

NJ Essential Employees Now Have a Presumption for Work-Related COVID-19

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On September 14, 2020, Governor Murphy signed into law work-related COVID-19 legislation.

The law is retroactive to March 9, 2020 and grants a presumption in the burden of proof to essential employees when claiming that contraction of the COVID-19 virus occurred at work. The COVID-19 law may lead to some confusion about who is considered an "essential employee" during the time of a pandemic. The definition includes that (1) "the employee is considered essential in support of gubernatorial or federally declared statewide emergency response and recovery operations" or (2) "the employee is an employee in the public or private sector with duties and responsibilities, the performance of which is essential to the public's health, safety, and welfare." Another part of the law says there must be interactions with the public. The employees covered by the law include first responders, healthcare workers and others who provide essential goods and services, such as transportation, groceries, office supplies, home improvement supplies, banking and auto repair.

The presumption means that the burden of proof shifts to the employer to establish "by a preponderance of the evidence" that the employee "was not exposed to the disease." It is not clear in the language of the law, but the intention should be that the burden is to prove the contraction did not occur at work, rather than that it did not occur at all. If the presumption is not disproven, the employee becomes entitled to any New Jersey work-related benefits, including workers' compensation benefits and any kind of work-related accident disability benefits. The employee shall not be required to use any paid leave time.

In an earlier draft of the law, the standard of proof for the employer was "clear and convincing." That was in direct conflict with existing burdens of proof in the Workers' Compensation Act. The current language is now consistent with the burden of proof in a 2019 law that provides a presumption for some cancers sustained by first responders. Overall, the presumption increases exposure for New Jersey employers, and it is a trend that is occurring with many other states in the country.

If you have any questions about workers' compensation issues as they relate to COVID-19, please contact Sandy Niemotka (niemotkas@whiteandwilliams.com; 215.864.6338) or another member of the Workers' Compensation Group.

As we continue to monitor the novel coronavirus (COVID-19), White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. Read all of the updates [here](#).

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