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States Move to Ease Ability of Employees to Claim Work-Related Coronavirus Infection

Generally speaking, an employee has the burden of proving that his or her illness was the result of exposure sustained in the course of employment. As the COVID-19 crisis continues, some states have implemented new rules that shift the burden to the employer to disprove that an employee's contraction of COVID-19 occurred as a result of their employment. This will have the obvious result of increasing workers' compensation claims for coronavirus infection.

Across the Husch Blackwell footprint, **Illinois** has issued the broadest rules governing who can expect to receive workers' compensation benefits if they contract COVID-19 during the period of time in which they continue to work. The Illinois Workers' Compensation Commission enacted an emergency rule changing the burden of proof for certain employees claiming COVID-19 infection due to work. First responders and front-line workers are entitled to a rebuttable presumption that the illness arose out of and in the course of the employment if the employee contracted COVID-19 during a COVID-19-related state of emergency. It is also rebuttably presumed that the illness is causally connected to the hazards of employment.

Illinois defines the term "COVID-19 first responder or front-line worker" as any individuals employed as police, fire personnel, emergency medical technicians (EMT) or paramedics and all individuals employed and considered as first responders, healthcare providers engaged in patient care, correction officers and the crucial personnel identified under the following headings in Section 1, Part 12 of Executive Order 2020-10 dated March 20, 2020: Stores that sell groceries and medicine; Food, beverage, and cannabis production and agriculture; Organizations that provide charitable and social services; Gas stations and businesses needed for transportation; Financial institutions;

Hardware and supplies stores; Critical trades; Mail, post, shipping, logistics, delivery, and pick-up services; Educational institutions; Laundry services; Restaurants for consumption off-premises; Supplies to work from home; Supplies for Essential Businesses and Operations; Transportation; Home-based care and services; Residential facilities and shelters; Professional services; Day care centers for employees exempted by [Executive Order 2020-10]; Manufacture, distribution, and supply chain for critical products and industries; Critical labor union functions; Hotels and motels; and Funeral services.

In **Missouri**, by Emergency Rule, a “first responder,” defined as a law enforcement officer, firefighter or EMT, who has contracted or is quarantined for COVID-19, is presumed to have an occupational disease arising out of and in the course of their employment. This change is retroactive and expires when the state of emergency expires.

In **Wisconsin**, the legislature passed a new law that creates a rebuttable presumption of work-relatedness for first responders who test positive for COVID-19 and have been exposed to persons with confirmed COVID-19 in the employment. A “first responder” means an employee of or volunteer for an employer that provides firefighting, law enforcement, medical or other emergency services, and who has regular, direct contact with, or is regularly in close proximity to, patients or other members of the public requiring emergency services, within the scope of the individual’s work for the employer.

Several other states are considering the adoption of emergency rules mandating a rebuttable presumption that certain groups of employees who contract COVID-19 are entitled to workers’ compensation benefits. In **Texas**, a law enforcement and detention officers’ organization has requested a presumption of work-relatedness for first responders who test positive for COVID-19. In **Maryland** and **Virginia**, citizens are proposing legislation to create a presumption that healthcare workers and public safety employees who become ill with COVID-19 contracted the virus in the course of employment. In **Tennessee**, a national law enforcement organization is pushing for a similar presumption. We will continue to provide updates as more states move to make it easier for employees to claim coronavirus infection as a work-related injury.

Comprehensive CARES Act and COVID-19 Guidance

Husch Blackwell’s CARES Act resource team helps clients identify available assistance using industry-specific updates on changing agency rulemakings. Our COVID-19 response team provides clients with an online legal Toolkit to address challenges presented by the coronavirus outbreak, including rapidly changing orders on a state-by-state basis. Contact these legal teams or your Husch Blackwell attorney to plan a way through and beyond the pandemic.

Tracey O’Brien contributed to this article.