

Alert | Health Emergency Preparedness Taskforce: Business Continuity Amid COVID-19



September 2020

New Jersey Joins Other States in Creating Rebuttable Presumption of Workers' Compensation Coverage for 'Essential Employees' Who Contract COVID-19

On Sept. 14, 2020, New Jersey Gov. Phil Murphy signed into law [S2380](#), which creates a rebuttable presumption of workers' compensation coverage for Coronavirus Disease 2019 (COVID-19) cases contracted by "essential employees" during the ongoing public health emergency. The law took effect immediately, and applies retroactively to March 9, 2020, when the governor first declared the current state of emergency.

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

1. is a public safety worker or first responder, including any fire, police, or other emergency responders;
2. is involved in providing medical and other health care services, emergency transportation, social services, and other care services, including services provided in health care facilities, residential facilities, or homes;

3. performs 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. is any other employee deemed an essential employee by the public authority declaring the state of emergency.

Examples of such employees deemed "essential" during the current state of emergency include (but are not limited to):

- grocery/food store employees;
- pharmacy employees;
- convenience store employees;
- cashier and store clerks;
- construction workers; or
- employees providing child care services to "essential employees."

Under the law, if an individual contracts COVID-19 during a period when the individual is working as an essential employee in a place of employment other than the individual's own residence, a rebuttable presumption arises that the contraction of the disease was work-related and therefore covered and fully compensable under applicable workers' compensation benefits.

Employers may rebut this presumption only "by a preponderance of the evidence showing that the worker was not exposed to the disease" in the workplace. To overcome this burden, employers will need to provide evidence that an employee contracted COVID-19 outside of the workplace (for example, from a family member or at the hospital).

The law notably provides that any workers' compensation claims paid as a result of the rebuttable presumption will not be considered in calculating an employer's Experience Modification Factor, pursuant to the New Jersey Workers' Compensation and Employers Liability and Insurance Manual administered by the state Compensation Rating and Inspection Bureau. In other words, employer premiums will not increase based on COVID-19-related claims.

With this law, New Jersey joins a growing number of states that have, through legislation or executive order, established a presumption of compensability under their workers' compensation laws for essential employees who contract COVID-19. Employers in New Jersey will now face an uphill battle in proving that an alleged COVID-19 infection is not work-related, potentially leading to an increase in workers' compensation claims. The presumption of workers' compensation coverage, however, may benefit employers, too, in that it may insulate them from ordinary civil liability arising from COVID-19 infections allegedly contracted by employees in the workplace.

For more information and updates on the developing situation, visit [GT's Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#) and [Business Continuity Amid COVID-19](#) page.

Authors

This GT Alert was prepared by:

- [Robert H. Bernstein](#) | +1 973.360.7946 | bernsteinrob@gtlaw.com
- [Michael J. Slocum](#) | +1 973.443.3509 | slocumm@gtlaw.com
- [Ryan P. O'Connor](#) | +1 973.443.3563 | oconnorry@gtlaw.com

Albany. Amsterdam. Atlanta. Austin. Boston. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Germany.~ Houston. Las Vegas. London.* Los Angeles. Mexico City.+ Miami. Milan.» Minneapolis. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Sacramento. Salt Lake City. San Francisco. Seoul.∞ Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv.^ Tokyo.* Warsaw.~ Washington, D.C.. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ~Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. *Operates as a separate UK registered legal entity. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. »Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. #Greenberg Traurig Tokyo Law Offices are operated by GT Tokyo Horitsu Jimusho, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ~Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2020 Greenberg Traurig, LLP. All rights reserved.*