



WORKERS' COMPENSATION COVID-19 CLAIMS ALERT: NEW LAWS AND EXECUTIVE ORDERS MAKE RADICAL CHANGES TO WORK COMP CLAIMS

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This article is intended to help employers understand the ongoing changes and prepare for new laws and litigated claims, but as we go to print, there remain several states whose legislators are drafting bills for new laws and continued pressure on governors to issue executive orders for coverage. Contact your carrier, legal counsel, or IMA claims advocate for the latest on your state's current stance on COVID-19 claims for workers' compensation.

Historically, viruses are considered under the "occupational disease" provisions of workers' compensation coverage. However, employees who might contract the flu or the common cold would not expect to have workers' compensation insurance pay for any lost wages or medical visits, due to the high difficulty of proving that they were exposed to the virus while in the course of employment. While there certainly are occupational diseases that are more commonly compensable under workers' compensation statutes, minor viral injuries were rarely pursued, that is, until COVID-19.

Some state governors have issued executive orders to broaden workers' compensation coverage to "first responders", or "essential workers", however the definition of the exact occupations included in these classes can vary substantially, by state. Other state legislators have already passed laws, or are preparing to introduce COVID-19 bills, as their legislative bodies reconvene.

California's executive order is probably the most extensive-expanding an automatic presumption of work-related compensability to all employees exposed to COVID-19. Employers may also be responsible for paying accrued sick time or vacation benefits, before any lost wage benefits are triggered.

Meanwhile, the Illinois Workers' Compensation Commission issued an order to cover COVID-19 claims, only to have the

order struck down by the courts and the order withdrawn. Still other state workers' comp. regulators, such as in Florida, have issued stern written "reminders" to carriers that they are expected to pay workers' compensation benefits to employees who claim they contracted COVID-19 on the job.

As each state court system reopens and begins to actively adjudicate workers' compensation COVID-19 cases, each state will either reinforce its new laws, or develop case precedent on whether, or not, these COVID-19 cases will be found compensable. From there, we will undoubtedly see these cases move on to appellate courts, where further litigation will likely bring us into next year, before we have a defined legal application for what coverage exists, which classes of employees it applies to and in which states. Meanwhile, we enclose a chart and links to recent state orders and legislation on workers' compensation coverage and its application to COVID-19 claims.

COVID-19 has the potential to have far-reaching financial impact to the workers' compensation system. California's early estimates of costs due to COVID-19 work. comp. claims are nearly \$34B (before the Governor's order to expand coverage), while New York estimates a cost of \$31B to their workers' compensation system.

IMA encourages employers to report all workers' compensation claims of a COVID-19-related illness to their insurance carriers to investigate, in order to avoid potential reporting fines or other state penalties. In the interim, it remains imperative for businesses to closely follow safety guidelines issued by federal, state, or local authorities. Employers should communicate their policies to each employee and document their employee's participation in, or violation of, such company standards. Employers will need to work closely with their insurance carriers to provide such proof/documentation in states that may allow them to refute a claim of COVID-19 by their employee.



The following chart identifies only those states that have issued executive orders or passed laws as of May 29, 2020.

STATE	CLASS OF EMPLOYEES (DEFINITION OF 1ST RESPONDERS OR ESSENTIAL VARIES BY STATE)	AUTOMATIC PRESUMPTION COVID-19 INJURY OCCURRED IN WORKPLACE	EMPLOYER CAN REBUT?	CLAIM REQUIREMENTS, EXECUTIVE ORDERS AND LEGISLATIVE BILL LINKS	SPECIAL NOTES
AK	First Responders	YES	YES	Senate Bill 241	
AR	First Responders	YES	YES	Executive Orders Additional Executive Order	
CA	ALL	YES	YES 30 days to do so (reduced from previous 90 days)	Claims after 3/19/20 Positive test within 14 days of working (not at home) Diagnosis cert. by physician Executive Order Additional Bills Pending; AB-196 , AB-664 , SB-1159 , SB-893	Employer exhausts PTO before TTD/Lost Wage benefits apply
CO	Essential Employees + Others	YES Senate Bill PENDING	YES	Legislative Session to Reconvene May 26th Senate Bill drafted and sponsored for introduction.	Offsets for health/life insur. may apply
FL	First Responders Healthcare Workers State Employees			Office of Insurance Regulations Issued Strong Reminder to Carriers to Provide Coverage Memorandum Coverage for State Workers: Directive 2020-05	
IL	Essential Workers (Withdrawn)	Withdrawn	Withdrawn	IL WC Commission Order challenged in court and withdrawn.	Order Withdrawn
KY	Essential Employees	YES	YES	Gov. Order 4/29 Executive Order 2020-277	
LA	Essential Employees	Sen. Bill 475 PENDING	Sen. Bill 475 PENDING	SB475	
MA	Medical and State Employees	PENDING	PENDING	HD.4949 , HD.5050 , SD.2924	
MI	First Responders	YES	YES	Emergency Ruling , HB 5743 , SB 906 , HB 5758	Add'l. Pending
MN	First Responders	YES	YES	HF 4537 , SF 4564 , HF 4683	Add'l. Pending
MO	First Responders	YES	YES	Emergency Rule	
NH	First Responders	YES	YES	Emergency Order #36	
NJ	Essential Employees	YES	YES	Executive Order No. 103 , A3999 , S2380	Add'l. Pending
NM	State Workers	YES	YES	Occupationally Specific Executive Order 2020-025	
NY	Multiple	YES	YES	S8091 , A10153 , A10172 , S0841A , S08117A , A10391 , Executive Order No. 202.6	Add'l. Pending
NC	Essential Employees	PENDING	PENDING	Proposed Legislation, House Bill DRH40549-LR-129 Proposed Legislation, House Bill DRH30544-LRa-135A	
ND	First Responders	YES	YES	Executive Order 2020-12	



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OH	Essential Employees	PENDING	PENDING	HB571 , Executive Order 2020-01D , HB573 , HB605 , HB633	
PA	Specific Occupations	PENDING	PENDING	Proposed Legislation HB1189 , HB2396	
SC	Specific Occupations	PENDING	PENDING	H 5482	
TX	First Responders	NO	YES	Mar 30th Exec. Order only allows First Responders to be reimbursed for COVID-19 medical expenses	
UT	First Responders	YES	YES	H.B. 3007 Signed into Law	
VT	Front Line Workers	YES	YES	S.342 Pending Passage into Law	
WA	First Responders	YES	YES	Press Release	
WI	First Responders	YES	YES	AB1038 – Signed into Law, Executive Order #72	
WY	All Employment	YES	YES	SF1002 , Pending Passage	

ABOUT THE AUTHORS



Sonja Guenther has more than forty years in the insurance industry and is a recognized national expert in the field of workers' compensation insurance. Along with drafting several pieces of legislation, she is a published author of and contributor to numerous workers' comp. articles and an awarded speaker in both local and national platforms. She holds a Bachelor of Science degree in Criminal Justice and a Master of Science degree in Communication, both from Regis University in Denver, Colorado.



Michelle Troppito has enjoyed twenty years in the claims industry and six years as a leader in the Claims Advocacy group with IMA. Michelle has handled catastrophic and complex litigated cases, as well as an attorney in the construction litigation field. Michelle's hands-on experience with claims along with her legal background truly benefits her customers in that Michelle provides unique insight, consulting and expertise in what can be a confusing and daunting time. She earned her Juris Doctorate from the University of Missouri at Kansas City School of Law and she earned a Bachelor of Arts degree from Truman State University.

This document has been produced as a guide only and is not intended to provide legal interpretation, nor legal advice. We recommend that you seek legal counsel for specific questions on workers' compensation statutes.