

## **NJ Grants Essential Workers Who Contract COVID Enhanced Workers' Compensation Coverage**

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Following a trend among states, New Jersey enacted a new statute on September 16, 2020 that will significantly expand the number of employees in New Jersey who are eligible to collect workers' compensation benefits if they contract COVID-19. The effective date of the new law was made retroactive to March 9, 2020. The law curtails the ability of employers to contest such claims based on the premise that the employee cannot prove that he or she became infected by COVID-19 while at work.

The law expansively applies to any "essential employee" who, during the current pandemic:

- 1) is a public safety worker or first responder;
- 2) is involved in providing medical and other healthcare services, emergency transportation, social services, and other care services;
- 3) performs functions involving physical proximity to members of the public and are essential to the public's health, safety, and welfare; or
- 4) is any other employee deemed an essential employee by the public authority declaring the state of emergency due to COVID-19.

Examples of the types of employees who would be included in category 4) include grocery/food store employees, pharmacy employees, medical supply store employees, employees in retail functions of gas stations, convenience store employees, cashier and store clerks, construction workers, and employees providing childcare services to "essential employees."

This law creates a "rebuttable presumption" that the covered essential employee contracted COVID-19 at work. However, the burden of rebutting that presumption effectively lies with the employer – a burden that will be virtually impossible for employers to meet. The employer would need to show that the essential worker was not exposed to the disease while at the workplace. Even with the most sweeping safety measures taken by an employer, an employer cannot guarantee that an employee has not been or will not be exposed to COVID-19 while in the workplace.

One evolving issue to note is that workers' compensation benefits awarded under this law are typically the exclusive remedy available to an employee who suffers a workplace injury as a result of common workplace negligence. As such, workers' compensation benefits could potentially offset future benefits otherwise available to or (given the effect of retroactively awarding benefits awarded under this statute) already paid to employees under other laws, including the federal Coronavirus Aid Relief and Economic Security Act (the CARES Act). However, each such other law would need to be reviewed separately to determine the impact of the NJ statute.

There are two pieces of good news for employers. First, the new law expressly states that any compensation claims paid under the law will not be considered in calculating an employer's experience rating, which is used to set the employer's premium payments for coverage. Second, application of the workers' compensation statute, absent an injury caused by an employer's gross negligence or intentional misconduct, generally should insulate an employer from judicial personal injury claims from essential workers, which can be tremendously costly to employers.

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