

COVID-19: Workers' Compensation

12/9/2020 Josh Cunningham



The COVID-19 pandemic has created countless challenges for state policymakers across the country. Among those is the role that [workers' compensation](#) insurance plays in helping workers infected with the disease. Every state has its own unique workers' compensation policy landscape. States apply varying coverage requirements and standards based on industry, occupation, and the size and structure of a business. Workers' compensation is designed to benefit both employees and employers by providing reliable insurance coverage with predictable, timely payments and reduced legal costs. Beyond providing medical treatment at no cost to the employee, workers' compensation also provides wage replacement benefits for lost wages resulting from time away from work. If a worker dies due to a qualifying condition, the worker's family could be eligible for financial death benefits. Most states have a dedicated workers' compensation court system where judges make the final decision on claims and benefits awarded.

Does Workers' Compensation Cover COVID-19?

The answer is complicated. Generally, workers' compensation does not cover routine community-spread illnesses like a cold or the flu because they usually cannot be directly tied to the workplace. Some states have made exceptions for certain workers who develop chronic illnesses, like cancer, resulting from repeated exposure to harmful materials and environments. According to the [National Council on Compensation Insurance](#), prior to the COVID-19, at least 19 states had policies stating that when firefighters and other first responders develop lung and respiratory illnesses, those conditions are presumed to be work-related and covered under workers' compensation. It is unclear if those existing policies would include COVID-19 illnesses.

The COVID-19 pandemic presents a unique circumstance where the many jobs that are not typically considered hazardous have suddenly become very dangerous for the workers. Workers deemed essential including health care workers, mass transit operators and grocery store workers are at a high risk of exposure to the virus while at work. But the more hazardous working conditions do not guarantee that a COVID-19 infection would be covered under workers' compensation in most states.

State Response to COVID-19

States are [taking action](#) to extend workers' compensation coverage to include first responders and health care workers impacted by COVID-19. A common approach is to amend state policy so that COVID-19 infections in certain workers are presumed to be work-related and covered under workers' compensation. This presumption places the burden on the employer and insurer to prove that the infection was not work-related making it easier for those workers to file successful claims. Some employers and insurers have [raised concerns](#) that these presumption policies will increase insurance costs for employers at a time when businesses are already facing significant financial challenges.

In total, 17 states and Puerto Rico have take action to extend workers compensation coverage to include COVID-19 as a work-related illness. Nine states have enacted legislation creating a presumption of coverage for various types of workers. Minnesota, Utah and Wisconsin limit the coverage to first responders and health care workers. Illinois, New Jersey and Vermont cover all essential workers while California and Wyoming cover all workers. Four states have used executive branch authority to implement presumption policies for first responders and health care workers in response to COVID-19. Another four states including [California](#) and [Kentucky](#) have taken executive action to provide coverage to other essential workers like grocery store employees.

State Spotlight

In March, [Washington](#) state's Department of Labor and Industries announced that health care workers and first responders will receive wage-replacement benefits and have all related health care expenses covered under the state's workers' compensation program when quarantined by a physician. Washington has a single publicly-managed insurance option that employers can purchase giving the state more control over the coverage offered to workers. Other essential workers in Washington who test positive for COVID-19 will be considered on a case-by-case basis. The state has established three criteria for evaluating these COVID-19 claims:

- Was there an increased risk or greater likelihood of contracting the condition due to the worker's occupation (such as a first responder or health care worker)?
- If not for their job, would the worker have been exposed to the virus or contracted the condition?
- Can the worker identify a specific source or event during the performance of his or her employment that resulted in exposure to the new coronavirus (examples include a first responder or health care worker who has actually treated a patient with the virus)?

State Actions

NCSL is tracking legislation, executive orders and other administrative policy changes that directly address workers' compensation coverage of COVID-19.

State	Status	Type of Worker With Presumption of Occupational Disease	Bill or Order Number
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Alaska	Enacted (program expired)	<ul style="list-style-type: none">▪ First responders▪ Health care workers	SB 241
Arkansas	Executive Order	<ul style="list-style-type: none">▪ All workers whose jobs make exposure to COVID-19 possible or likely.▪ The order does not give a presumption of coverage, but defines COVID-19 as an occupational disease making it coverable by workers compensation under the regular process of filing a claim.	EO 20-35
Arkansas	Executive Order	<ul style="list-style-type: none">▪ Any worker who can establish that they contracted COVID-19 as a result of their job	EO 20-35
California	Executive Order	<ul style="list-style-type: none">▪ All workers who test positive for COVID-19 and who are not exclusively working from home	EO N-62-20
California	Enacted	<ul style="list-style-type: none">▪ All workers exposed to COVID-19 resulting from a hazardous workplace	AB 685
California	Failed	<ul style="list-style-type: none">▪ First responders▪ Health care workers	AB 664
California	Failed	<ul style="list-style-type: none">▪ All essential workers	AB 196
California	Enacted	<ul style="list-style-type: none">▪ Workers employed to combat the spread of COVID-19	SB 1159
California	Failed	<ul style="list-style-type: none">▪ Hospital workers	SB 893
Colorado	Failed	<ul style="list-style-type: none">▪ All essential workers	SB 216
Connecticut	Executive Order	<ul style="list-style-type: none">▪ All essential workers who contracted COVID-19 between March 10, 2020 and May 20, 2020	EO 7JJJ
Florida	Admin. Policy Change	<ul style="list-style-type: none">▪ First responders▪ Child safety investigators▪ Corrections officers▪ National Guard service members responding to COVID-19▪ State-employed health care workers	CFO Directive 2020-05
Florida	Informational Memorandum	<ul style="list-style-type: none">▪ Reinforces the administrative policy change and informs insurance carriers that existing Florida law defines and covers occupational diseases.	OIR-20-05M
Illinois	Enacted	<ul style="list-style-type: none">▪ All essential workers	HB 2455
Kansas	Failed	<ul style="list-style-type: none">▪ All workers who work in close proximity with the public or coworkers	HB 2007 (special session)
Kansas	Failed	<ul style="list-style-type: none">▪ All workers who work in close proximity with the public or coworkers	HB 2018 (special session)
Kansas	Failed	<ul style="list-style-type: none">▪ All workers who work in close proximity with the public or coworkers	SB 1 (special session)
Kentucky	Executive Order	<ul style="list-style-type: none">▪ First responders▪ Health care workers▪ Military and National Guard▪ Domestic violence shelter workers▪ Child advocacy workers▪ Rape crisis center staff▪ Grocery store workers▪ Postal workers▪ Child care workers	EO 2020-277

Louisiana	Failed	<ul style="list-style-type: none"> ▪ All essential workers 	SB 475
Massachusetts	Pending	<ul style="list-style-type: none"> ▪ Paramedics ▪ Emergency and urgent care health care workers 	HD 4949
Massachusetts	Pending	<ul style="list-style-type: none"> ▪ Emergency room and urgent care health workers 	HB 4749
Massachusetts	Pending	<ul style="list-style-type: none"> ▪ All public employees working outside of their home 	SB 2732
Michigan	Pending	<ul style="list-style-type: none"> ▪ All essential workers 	HB 5758
Michigan	Pending	<ul style="list-style-type: none"> ▪ First responders ▪ Health care workers ▪ Corrections officers 	SB 906
Michigan	Pending	<ul style="list-style-type: none"> ▪ All essential workers 	SB 928
Michigan	Executive Order	<ul style="list-style-type: none"> ▪ First responders ▪ Health care workers 	EO 2020-125
Michigan	Pending	<ul style="list-style-type: none"> ▪ Workers who contract COVID-19 would be ineligible for workers' compensation if their employer was in compliance with public health requirements and guidelines 	SB 1019
Michigan	Pending	<ul style="list-style-type: none"> ▪ All workers who are required by their employer to work outside their home 	HB 6040
Minnesota	Enacted	<ul style="list-style-type: none"> ▪ First responders ▪ Health care workers 	HF 4537
Minnesota	Failed	<ul style="list-style-type: none"> ▪ School and higher education workers 	HF 9 e
Minnesota	Failed	<ul style="list-style-type: none"> ▪ School and higher education workers 	SF 16 f
New Hampshire	Executive Order	<ul style="list-style-type: none"> ▪ First responders 	Emergency Order #36
New Jersey	Pending	<ul style="list-style-type: none"> ▪ All essential workers 	AB 3998
New Jersey	Enacted	<ul style="list-style-type: none"> ▪ All essential workers 	AB 3999
New Jersey	Pending	<ul style="list-style-type: none"> ▪ Would prohibit payment of workers compensation benefits for COVID-19 unless the employer committed gross negligence 	AB 4496
New Jersey	Pending	<ul style="list-style-type: none"> ▪ Workers in warehouses and distribution centers 	AB 4784
New Mexico	Executive Order	<ul style="list-style-type: none"> ▪ Certain state workers and volunteers 	EO 2020-025
New York	Pending	<ul style="list-style-type: none"> ▪ First responders 	SB 8117A
New York	Pending	<ul style="list-style-type: none"> ▪ All workers who have contact with others 	SB 8266
New York	Pending	<ul style="list-style-type: none"> ▪ All workers at risk of exposure as part of their job 	AB 10401
North Carolina	Failed	<ul style="list-style-type: none"> ▪ First responders ▪ Corrections officers 	HB 1056

Northa Carolina	Failed	<ul style="list-style-type: none"> ▪ All essential workers 	HB 1057
North Dakota	Executive Order	<ul style="list-style-type: none"> ▪ First responders ▪ Health care workers ▪ Providers of treatment, care, programs or services to individuals with intellectual or developmental disabilities ▪ Employees of the Life Skills and Transition Center ▪ *Benefits limited to temporary wage replacement while in quarantine and health care treatments 	EO 2020-12.2
Ohio	Pending	<ul style="list-style-type: none"> ▪ First responders 	HB 571
Ohio	Pending	<ul style="list-style-type: none"> ▪ All essential workers 	HB 573
Ohio	Pending	<ul style="list-style-type: none"> ▪ Grocery store workers ▪ Food processing workers 	HB 605
Ohio	Pending	<ul style="list-style-type: none"> ▪ Health care workers 	HB 633
Ohio	Pending	<ul style="list-style-type: none"> ▪ Corrections officers 	HB 667
Ohio	Pending	<ul style="list-style-type: none"> ▪ First responders 	HB 668
Pennsylvania	Failed	<ul style="list-style-type: none"> ▪ Workers employed by a life-sustaining business or occupation 	HB 2396
Puerto Rico	Enacted	<ul style="list-style-type: none"> ▪ All workers infected while performing authorized services 	SB 1540
Rhode Island	Pending	<ul style="list-style-type: none"> ▪ All essential workers 	HB 8066
South Carolina	Failed	<ul style="list-style-type: none"> ▪ First responders ▪ Health care workers ▪ Corrections officers 	HB 5482
Tennessee	Failed	<ul style="list-style-type: none"> ▪ Essential workers ▪ Any infected worker if 9 or more other workers at the same location have also become infected 	SB 8007b
Texas	Pre-filed	<ul style="list-style-type: none"> ▪ Nurses 	HB 396
Utah	Enacted	<ul style="list-style-type: none"> ▪ First responders ▪ Health care workers 	SB 3007
Vermont	Enacted	<ul style="list-style-type: none"> ▪ First responders ▪ Health care workers ▪ Corrections officers ▪ Long-term care staff ▪ Child care providers ▪ Employees of pharmacies or grocery stores ▪ Other workers with high risk of exposure 	SB 342
Virgina	Failed	<ul style="list-style-type: none"> ▪ First responders ▪ Health care workers ▪ School employees 	HB 5028a
Virgina	Failed	<ul style="list-style-type: none"> ▪ First responders 	SB 5022a

Virginia	Failed	<ul style="list-style-type: none">▪ First responders▪ Health care workers	SB 5097a
Virginia	Failed	<ul style="list-style-type: none">▪ First responders▪ Health care workers	SB 5104a
Virginia	Failed	<ul style="list-style-type: none">▪ First responders▪ Health care workers▪ Corrections officers	SB 5066a
Virgina	Failed	<ul style="list-style-type: none">▪ First responders▪ Health care workers▪ School employees	HB 5028 a
Washington	Admin. Policy Change	<ul style="list-style-type: none">▪ First responders▪ Health care workers	Press Release
Wisconsin	Enacted	<ul style="list-style-type: none">▪ First responders	AB 1038
Wyoming	Enacted	<ul style="list-style-type: none">▪ All workers otherwise covered under workers' compensation	SB 1002 (special session)