

ALERTS

North Carolina Considering COVID-19 Workers' Compensation Expansion for Frontline and Essential Workers

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For the last two months, the doors of millions of businesses and homes have been shuttered due to government mandated stay at home orders. Through it all, the individuals who have served on the front lines and in essential businesses have been required to risk exposure to the novel coronavirus (COVID-19) to continue to serve and keep those businesses running. Several North Carolina Representatives recently introduced H.B. 1057 - WC/COVID-19 Front Line Coverage/Funds, a bill that would amend North Carolina's workers' compensation law by creating a rebuttable presumption that first responders, healthcare workers, and workers in essential services who contract COVID-19 or another pandemic infection contracted the infection on the job. A more limited measure also was introduced in H.B. 1056, which would create the rebuttable presumption for COVID-19 for first responders and healthcare workers only. With the introduction of these bills, North Carolina has joined several other states considering measures that would bring COVID-19 within the reach of workers' compensation coverage (e.g., Kentucky via Executive Order and Minnesota, Wyoming, Utah, and Wisconsin via legislation). We discuss the more expansive bill, H.B. 1057, below.

Under H.B. 1057, pandemic infection would be deemed an "occupational disease" for the following individuals:

- law enforcement officers,
- jailers,
- prison guards,
- firefighters,
- emergency medical technicians or paramedics employed by a State or local governmental employer, including certain volunteer firefighters,
- healthcare workers,
- and employees required to work for a business declared essential by executive order of the Governor or by order of a local governmental authority, including food service, retail, and other essential personnel.

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For these "covered persons," it would be presumed that they contracted COVID-19 in the course of their employment, and they would thereby be eligible for workers' compensation. The presumption could only be rebutted "by clear and convincing evidence."

H.B. 1057 would put in place additional measures for state and local employees. According to the May 14th fiscal analysis of H.B. 1057, an estimated 26,200 State employees and 45,200 local employees would be considered a covered person. Local government employees who fall within the healthcare worker and first responder categories outlined above would have to be credited for sick or vacation leave taken to comply with a quarantine related to exposure to coronavirus. For State employees, a non-recurring allocation of \$5 million would be provided for the settlement of their COVID-related workers' compensation claims through the end of 2020. Any remaining funds could be used by the State to settle prior outstanding workers' compensation claims.

Although roughly 71,000 State and local government employees would be affected by H.B. 1057, the fiscal analysis assumes that the bill would have a "relatively minor negative impact on State and local governments if infection and death rates do not increase significantly," due to several factors. The bill is expected not to lead to high payments of additional wages based on benefits already in place for employees, in part due to recent state and federal COVID-related legislation and policies. For state employees, COVID-related testing and treatment already is being covered for free under the State health plan. Accordingly, the bill would not require any additional expenditures for a State employee's medical care. For local employees, the fiscal analysis reasons that there may be a negative impact on local governments for increased coverage of medical expenses under workers' compensation insurance, but a corresponding positive impact would be realized with respect to coverage under local governments' health insurance plans. "Increased workers' compensation medical care costs on local governments could result in negative claims experience as it relates to workers' compensation insurance. However, assuming the workers' compensation insurance covers the medical care costs for covered employees who contract a pandemic infection, a positive claims experience would be realized on the local governments' health insurance coverage." The "largest net fiscal impact" of H.B. 1057 on the State and local governments is anticipated to be generated by the workers' compensation death benefit. The analysis estimates that \$600,000 would be paid out for State employee deaths and \$900,000 to \$1.2 million for local employee deaths. The H.B. 1057 fiscal analysis refrained from offering a numerical fiscal impact estimate on State and local governments due to the uncertainties of COVID-19 and any future pandemics.

Efforts to quantify the effect of COVID-19 on workers' compensation in other states estimate the impact for those states could be in the billions of dollars. For example, a study conducted by the National Council on Compensation Insurance found that the effect of COVID-19 on workers compensation costs in the 38 states the agency serves could range from \$1 billion to \$80 billion. The Workers Compensation Insurance Rating Bureau of California found "that aid including a COVID-19 presumption for essential workers in the state could carry an annual price tag of as much as \$33.6 billion."

H.B. 1057 reportedly has increasing bipartisan support by North Carolina lawmakers, but the North Carolina Retail Merchants Association along with more than 20 business groups have expressed opposition to the bill, considering it "a fundamental threat to the continued viability of the workers compensation system in our

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state." H.B. 1057 has been referred to the House Standing Committee on Health. We will keep you posted on developments.