

# Regulators and Lawmakers Introducing Workers' Comp to COVID-19

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By Jim Sams, April 20, 2020

Sympathetic state lawmakers and regulators in states both red and blue promise to make COVID-19 a major cost driver for workers' compensation insurers.

The governors of Kentucky, Arkansas, North Dakota and Florida and state regulators in Illinois, Washington, Michigan and Missouri have issued executive orders or amended rules to expand eligibility for workers' compensation.

Most of those decrees ease the path for benefits only for healthcare workers and first responders, but [an emergency order](#) by the Illinois Workers' Compensation Commission creates a presumption that work is the cause of COVID-19 if contracted by any "frontline worker" identified in Gov. J.B. Pritzker's March 20 stay-at-home order. That includes workers at grocery stores, laundries, banks and hardware stores, among other businesses.

Kentucky Gov. Beshear issued a similarly broad [executive order](#) that created a COVID-19 presumption for workers in grocery stores, child-care centers, domestic violence shelters and rape crisis centers, in addition to first responders and healthcare workers.

In the meantime state legislators are also pushing to expand benefits for COVID-19. Earlier this month, Alaska Gov. Mike Dunleavy (R), Wisconsin Gov. Tony Evers (D) and Minnesota Gov. Tim Walz (D) signed into law bills that create a COVID-19 presumptions for first responders and some healthcare workers.

Bills to create presumptions for COVID-19 have been introduced in the New York, New Jersey, Pennsylvania, Ohio and Utah state legislatures.

## Steamroller

Philadelphia defense attorney Cliff Goldstein said he saw the avalanche of presumption bills coming as soon as heard the first reports of the disease spreading into the United States.

"I don't think there's any way to stop that steamroller," he said.

Data from the California Division of Workers' Compensation bears him out. As of Thursday, 1,527 claims coded for COVID-19 on claims notices had been filed, according to agency spokeswoman Erika Monterroza.

Goldstein is not the only defense attorney predicting a flood of COVID claims.

"There will likely be many workman compensation claims because of the ease of filing, there is no requirement to prove negligence, and for many people their greatest contact with others, and hence the greatest chance of contracting the virus, is at work," David Boies, managing partner of Boies Schiller Flexner LLP in New York, told Bloomberg News.

Goldstein said presumption legislation promises to be a boon for claimants' attorneys, who will take a percentage of any permanent disability benefits awarded.

"You are just dangling meat in front of hungry lions," he said.

Goldstein said his office — Chartwell Law in Valley Forge — has already received a handful of claims, some of them death claims. He said employers should resist any kind-hearted urge to quickly approve such claims based on the employee's job category. Instead, each claim must be individually investigated, he said.

COVID-19 claims that require admission to an intensive care unit will likely run into the six figures for medical costs alone, he said. What's more, employers will be taking full responsibility for whatever complications arise from a coronavirus infection far into the future.

Goldstein said Congress passed a pair of relief bills in March that should make it easier for employers to delay acceptance of a claim. The legislation requires employers with fewer than 500 employees to grant up to 80 hours of sick leave to workers sickened by the new coronavirus, which will be reimbursed with tax credits. Gov. Gavin Newsom issued an executive order Thursday that requires the same benefit from employers with more than 500 workers.

For workers who lose their jobs because of coronavirus, the federal emergency law also allows up to 16 weeks of unemployment insurance benefits at rates ranging from \$875 to \$1,500 per week, depending on the state, Goldstein said.

#### Vulnerable Occupations

Claimants' attorney Julius Young in Oakland, Calif. said those benefits won't make workers whole. Usually workers lose their health insurance if they lose their job, which makes workers' comp a vital benefit for employees who were made sick because of their exposure to the public while at work. Also, some workers may be permanently disabled by COVID-19.

He said presumption bills make sense for workers who can't avoid constant contact with the public.

"A lot of these people in vulnerable occupations shouldn't have to go through this roulette-like maze wondering whether they are going to be covered," Young said.

Young said the federal benefits will help in the short-term. He said state regulators should start thinking about whether and how any federal benefits paid can be offset from workers' compensation awards.

Medical research indicates that there is a real possibility of permanent disability from COVID-19.

According to Science Magazine, the lack of oxygen and widespread inflammation caused by COVID-19 can damage kidneys, liver, heart, brain and other organs. Studies show that severe pneumonia caused by other diseases sometimes lead to scarring that causes long-term breathing problems. Pneumonia also increases the risk of future illnesses, including heart attack, stroke and kidney disease.

In one study of 138 patients hospitalized in Wuhan, China due to pneumonia from COVID-19, 20 percent suffered acute respiratory distress syndrome.

A separate study published by the New England Journal of Medicine in 2011 Regulators and Lawmakers Introducing Workers' Comp to COVID-19 found that of 109 survivors of ARDS, 51% suffered physician-diagnosed depression, anxiety or both. Perhaps more relevant to workers' comp, that study found that just 77 percent of the 83 patients who survived throughout the study period had returned to work five years after being treated. The study found that only 39% of patients were able to walk the distance expected for their age group in six minutes five years later, suggesting a high degree of physical impairment.

As of yet, none of the major workers' compensation rating organizations has released any projections on the potential impact of COVID-19 on workers' comp loss costs.

The National Council of Compensation hopes to release next week an analysis of potential claim costs under a variety of scenarios, said Executive Director Jeff Eddinger. For example, one scenario projects costs if a large percentage of workers who contract COVID-19 file claims and 100 percent are found to be compensable. He said the analysis will make projections for a variety of infection and claim-acceptance rates.

Eddinger said NCCI does not yet have any data on how many claims have been filed. He said insurers don't report their losses until six months after the policy period expires. But he said there is some data available. For example, the Centers for Disease

Control and Prevention reported that between 10 percent to 20 percent of COVID-19 cases were healthcare workers.

The California Workers' Compensation is working on similar projections, said President Alex Swedlow.