

COMPLIANCE

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Workers' Compensation Changes for COVID-19

Under most state workers' compensation (WC) laws, COVID-19 may be a compensable, work-related condition only if an employee can show that:

- He or she contracted the coronavirus while performing services growing out of and incidental to his or her employment; and
- The disease arose out of that employment (work relatedness).

As of June 30, 2020, however, several states have made—or are in the process of making—changes that reverse this burden for certain employees. In general, these changes mean that it would be an employer's burden to prove that an employee **did not** contract COVID-19 on the job, rather than the employee's burden of proving that he or she **did** contract it on the job. While most of these changes apply only to certain types of workers—such as first responders, health care providers or those who are otherwise deemed “essential”—some changes apply the new presumption more broadly.

Many states have also taken actions that aim to reduce the impact of COVID-19-related claims on an employer's WC premium rates.

This Compliance Bulletin provides general information about the COVID-19-related changes made to state WC laws and policies.

Highlights

Workers' Compensation

No-fault system that provides medical expenses and lost-income replacement for employees who sustain injuries or illnesses that arise out of and in the course and scope of their employment.

Presumption Changes

Several states have changed their WC laws so that COVID-19 is presumed to be a work-related illness for certain employees.

Premium Calculations

Some states allow employers to exclude COVID-19-related claims or take other actions from the calculations used to determine WC premium rates.

Action Steps

Employers should follow all workplace safety guidance from the Occupational Safety and Health Administration (OSHA), the Centers for Disease Control and Prevention (CDC) and local health authorities to minimize the risk of employees contracting COVID-19 on the job.

Employers should also familiarize themselves with state laws that may impact their workers' compensation COVID-19 obligations and premiums.

Background

Workers' compensation is a no-fault system that provides medical expenses and lost-income replacement for employees who sustain injuries or illnesses that arise out of and in the course and scope of their employment.

Each state has its own workers' compensation law that governs the process of determining whether an injury or illness is work related and therefore compensable. Although workers' compensation benefits are usually the exclusive remedy against an employer for any compensable condition, employers may also be subject to private lawsuits if they intentionally cause harm to an employee or fail to have workers' compensation coverage as required.

COVID-19 Compensability Presumptions

The table below provides a general overview of the changes to state workers' compensation laws that have been enacted to provide a presumption that COVID-19 is a compensable, work-related condition for certain employees. Similar changes remain pending in other states. Employers should become familiar with (and regularly check for updates to) the detailed requirements that may affect them under all applicable laws.

State	Affected Employees	Order/Change
Alaska	First responders and health care workers.	Senate Bill 241
California	All employees not working from home.	Executive Order N-62-20
Florida	Front-line state employees.	Directive 2020-05
Illinois	First responders and front-line workers (including essential workers who are required to encounter members of the general public or to work in employment locations of more than 15 employees).	House Bill 2455
Kentucky	All essential workers.	Executive Order 2020-277
Minnesota	First responders and health care workers.	HF 4537
Missouri	First responders.	Emergency Rule
New Hampshire		Emergency Order 36
New Mexico	State workers who provide direct assistance or care to COVID-19 patients or work inside a facility that provides direct assistance, care or housing to COVID-19 patients.	Executive Order 2020-025
North Dakota	First responders and health care workers.	Executive Order 2020-12
Utah	First responders and health care workers.	Senate Bill 3007
Washington	First responders and health care workers.	L&I Policy
Wisconsin	First responders and health care workers.	Assembly Bill 1038
Wyoming	All workers.	House Bill 1002

Premium Calculations

The premiums an employer must pay for coverage under a workers' compensation insurance policy is usually determined based on payroll, measures of risk associated with the jobs that workers perform and the number and type of WC claims that have been made against the employer in the past. Due to the effects the COVID-19 pandemic may have on these factors, some states (including [California](#), for example) allow employers to reclassify employees or exclude COVID-19-related claims from their calculations.