

COVID-19 AND WORKERS' COMPENSATION IN MINNESOTA

LEGISLATURE PASSES NEW PRESUMPTION RELATING TO COVID-19

On **April 7, 2020**, Governor Walz signed a bill put forth by the state legislature creating a presumption that certain categories of employees who contract COVID-19 are entitled to workers' compensation. This presumption takes effect on April 8, 2020 and ends May 1, 2021. The amendment is found in Minn. Stat. 176.011 subd 15 (f).

The date of injury under this presumption for employees who contract COVID-19 shall be the date the employee is unable to work due to a diagnosis of COVID-19, or due to symptoms later diagnosed as COVID-19, whichever occurs first.

If an employee doesn't fit within the presumption outlined here, they may still assert a claim for occupational disease under an already existing presumption for communicable disease contained in Minn. Stat. 176.011 subd 15 (b), or by proving an occupational disease as defined by Minn. Stat. § 176.011, subd. 15 (a).

To be covered by the new presumption employee must have a job within this list of categories. The presumption covers only the following Minnesota employees.

- Peace officer as defined by Minn. Stat. § 626.84, subd. 1
- Firefighter
- Paramedic
- Nurse, health care worker, corrections officer or security counselor employed by the state or a political subdivision at a corrections, detention or secure treatment facility
- Emergency medical technician
- Health care provider, nurse or assistive employee 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; or
- Workers required to provide child care to first responders and health care workers under Executive Order 20-02 and Executive Order 20-19.

If the employee is on the above list and contracts COVID-19, the condition is presumed work-related. Care in reading the list is important. For example, not every health care worker or provider is covered. The health care worker or provider must either be a government employee in corrections type work, or be involved in direct COVID-19 patient care or ancillary work in a COVID-19 patient unit.

Diagnosis

The diagnosis of COVID-19 must be confirmed by a positive laboratory test, or if a laboratory test was not available for this employee, the diagnosis can be confirmed by the employee's licensed physician, licensed physician's assistant or licensed advanced practice registered nurse. A copy of the test results or written documentation from the treating physician, physician's assistant or APRN shall be provided to the employer or insurer.

Rebutting the Presumption

This presumption is rebuttable. If the employee satisfies the requirements of the presumption, the presumption shall only be rebutted if the employer/insurer can show the employment was not a direct cause of the disease. Any denial of liability must meet the requirements of Minn. Stat. § 176.221, subd. 1.

Under this revised definition of occupational disease (during the statutory window of April 8, 2020 through May 1, 2021), an employee has three options to establish entitlement to workers' compensation benefits for a COVID-19 diagnosis.

1. An employee on the list of covered occupational categories can pursue a claim for COVID-19 under the new presumption.
2. If the employee is not on that list, they can look to the previous presumption. However, with its shorter list of employment categories, this will not offer much of an alternative for COVID-19 claims between now and May 1, 2021.
3. If they are not on either list of employments, they can work to prove their diagnosis of COVID-19 was directly caused by a work-related exposure. In this regard, employee has the burden of proof as with any work related injury or occupational disease. Ordinary diseases of life are generally not covered (see our March 12, 2020 news blast for discussion of the law in effect before April 8, 2020).

Comparing the COVID-19 Presumption to Existing Options.

The communicable disease presumption existing before April 8, 2020 was and remains limited to non-hospital settings. It covers licensed police officers as defined by statute, firefighters, paramedics, state correctional officers, EMTs, and licensed nurses who provide emergency medical care. The presumption does not cover hospital workers or non-emergency medical providers. Only state correctional officers are covered – excluding county or city jails. Home care, long-term care and child care workers are not covered. This presumption is rebuttable by substantial factors brought by the employer/insurer. The presumption is unchanged by the new law.

If you are wondering whether your employee or a certain category of employees is covered by either the new law or the previous communicable disease presumptions, please contact us.

We look forward to answering your questions and assisting you with navigating this complicated legislative framework, with multiple paths to evaluating an occupational disease claim relating to COVID-19 or other conditions.

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