

Workers' Compensation Presumption for COVID-19

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Issue

This report describes legislation enacted in other states to create a presumption that certain employees who contract COVID-19 and meet other criteria qualify for workers' compensation benefits.

Summary

According to the National Council on Compensation Insurance (NCCI), as of July 14, 2020, seven states have enacted laws to make it easier for certain employees to qualify for workers' compensation benefits if they contract COVID-19. These laws generally establish a "presumption" that the covered employees' contracted the disease in the course of their employment if they meet certain criteria. By presuming that an eligible employee's illness is related to the employee's work, the burden of proof falls on the employer to prove the illness is not work related. Without the presumption, employees would generally have to prove that they contracted the disease through their employment.

Other Presumption Activity

In many states, the governors have imposed a similar presumption through executive orders. NCCI's compilation of various state activities related to presumption is available [here](#).

While all seven of the states establish a similar presumption, they vary over the employees they cover, the criteria the employees must meet, and how employers can rebut the presumption. In four of the states, the presumption only covers employees employed in occupations that may bring a higher risk of exposure to COVID, such as first responders and health care workers. The three other states provide coverage to a broader array of employees from the general public, although they may also impose additional criteria and

requirements for them to qualify (e.g., requiring that their jobs require encountering members of the general public).

All the new state laws also require covered employees to meet additional criteria before qualifying for the presumption. These typically include a requirement for positive COVID-19 test results or diagnoses but may also include provisions requiring an employee to have been exposed to someone with a confirmed case of COVID-19 in the course employment (Wisconsin and Vermont) or excluding employees who worked solely from home for at least 14 consecutive days immediately before their illness (Illinois).

In all the states, except Alaska, the presumption may be rebutted (i.e., proven incorrect) by employers who meet certain evidentiary criteria and standards. These range from showing that the employment was not a direct cause of the disease (Minnesota) to showing that the employer met certain standards for sanitation, social distancing, and health and safety practices (Illinois). Some of the new laws also include provisions aimed at limiting the financial impact on employers by prohibiting the COVID-19-related benefits from being used to increase their insurance rates (Illinois and Wyoming) or freezing their workers' compensation insurance rates for the next fiscal year (Vermont).

Covered Employees

Most of the states limit the presumption to employees in occupations that may bring a higher risk of exposure to COVID-19 (e.g., firefighters, police, and health care workers). The new laws in Illinois, Vermont, and Wyoming also cover a broader array of employees from the general public but Illinois and Vermont require them to meet more stringent criteria in order to qualify for the presumption.

Table 1 shows the employees covered by the presumption in the seven states.

Table 1: Covered Employees

State	Covered Employees
Alaska (§ 15)	Firefighters, emergency medical technicians, paramedics, peace officers, health care providers
Illinois (§ 15)	<ul style="list-style-type: none"> • Police, fire personnel, emergency medical technicians, or paramedics and other individuals employed and considered as first responders • All workers for health care providers, including nursing homes and rehabilitation facilities and home care workers • Corrections officers • Individuals employed by essential businesses and operations, if they are required to encounter members of the general public or work in locations with more than 15 employees

Table 1 (continued)

State	Covered Employees
Minnesota	<ul style="list-style-type: none"> • Licensed peace officers, firefighters, paramedics • Nurses or health care workers • Correctional officers, or security counselors employed by the state or a political subdivision at a corrections, detention, or secure treatment facility • Emergency medical technicians • Health care providers, nurses, or 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 • Workers required to provide child care to first responders and health care workers under executive orders
Utah	<ul style="list-style-type: none"> • Health care providers (as defined in 29 C.F.R. § 826.30(c)(1)) • Emergency responders (as defined in 29 C.F.R. § 826.30(c)(2))
Vermont	<p>All workers covered by the state’s workers’ compensation law, however, the qualifying criteria for “front-line workers” with an elevated risk of exposure to COVID-19 is different from the criteria for other workers (see Table 2).</p> <p>Front-line workers include:</p> <ul style="list-style-type: none"> • Firefighters, law enforcement officers, emergency medical personnel and volunteers • Workers in health care facilities or locations where health care services are provided by licensed healthcare professionals • Correctional officers • Workers in long-term care or residential facilities • Childcare providers allowed to provide childcare to children of other front-line workers • Home health care workers or personal care attendants • Workers in a morgue, funeral establishment, or crematory • Workers performing services that the workers’ compensation commissioner determines place the worker at a similarly elevated risk as the above occupations
Wisconsin (§ 33)	Employees or volunteers who work for an employer that provides firefighting, law enforcement, or medical treatment of COVID-19
Wyoming	All workers covered by the state’s workers’ compensation law

Qualifying Criteria and Requirements

The new state laws also require covered employees to meet certain criteria and requirements to qualify for the presumption. These typically include a requirement for positive COVID-19 test results or diagnoses, but may also include criteria that limits the presumption to employees who have been exposed to someone with a confirmed case of COVID-19 in the course of employment (Wisconsin and Vermont) or excludes from the presumption employees who worked solely from home for at least 14 consecutive days immediately before their illness (Illinois). Table 2 shows the criteria and requirements needed to qualify for the presumption in the seven states.

Table 2: Qualifying Criteria & Requirements

State	Qualifying Criteria & Requirements
Alaska (§ 15)	<ul style="list-style-type: none"> • Exposure to COVID-19 in the course of employment • COVID-19 diagnosis by a physician, presumptive positive COVID-19 test result, or lab-confirmed COVID-19 diagnosis
Illinois (§ 15)	<ul style="list-style-type: none"> • Employee's injury or disease resulted from exposure to and contraction of COVID-19 • For diagnoses on or before June 15, 2020, an employee must provide a confirmed medical diagnosis or a positive lab test for COVID-19 or for COVID-19 antibodies • For diagnoses after June 15, 2020, an employee must provide a positive lab test for COVID-19 or for COVID-19 antibodies • Presumption does not apply if the employee worked solely from home for at least 14 consecutive days immediately before the injury or disease
Minnesota	<ul style="list-style-type: none"> • Contraction of COVID-19 must be confirmed by a positive lab test or, if a lab test was not available, diagnosed and documented by the employee's licensed physician, physician's assistant, or APRN • Employee must provide a copy of the positive test or the written documentation to the employer or insurer
Utah	<ul style="list-style-type: none"> • Diagnosed with COVID-19 while employed or serving as a health care provider or emergency responder or within two weeks after termination • Employee must provide the employer or insurer with a copy of the positive lab test or written documentation of a physician's diagnosis
Vermont	<p>For front-line workers with an elevated risk of exposure:</p> <ul style="list-style-type: none"> • a job that requires regular (1) physical contact with known sources of COVID-19, or (2) physical or close (within six feet) contact with patients, inmates, residents of a residential care, long-term care, or correctional facility, or members of the general public • Positive lab test for COVID-19 or a COVID-19 diagnosis between March 1, 2020, and January 15, 2021 <p>For other workers:</p> <ul style="list-style-type: none"> • Positive lab test for COVID-19 or a COVID-19 diagnosis between April 1, 2020, and January 15, 2021 • Within 14 days before the test or exam, the employee <ul style="list-style-type: none"> (1) had documented occupational exposure in the course of employment to someone with COVID-19 or (2) performed services at a residence or facility with at least one resident or employee who was present when the services were performed and either (A) had COVID-19 at that time or (B) tested positive within 14 days
Wisconsin (§ 33)	<ul style="list-style-type: none"> • Has regular, direct contact with or are regularly near patients or members of the public requiring emergency services, within the scope of the individual's work for the employer • Exposure to someone with a confirmed case of COVID-19 in the course of employment • Claim must include a specific diagnosis by a physician or a positive COVID-19 test
Wyoming	Employee is infected with the COVID-19 Coronavirus (presumably, the criteria and requirements under the state's typical workers' compensation law apply)

Rebuttal Standards

In all the states, except Alaska, the presumption may be rebutted by employers who can meet certain evidentiary criteria. Alaska’s law provides an “irrebuttable” presumption under which qualified workers are “conclusively presumed” to have contracted the disease through their employment. Table 3 shows the criteria and standards employers must meet to rebut the presumption in each state’s law.

Table 3: Rebuttal Standards

State	Defense Standards
Alaska (§ 15)	None, workers who meet qualifying criteria and requirements are “conclusively presumed” to have contracted the disease through their employment
Illinois (§ 15)	Presumption may be rebutted if: <ul style="list-style-type: none"> • employee was working from home or on leave (or a combination) for at least 14 consecutive days immediately prior to the injury, disease, or incapacity resulting from exposure to COVID-19; • employer was (1) engaging in and applying to the fullest extent possible, or enforcing to the best of its ability, industry-specific workplace sanitation, social distancing, and health and safety practices based on updated guidance issued by the CDC or state Department of Public Health or (2) using a combination of administrative controls, engineering controls, or personal protective equipment to reduce the transmission of COVID-19 to all employees for at least 14 consecutive days prior to the employee’s injury, disease, or incapacity; or • the employee was exposed to COVID-19 by an alternate source
Minnesota	Presumption may be rebutted if the employer or insurer shows the employment was not a direct cause of the disease
Utah	<ul style="list-style-type: none"> • Presumption may be rebutted by a preponderance of evidence • Employee is not entitled to the presumption if the employee refuses examination for COVID-19 or fails to be diagnosed with COVID-19
Vermont	For front-line workers with an elevated risk of exposure, the presumption does not apply if it shown by a preponderance of the evidence that the disease was caused by non-employment-connected risk factors or exposure For other workers, the presumption does not apply if the employer shows by a preponderance of the evidence that: <ul style="list-style-type: none"> • the disease was caused by non-employment-connected risk factors or exposure or • the potential exposure to COVID-19 occurred when the place of employment complied with <ol style="list-style-type: none"> (1) the relevant COVID-19 related guidance for businesses and workplaces issued by the CDC, state health department, and similar guidance issued by local authorities (for exposures between April 1, 2020, and April 20, 2020) or (2) the Restart Vermont Worksafe Guidance issued by the Agency of Commerce and Community Development and any similar local guidance (for exposures between April 20, 2020, and January 15, 2021)
Wisconsin (§ 33)	Presumption may be rebutted by specific evidence that the injury was caused by exposure to COVID-19 outside the employment
Wyoming	None specified (presumably, the criteria and requirements under the state’s typical workers’ compensation law apply)

Financing Provisions

The new laws in three of the states contain provisions that may help limit their financial impact on employers. These provisions generally seek to prevent employers' workers' compensation insurance rates from increasing due to the benefits provided under the new laws.

Table 4: Financing Provisions

State	<i>Other Relevant Provisions</i>
Illinois (§ 15)	COVID-19 cases cannot increase or affect an employer's workers' compensation insurance experience rating or modification, but costs may be included in determining overall state loss costs
Vermont	Freezes workers' compensation insurance rates for FY 21
Wyoming	COVID-19 cases covered by the act cannot be charged to an employer's experience rating. The state must cover the cost to the extent that federal monies are available for that purpose from the federal CARES Act or any other available federal funds related to the COVID-19 emergency response

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