



Reduce harmful work stressors.
Improve job quality and health.

Healthy Work Strategies

Reducing COVID-19-related work stressors

IV. Workers' compensation

For workers who have been injured or become ill due to work, the workers' compensation insurance system is designed to pay for the cost of their medical care and to replace part of their lost wages. It is also designed to provide a financial incentive to employers to provide a safer and healthier workplace. However, workers' compensation in practice is typically limited in coverage to hazards that can be directly connected with work. Seasonal community-spread illnesses, such as the cold or the flu, are often not covered as it may be difficult to connect them to the workplace.¹ The current COVID-19 pandemic presents a challenge, therefore, since the virus can be transmitted in the workplace, but it may be difficult to prove that the workplace was the source of the infection.

State laws

As of December 9, 2020, 17 states and Puerto Rico had extended workers' compensation coverage of COVID-19 as a work-related illness for various workers. Minnesota, Utah, and Wisconsin provide coverage for first responders and health care workers. Illinois, New Jersey, and Vermont cover all essential workers.¹ Wyoming covers all workers. California covers first responders, health care workers, and employees whose employers have more than four employees and others involved in a defined "outbreak".⁵ Four states (NM, MI, CN, and NH) took executive action to put in place presumptions for first responders and healthcare workers in response to COVID-19, and four other states (CA, KY, AR, ND) used executive actions to provide coverage to all "essential" workers, some including a broader range of workers, such as grocery store employees.¹ California's executive action was short-lived, now replaced by SB 1159.⁵

The New Jersey law defines "essential employee" as "an employee in the public or private sector who during a state of emergency is":²

1. A public safety worker or first responder, including fire, police, or emergency responder

2. Involved in providing any medical or healthcare services, including emergency transportation, social services, and other services provided in a facility or home
3. Performs functions that involve physical proximity to the public and are essential to the public's health, safety, and welfare, including transportation, hotel and residential services, financial services, and services related to essential items such as food, beverages, medicine, fuel and supplies for conducting business at work or home.
4. Any employee deemed essential by the public authority who declares the state of emergency. This last category is the most fluid, with many states interpreting "essential" differently. For example, some states support religious organizations and churches as "essential", others who support the cannabis industry are designated as "essential".³

The governor of Connecticut signed a "Stay Home, Stay Safe", executive order, that established workers' compensation related to COVID-19. Workers protected under this order are health care professionals, grocery store workers, first responders, and other essential workers as determined by the state. This order applies for these workers who missed at least one day of work between March 10 and May 20 due to diagnosis, or symptoms that were diagnosed, as COVID-19, that were contracted at work.⁴

On September 17, 2020, SB 1159 expanded the framework for COVID-19 related workers' compensation claims in California. In this law, a "disputable presumption" exists for any employee that becomes ill or dies as a result of COVID-19 from July 6, 2020 through January 1, 2023. If the presumption applies, an employee is entitled to "full hospital, surgical, medical treatment, disability indemnity, and death benefits". In the event the employee does not have dependents, the Dept. of Industrial Relations waives death benefit entitlements.⁵

Federal law

On August 14, 2020, The Safeguarding America's First Responders (SAFR) Act was passed that established a presumptive benefit for public safety officers who contract COVID-19. The International Association of Fire Fighters (IAFF) noticed a gap in the previous law, such that a firefighter had to provide proof they contracted the virus at their workplace, which is difficult due to the nature of their work. Therefore, the IAFF worked with government officials to enact the SAFR Act, that provides full federal benefits to firefighters who die or are permanently and totally disabled due to COVID-19.⁶

Eligibility

Each state workers' compensation system is slightly different and there are no minimum federal standards for state systems. Being eligible for and filing for workers' compensation does not guarantee getting the benefit, even if standards of proof are met. Many employers and insurers will deny claims arguing that they are due to a non-work, or other work situation.

In order to be eligible for workers' compensation due to COVID-19, workers will have to prove that they have a work-related infection.⁷ Some key information on what this means is listed below, and a more comprehensive list can be viewed [here](#).

- In order to be eligible, an employee must get sick on the job while acting “within the scope” of employment, and this definition can vary. For example, if you come into contact with the virus while in the bathroom or hallway of your building, you would likely be eligible, though if you contracted the virus while out for a lunch break during work hours, you would not.
- The employer does not have to be “at-fault” for an employee being diagnosed with COVID-19 in order for you to be eligible. Even if all CDC guidelines were being followed, if an employee gets sick while at work, they can file for workers' compensation.
- If your employer did not take the necessary precautions to ensure your protection at work, this may be grounds to sue for “gross negligence”. However, a much more likely outcome would be the addition of a penalty within workers' compensation for “serious and willful” employer misconduct.
- It is important to speak to a work injury lawyer about taking appropriate legal action when filing for workers' compensation. Union members should have representation from an internal workers' compensation committee or be part of a regional injured workers organization to:
 - provide support to injured workers in their union
 - be used as a generator of materials for bargaining and negotiation
 - contribute shop floor expertise and guidance for policy reform to what should be a worker-centered system.

Denied or delayed claims

Despite these laws and orders that provide greater access to workers' compensation for COVID-19, many workers are still having claims either held up or denied. A Connecticut corrections officer reported taking off three weeks from work due to contracting COVID-19 at work, as her work did not provide sufficient PPE and she was unable to maintain social distancing due to the nature of her job. Though she filed a claim with her state workers' compensation system, she has not received any benefits. In Massachusetts, out of 5,030 reports of first injury (the first step in filing a claim), 734 have been denied and 69 are in dispute. In California, out of the 30,000 workers' compensation claims, nearly 1/4 have been denied, and out of the 3,807 claims in Florida, 1,695 had been denied by the end of May. Many denials have been to front-line workers. Furthermore, some executive orders that provide workers' compensation have expiration dates. For example, Connecticut's executive order only provides coverage for COVID-19 related illnesses contracted until May, even though many workers may still have lacked proper PPE after that, complicating compensation claims even further.⁸

When workers' compensation claims for work-related illnesses are denied or delayed, not only do workers suffer financially or through delayed medical treatment, it is more difficult to achieve the goal of *preventing* work-related illnesses through lower insurance premiums for employers who provide safer workplaces.

Updates

Laws, regulations and executive orders related to workers' compensation and COVID-19 need to be evaluated for their impact on reducing work hazards and workers' illnesses. We plan to update this page as COVID-19-related workers' compensation laws and regulations are enacted or revised. Please share new information about workers' compensation and COVID-19 with us at contact@healthywork.org, so that we can discuss it here.

References:

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8. Covert, B. (2020, September 7). *Covid-19 Workers' Comp Claims Are Being Held Up or Denied*. The Intercept. <https://theintercept.com/>.

The following report was the source of some of the information in this case study: "Workers Compensation, Occupational Infectious Disease and Covid-19", January 12, 2021 compiled by Glenn Shor, PhD, MPP. We are also grateful to Dr. Shor for his review of this case study.