a state of emergency. For purposes of this presumption, the term "emergency rescue worker" is defined as any person employed full-time by the state or any political subdivision of the state, as a firefighter, paramedic, or emergency medical technician. This does not

		<p>include any person employed by a public hospital. The worker must, prior to diagnosis, have tested negative for the infectious disease, and the worker may also be disqualified for refusal to take a medically accepted vaccine.</p> <p>For more information, or if you have questions, please feel free to contact: Fred Baker, Wimberly Lawson Wright Davis &amp; Jones, 1420 Neal Street, Suite 201, P.O. Box 655, Cookeville, TN 38503 931-372-9123, <a href="mailto:fbaker@wimberlylawson.com">fbaker@wimberlylawson.com</a></p>
Texas	<p>James Loughlin <a href="mailto:Jloughlin@slsaustin.com">Jloughlin@slsaustin.com</a></p> <p>Jane Stone <a href="mailto:jstone@slsaustin.com">jstone@slsaustin.com</a></p>	<p>Texas has not enacted a presumption for healthcare workers diagnosed with COVID-19 that the illness is work-related. The Texas legislature will not be in session until 2021. The Division could enact such a rule assuming it has the statutory authority to do so. To do so on an emergency basis without following the normal notice and comment periods for rule-making, the Division would likely need to argue that an imminent peril to public health, safety, or welfare requires adoption on fewer than 30 days' notice.</p> <p>There has been no significant discussion of such a presumption yet. Presently, health care workers must meet the same standards as other employees. In order for an infection with the virus to be compensable, the employee must have contracted the disease at work and their job must have put them at increased risk of exposure compared with employment generally. Not all health care workers are at increased risk of exposure. It depends on the requirements of their job.</p>
Utah	<p>Ford Scalley <a href="mailto:bud@scalleyreading.net">bud@scalleyreading.net</a></p>	<p>A new law recently passed by the Utah legislature which establishes, under certain circumstances, a rebuttable presumption that a first responder who contracts Covid-19 by accident during the course of performing the first responder's duties as a first responder and establishes a presumed date of accident for a first responder making a claim.</p>
Vermont	<p>Keith J. Kasper <a href="mailto:kjk@mc-fitz.com">kjk@mc-fitz.com</a></p>	<p>Legislation was passed after May and made retroactive to March 1 applying a presumption of compensability for "front line workers," police, fire, EMT, correctional offices, health care, long term care, home health, funeral workers and then a "catch all": "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 in this subsection."</p> <p>For non-front line workers, presumption of compensability applies if documented exposure or working in a facility with COVID. Employer can overcome the presumption if it can show alternative exposure or that the employer followed all federal, state and local guidance for preventing the spread of COVID.</p>
Virginia	<p>Lynn Fitzpatrick <a href="mailto:lfitzpatrick@fandpnet.com">lfitzpatrick@fandpnet.com</a></p>	<p>No such presumption in VA.</p>
Washington	<p>Andrew H. Graham <a href="mailto:AHG@cumminsgoodman.com">AHG@cumminsgoodman.com</a></p>	<p>Washington does not have any laws on the books presumptively covering COVID-19. However, the Department of Labor and Industries (the "State Fund" insurer), as a matter</p>

		of administrative policy, is effectively giving healthcare workers and first responders what amounts to a presumption of compensability when evaluating their claims. No presumption legislation is currently pending.
West Virginia	H. Dill Battle III <a href="mailto:hdbattle@spilmanlaw.com">hdbattle@spilmanlaw.com</a>	In West Virginia, there is not a presumption for healthcare workers who are diagnosed with COVID-19 that the illness is work-related. This type of COVID-19 presumption legislation is not being contemplated to my knowledge. It should be noted West Virginia does have a rebuttable presumption of compensability for certain occupational diseases and illnesses applicable to professional firefighters. W. Va. Code 23-4-1(h)(1) provides a rebuttable presumption that a professional firefighter has sustained a compensable disease or injury if the professional firefighter has developed a cardiovascular or pulmonary disease, sustained cardiovascular injury, or developed leukemia, lymphoma, or multiple myeloma arising in the course of or out of employment. Arguably exposure to COVID-19 and development of a pulmonary disease could be a rebuttable presumption of compensability in a professional firefighter.
Wyoming	Doug Stratton <a href="mailto:Doug.Stratton@ritsema-lyon.com">Doug.Stratton@ritsema-lyon.com</a>	The legislature amended W.S. § 27-14-102(a)(xi)(A) by altering the burden of proof with regard to Covid-19, currently effective until the end of 2020. This subsection defines an injury as not including a communicable disease unless the risk of contracting the disease is increased by the nature of the employment. The added amendment states that, for any employee covered under the Act, "it shall be presumed that the risk of contracting Covid-19 was increased by the nature of the employment." The legislature also added subparagraph (u) to W.S. 27-14-201, which prohibits the state from charging to the employer's experience rating the coverage provided for Covid-19 claims.

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