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The COVID-19 Statutory Presumption Has Been Extended

By Penny Helgren

The Minnesota legislature has extended the Covid-19 presumption for many front-line workers until January 13, 2023. Minn. Stat. § 176.011, subd. 15(f), which created the rebuttable presumption for certain front-line workers effective April 8, 2020, expired on December 31, 2021. The presumption was reinstated on February 3, 2022 and continues the presumption that eligible workers who test positive for Covid-19 contracted the virus during employment. However, coverage is not retroactive. Therefore, for front-line workers who contract COVID-19 from January 1, 2022 to February 2, 2022, the presumption does not apply. Eligible workers include licensed peace officers, firefighters, paramedics or emergency medical technicians; certain correctional, detention or secure treatment facility workers; healthcare providers, nurses or assistive employees working directly or indirectly with Covid-19 patients and healthcare, homecare or long-term care setting; and childcare providers caring for children of first responders and healthcare workers under the executive orders.

Per Minn. Stat. § 176.011, Subdivision 12A, 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. The definition of either assistive employee or ancillary work is a question of fact.

In order to qualify for the rebuttable presumption, an employee can show either 1) a positive laboratory test showing they have contracted Covid-9, or 2) if a test was not available for the employee, a diagnosis based on symptoms by licensed physician, licensed physician's assistant or licensed advanced practice registered nurse.

The Department of Labor and Industry has also issued directives with regard to the filing of reports of injury for Covid-19 claims. It requires employers to report any injury that wholly or partly incapacitates an employee from performing labor or service for more than three (3) calendar days. This includes an employee's contraction of Covid-19 that may have occurred at work and that could be considered an occupational disease or injury. For non-presumptive cases, a First Report of Injury (FROI) is encouraged to be filed regardless of whether the employee reports that Covid is not work-related. For presumptive cases that occurred during the periods, the presumption is in effect, a First Report of Injury must be filed regardless of whether the employee reports that Covid is not work-related. The Department of Labor and Industry directs that when completing the First Report of Injury, employers should use "Nature of Injury Code 83" for Covid-19 claims. Filing a First Report of Injury is not an admission of liability but failure to report the claim to the insurer or TPA may result in time-consuming and costly litigation and increased benefits to injured employees.

Should you have any questions regarding the application of the renewed presumption or the Covid-19 specific legislation, please reach out to myself or any of the other attorneys at Brown & Carlson P.A.

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