



## **WHAT CLAIMS QUALIFY UNDER THE NEW COVID-19 STATUTORY PRESUMPTION AND WHAT PROOF IS NEEDED?**

By Sean M. Abernathy

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Recently, Governor Tim Walz enacted legislation amending the Minnesota Worker's Compensation Act §176.011 to add Subd. 15(F). This added a provision outlining that workers in specific fields of employment who contract COVID-19 are presumed to have contracted the disease arising out of and in the course and scope of their employment. This provision means that specific classes of employees are presumed to have sustained a compensable occupational disease and would therefore be entitled to workers compensation benefits stemming from their contraction of COVID-19.

The classes of workers covered by this provision include licensed peace officers, firefighters, paramedics, or emergency medical technicians. Also, nurses, healthcare workers, correctional officers or security counselors employed by the state or a city or county corrections, and officers in a detention or secure treatment facility would also fall into this category. More broad categories include healthcare providers, nurses or "assistive employees" working in healthcare facilities, home care or long-term care settings provided they have direct contact with COVID-19 patients or have performed "ancillary work" within COVID-19 patient units. Lastly, the law also applies to childcare providers who are required to provide childcare to first responders and healthcare workers under Executive Orders 20-02 and 20-19.

Per Minn. Stat. § 176.011 Subd. 12 A, a "healthcare provider" means a physician, podiatrist, chiropractor, dentist, optometrist, osteopathic physician, psychologist, psychiatric social worker or any other person who furnishes a medical or health service. The definition of healthcare provider is broad and is likely an individual working to provide healthcare to patients would likely fall under the definition of healthcare provider even if their employment title does not strictly correspond with statutory definitions.

The statute outlines that "assistive employees" or those performing

"ancillary work" supporting healthcare activities would be presumed to have contracted COVID-19. Unfortunately, the new law does not define either assistive employee or ancillary work. Thus, this is likely to be a question of fact. Per the Department of Labor and Industry, the term is likely to include professional and non-professional employees who perform varieties of work in healthcare settings. Employees who may fall under the assistive employee or ancillary work definitions might include custodial workers, maintenance professionals, medical technicians or other similarly situated workers who provide support services within healthcare settings where COVID-19 patients are being treated.

In order to qualify for the rebuttable presumption, an employee can show either 1) a positive laboratory test showing they have contracted COVID-19, or 2) if a test was not available for the employee, a diagnosis based on symptoms by a licensed physician, licensed physician's assistant or licensed advanced practice registered nurse. Copies of test results or treatment notes showing the diagnosis by one of the qualifying healthcare providers must be provided to the employer or their insurer in order for an employee to qualify for this rebuttable presumption.

Additionally, the employee is only entitled to this presumption if they have contracted COVID-19 on or after April 8, 2020 while employed in one of the aforementioned occupations. It is possible that an employee having contracted COVID-19 prior to April 8, 2020 could bring a claim under a traditional occupational disease theory, but it is likely that they would not be afforded the presumption of compensability.

For additional details, please see the COVID-19 Workers' Compensation COVID-19 Rebuttable Presumption Outline and FAQ's. Should you have any questions regarding the application of the newly enacted COVID-19 specific legislation, please reach out to myself or any of the other attorneys of Brown & Carlson P.A. We are happy to help.

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