

# IMPORTANT COVID-19 UPDATE

## ESSENTIAL EMPLOYEES WHO CONTRACT COVID-19 AT WORK PRESUMED ENTITLED TO WORKERS' COMPENSATION

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On September 14, 2020, the State of New Jersey enacted legislation creating a rebuttable presumption for certain categories of workers that if they contract COVID-19, such contraction is work related. The legislation ([P.L. 2020, c.84](#)) applies to the following groups of workers:

1. public safety worker or first responder, including any fire, police or other emergency responders
2. those involved in providing medical and other healthcare services, emergency transportation, social services, and other care services, including services provided in health care facilities, residential facilities, or homes
3. those performing functions which involve physical proximity to members of the public and are essential to the public's health, safety, and welfare, including transportation services, hotel and other residential services, financial services, and the production, preparation, storage, sale, and distribution of essential goods such as food, beverages, medicine, fuel, and supplies for conducting essential business and work at home; or
4. any other employee deemed an essential employee by the public authority declaring the state of emergency

As such, these categories of workers are presumed to be entitled to fully compensable workers compensation benefits, and any other work-related benefits, if they contract COVID-19. The employer can rebut the presumption by a "preponderance of the evidence" showing that the exposure to COVID-19 did not occur while working. It is important to note that individuals working from their own residence who contract COVID-19 do not receive the protections of this rebuttable presumption.

Carriers may retroactively review any denied claims for COVID-19 where there was a positive test and review the cases to determine if the employee qualifies for the protections outlined in the new legislation in order to determine whether to overturn or uphold the denial. Similarly, more clarity around the qualifications for the protections will come in the future as more New Jersey judges review and opine in cases brought before them.

The legislation also specifies that any workers' compensation claims paid pursuant to this new law shall not be considered in calculating an employer's Experience Modification Factor.

Please be aware that this law applies retroactively back to March 9, 2020 and continues so long as the Governor continues to declare a public health emergency. Thus, if an employee contracts or has previously contracted COVID-19 and asserts it is work related, employers should report it to their carrier and defer to the carrier to investigate and determine compensability.

**Note:** As a helpful resource for guiding employers through the rapidly changing legislative landscape created by the COVID-19 pandemic, refer to the Council of Insurance Agents and Brokers [State by State overview of Presumptive Eligibility for Workers' Compensation](#) laws that have been recently enacted.

Please visit our [COVID-19 Resource Center](#) for more information.

