

# Quarantine Quandaries: Tips for Navigating COVID-19 and Workers' Compensation

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#COVID19



# Hard Line Defenses

# Burden of Proof

- There is a general burden on the claimant to prove essential elements of the claim, including the fact that the accident arose out of and in the course of the employment
- O.C.G.A. § 34-9-1
  - “**Injury**” means only an injury by accident arising out of and in the course of the employment and shall not include, except as provided in this chapter, a disease in any form except where it results naturally and unavoidably from the accident



# Is COVID-19 an “Occupational Disease”?

An injury stemming from an occupational disease, as defined by the Workers’ Compensation Act, is within coverage of the Act, but it is not compensable without disability

- **O.C.G.A. § 34-9-280**

- "Occupational disease" means those diseases which arise out of and in the course of the particular trade, occupation, process or employment in which the employee is exposed to such disease, provided the employee or the employee's dependents first prove to the satisfaction of the State Board **all** of the following:
  - A. A direct causal connection between the conditions under which the work is performed and the disease
  - B. The disease followed as a natural incident of exposure by reason of the employment
  - C. The disease is not of a character to which the employee may have had substantial exposure outside of the employment
  - D. The disease is not an ordinary disease of life to which the general public is exposed
  - E. The disease must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a natural consequence



# **Front Line Employees and Essential Workers**

# Front Line Employees and Essential Workers

- Nurses
- Doctors
- First responders
- Nursing home workers
- Grocery store employees



# Presumptions Associated with Higher-Risk Jobs

- Some employees working in environments that put them at a higher-risk of contracting COVID-19 are receiving temporary pay bumps to encourage them to continue working during the pandemic
  - Hero pay
  - Hazard pay





# Sympathy for Essential Workers



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# Proof

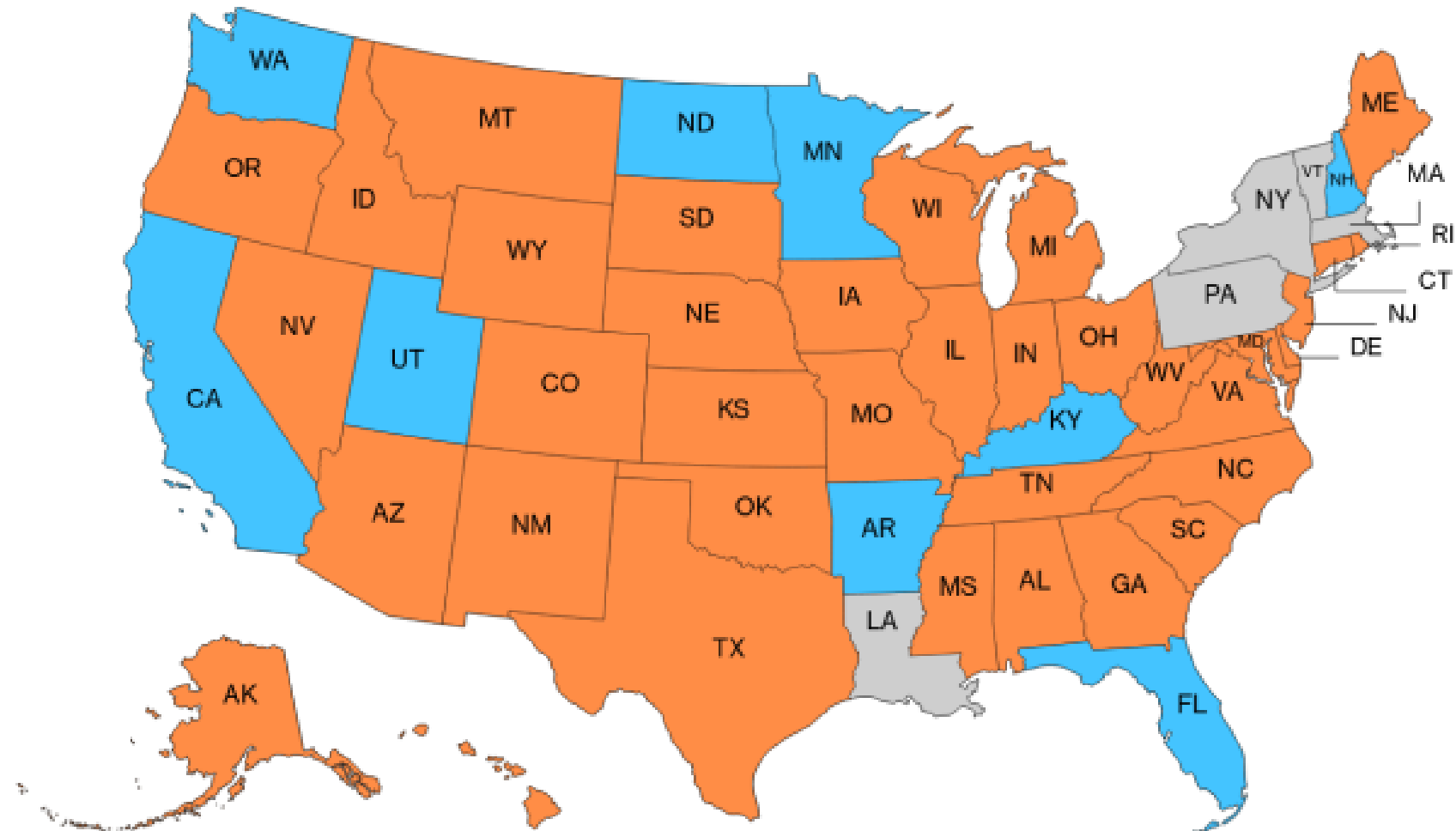
- Determining the precise COVID-19 exposure event is extremely difficult
- The states that provide coverage for COVID-19 only do so if the employee can do the following:
  1. Demonstrate COVID-19 was prevalent in the work environment
  2. Provide medical documentation demonstrating a positive test result



# **COVID-19 Workers' Compensation Claims in Other States**

## States That Eased Standards for Covid-19 Workers' Compensation

■ Enacted measure ■ Pending measure ■ No action



Source: National Conference of State Legislatures

Note: States that enacted measures made Covid-19 presumptively work-related, except for Arkansas, which lifted other limitations on workers' compensation.

California has proposed legislation pending in addition to its enacted measure

# Overview

- **14 states** took action to extend workers' compensation coverage to include first responders and health care workers impacted by COVID-19
  - Several states have pending bills
- **Six states** amended state policy so that COVID-19 infections are presumed to be work related and covered under workers' compensation
- **Four states** used the authority of the executive branch to implement presumption policies for first responders and health care workers
- **Four states** took executive action to provide coverage to first responders, health care workers and grocery store employees

# State Spotlight: Virginia

- First state to adopt an emergency workplace safety standard
- Mandates that workers be provided with personal protective equipment and sets parameters for businesses to sanitize their worksites, enforce social distancing protocols and have infectious disease response plans



# State Spotlight: Washington

- Health care workers and first responders will receive wage-replacement benefits and have all related health care expenses covered when quarantined by a physician
- Other essential workers who test positive will be considered on a case-by-case basis



# State Spotlight: New York

- Individuals who work in an environment where exposure risks are significantly higher are more likely to have compensable claims
- Office workers or other employees who may contract COVID-19 through casual contact with an infected co-worker are unlikely to qualify for workers' compensation benefits





# Federal Employees Compensation Act (FECA)

- All federal employees who develop COVID-19 while in the performance of their federal duties are entitled to workers' compensation coverage
- Specific procedure must be followed to file a claim and receive coverage



# **Aggravations of Pre-Existing Medical Conditions**

# Aggravations of Pre-Existing Medical Conditions

- Generally, O.C.G.A. § 34-9-1 permits coverage for the aggravation of a pre-existing condition, so long as the aggravation continues to be the cause of the disability
- Injuries not included:
  - Heart disease
  - Heart attack
  - Failure or occlusion of any of the coronary blood vessels
  - Stroke
  - Thrombosis

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Alternate contact name: \_\_\_\_\_  
Do you currently have or have you ever been treated for:

Yes	No	Condition
		Diabetes
		Hypertension (high blood pressure)
		Adult or congenital heart disease/heart attack/chest pain (anginal)/heart murmur/coronary artery disease. Any heart surgery or procedure. Explain all "yes" answers.
		Family history of heart disease or any sudden heart-related death of a family member before age 50.
		Stroke/TIA
		Asthma
		Lung/respiratory disease
		COPD
		Ear/eyes/nose/sinus problems
		Muscular/skeletal condition/muscle or bone issues
		Concussion
		Difficulty

# Waivers

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# Waiver of Compensation

- O.C.G.A. § 34-9-10
  - No contract, regulation or device may relieve an employer or insurer, in whole or in part, from any workers' compensation liability
- Relieving a party from its obligation would be against Georgia public policy



# Teleworking and Home Injuries

- COVID-19 has led many companies to allow employees to work from home to prevent transmission of the virus at the workplace
- Working remotely may lead to more workers' compensation claims for injuries occurring at home
- Investigating an injury that occurred at home is difficult
- Recommendations to reduce the risk of home injury claims
  - Define the employee's job duties
  - Provide office equipment
    - Keyboards, desks and chairs
  - Provide training for employees setting up home workstations
  - Set specific work hours
  - Set scheduled work breaks



# THANK YOU!



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