States Create Presumptions for Essential Workers to Become Eligible for Workers’ Compensation Benefits During Pandemic

Article By
W. Kyle Dillard
S. Michael Nail
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
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A number of states have recently passed or proposed amendments to their workers’ compensation statutes (or have issued other authority) to make it easier for healthcare workers, first responders, and other essential workers to receive workers’ compensation benefits in connection with COVID-19. These measures generally do so by providing a presumption of coverage for certain employees who test positive for, are impacted by or exposed to, the virus causing COVID-19. In many of these states, the presumption is rebuttable; however, in some states, the presumption is conclusive.

Ten states have implemented authoritative changes (Alaska, Arkansas, Kentucky, Michigan, Minnesota, Missouri, North Dakota, Utah, Washington, and Wisconsin), eight states have similar legislation pending (California, Louisiana, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, and Vermont), and government figures in other states have alluded to the possibility of similar proposals. One proposal picking up steam is Governor Gavin Newsom’s reported consideration of an executive order that would provide an automatic presumption of coverage for essential workers in California. Adding to the list of California proposals is Assemblywoman Lorena Gonzalez’s April 28, 2020, announcement of her intention to amend an existing bill with language that conclusively presumes essential workers with COVID-19 contracted the disease at their workplaces. The measure would allow workers to be compensated for their hospital stays, medical treatments, disability indemnity, or surgeries, and would disburse death benefits if the disease were fatal. It has been reported that grocery, retail, warehouse, and transportation workers, as well as other employees deemed essential during the pandemic, would qualify for workers’ compensation pursuant to the amendment.

In addition, the Illinois Workers’ Compensation Commission (IWCC) implemented an emergency amendment to the workers’ compensation rules on April 13, 2020, to create a rebuttable presumption of compensable occupational injury for first responders or essential front-line workers (as broadly defined in Executive Order 2020-10). However, a Sangamon County circuit judge recently issued a temporary restraining order barring enforcement of the Illinois emergency amendment. Thereafter, on April 27, 2020, the IWCC repealed the emergency rule.

In general terms, compensability for a workers’ compensation claim will be determined on a case-by-case basis and subject to each state’s specific laws related to coverage and the employee’s burden of proof. Determining whether an employee was exposed to COVID-19 while at work and whether the employee’s claim is compensable generally will hinge on whether the employee’s condition arose out of and in the course and scope of employment, as well as whether the infection was caused by conditions peculiar to the work such that the work created a greater risk of contracting the illness and in a different manner than that faced by the public in
Establishing a presumption of compensability for certain essential workers during the pandemic is a growing trend among states and would significantly lessen an employee’s burden of proving that a COVID-19-related illness is compensable under workers’ compensation laws. Details of these state law amendments vary. For more detail and the latest developments, please refer to our Workers’ Compensation Coverage chart.

Critical information for employers is also available via the firm’s webinar programs.
