



## Alerts

### Illinois Legislature Passes COVID-19 Workers' Compensation Bill Containing Rebuttable Presumption for Front-Line Workers

May 26, 2020

*Insights for Insurers*

On May 22, 2020, the Illinois legislature overwhelmingly passed a [bipartisan bill](#) that creates COVID-19 workers' compensation protection for certain workers considered "essential" under the Governor's [stay-at-home order](#). The bill provides that for COVID-19 first responders and front-line workers who are infected with the coronavirus, "the exposure and contraction shall be rebuttably presumed to have arisen out of and in the course of the employee's first responder or front-line worker employment and the injury or occupational disease shall be rebuttably presumed to be causally connected to the hazards or exposures of the employee's first responder or front-line worker employment."

The term "COVID-19 first responder or front-line worker" is defined in the bill as "all individuals employed as police, fire personnel, emergency medical technicians, or paramedics; all individuals employed and considered as first responders; all workers for health care providers, including nursing homes and rehabilitation facilities and home care workers; correction officers; and any individuals employed by essential businesses and operations as defined in Executive Order 2020-10 dated March 20, 2020, *as long as individuals employed by essential businesses and operations are required by their employment to encounter members of the general public or to work in employment locations of more than 15 employees. For purposes of this subsection only, an employee's home or place of residence is not a place of employment, except for home care workers.*" (emphasis added).

In order for the presumption to arise in cases where the COVID-19 diagnosis occurred on or before June 15, 2020, the employee must provide a confirmed medical diagnosis by a licensed medical practitioner, or a positive laboratory test for COVID-19 or COVID-19 antibodies. For cases involving a COVID-19 diagnosis made after June 15, 2020, the employee will be required to provide a positive laboratory test for COVID-19 or COVID-19 antibodies. The presumption will not apply if the employee's place of employment was solely the employee's home or residence for a period of 14 or more consecutive days immediately prior to the employee's injury, occupational disease, or period of incapacity resulting from exposure to COVID-19.

#### Attorneys

Robert J. Finley

Scott M. Seaman

#### Service Areas

Workers' Compensation  
Defense



Under the bill, employers will be able to introduce evidence to rebut the presumption. The bill provides the following examples of such evidence:

- (A) the employee was working from his or her home, on leave from his or her employment, or some combination thereof, for a period of 14 or more consecutive days immediately prior to the employee's injury, occupational disease, or period of incapacity resulted from exposure to COVID-19; or
- (B) the employer was engaging in and applying to the fullest extent possible or enforcing to the best of its ability industry-specific workplace sanitation, social distancing, and health and safety practices based on updated guidance issued by the Centers for Disease Control and Prevention or Illinois Department of Public Health or was using a combination of administrative controls, engineering controls, or personal protective equipment to reduce the transmission of COVID-19 to all employees for at least 14 consecutive days prior to the employee's injury, occupational disease, or period of incapacity resulting from exposure to COVID-19. . . . ; and
- (C) the employee was exposed to COVID-19 by an alternate source.

The rebuttable presumption will apply to all cases in which the diagnosis of COVID-19 was made on or after March 9, 2020, and on or before December 31, 2020. Employees who contract COVID-19, but fail to establish the rebuttable presumption, would not be precluded from compensation if, nonetheless, they carry their burden of proof.

The bill—which is now headed to the Governor's office—materially differs from the now repealed rule issued last month by the Illinois Workers' Compensation Commission, which would have allowed a larger group of front-line workers not having been diagnosed with COVID-19 to obtain workers' compensation benefits without having to prove they contracted the virus at work. The bill does not prohibit any other employee from pursuing workers compensation or occupational disease claims resulting from exposure to COVID-19; however these employees would not have the evidentiary benefit of a rebuttable presumption.

If this bill becomes law, then Illinois courts may still see challenges by classes of "non-essential" employees who worked during the stay-at-home order, or by employers and insurers who face "a daunting Sophie's Choice" of paying the employee's claim at the outset, or exposure to statutory penalties for a failed attempt to rebut the presumption. As a practical matter, employers and insurers responding to COVID-19 claims must not only rebut the presumption in accordance with the text of the bill by tracing and retracing employee activity after March 9, 2020 and documenting compliance with safe workplace guidance, but they must also conduct an immediate and thorough investigation including, where practicable, an interview of the claimant and further showing that the employee was exposed to and/or contracted COVID-19 outside the scope of employment. Rebutting the presumption is just the halfway point to defending these claims.

## Related Content

See also, "[Governor Newsom Issues Executive Order Creating Rebuttable Presumption of Workers' Compensation Compensability for COVID-19 Work-Place Related Illnesses](#)," *Insights for Insurers*, May 8, 2020.

---

The bill defines "updated" as "the guidance in effect at least 14 days prior to the COVID-19 diagnosis."