

WORKER'S COMPENSATION FOR FIRST RESPONSE EMPLOYEES' COVID-RELATED INJURIES

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4822 (H-1) as reported from committee

Sponsor: Rep. Mike Mueller

Committee: Government Operations

Complete to 6-29-21

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4822 would amend the Worker's Disability Compensation Act to provide that a first response employee's injury or illness resulting from his or her contracting COVID-19 is rebuttably presumed to be a personal injury arising out of and in the course of employment. For other employees, the bill would provide that COVID-19 is an ordinary disease of life to which the public is generally exposed and for which a resulting injury or illness is not compensable under the act.

Generally speaking, the Worker's Disability Compensation Act provides compensation to employees who are injured on the job and provides that those benefits are the employee's sole remedy for the injury. (That is, the employee cannot sue the employer for other damages.) Injuries for which benefits are provided under the act include diseases or disabilities that arise from and in the course of employment and result from causes and conditions that are characteristic of, and specific to, the employer's business. An ordinary disease of life to which the public is generally exposed outside of the employment is not compensable under the act.

The bill would provide that an injury or illness resulting from a *first response employee's* contracting of **COVID-19** is rebuttably presumed to be a personal injury¹ arising out of and in the course of employment in the absence of evidence to the contrary if the first response employee receives a laboratory-confirmed COVID-19 diagnosis.

First response employee would mean an individual who has regular, direct contact with, or is regularly in close proximity to, patients, inmates, or other members of the public requiring emergency services within the scope of the individual's work for his or her employer and who is any of the following:

- A firefighter as defined in the Fire Prevention Code.²
- A law enforcement officer as defined in the Michigan Commission on Law Enforcement Standards Act.³
- Emergency medical services personnel as defined in section 20904 of the Public Health Code.⁴

¹ See <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-418-401.pdf>

² <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-29-1.pdf>

³ <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-28-602.pdf>

⁴ <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-333-20904.pdf>

- A state correctional officer as defined in the Correctional Officers’ Training Act.⁵
- A local corrections officer as defined in the Local Corrections Officers Training Act.⁶

COVID-19 would mean the novel coronavirus identified as SARS-CoV-2 or a virus mutating from SARS-CoV-2.

The bill provides that the rebuttable presumption would apply to a first response employee who contracts COVID-19 after March 20, 2021, and before the earlier of September 1, 2021, or the date the Michigan Occupational Safety and Health Administration (MIOSHA) emergency COVID-19 rules that took effect May 24, 2021, and are effective through October 14, 2021, are lifted or expire.⁷ [On June 22, 2021, those rules were superseded in their entirety by new MIOSHA rules that are effective through December 22, 2021.⁸]

Except for a claim filed under the above provisions, the bill would provide that COVID-19 is an ordinary disease of life to which the public is generally exposed, and an injury or illness resulting from contracting COVID-19 would not be compensable under the act.

The bill would apply retroactively.

Proposed MCL 418.406

BACKGROUND:

Emergency rules issued by the Workers’ Disability Compensation Agency provided for a presumption regarding COVID-19 infections for certain first response employees similar to that proposed by the bill. Those rules expired March 20, 2021.⁹

FISCAL IMPACT:

House Bill 4822 could have modest fiscal implications for the state and for local units of government. Specifically, government entities that are self-insurers for workers’ compensation insurance may see increased claims costs under the bill, as a result of a larger population of eligible persons. The magnitude of this impact would depend on the number of additional cases that would arise as a result of the bill, which is presently indeterminate.

⁵ <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-791-502.pdf>

⁶ <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-791-532.pdf>

⁷ https://www.michigan.gov/documents/leo/MIOSHA_COVID_Emergency_Rules_726100_7.pdf

⁸ See https://www.michigan.gov/leo/0,5863,7-336-78396_78398-562322--,00.html

The rules: https://www.michigan.gov/documents/leo/MIOSHA_COVID_Emergency_Rules_726100_7.pdf

⁹ https://www.michigan.gov/documents/leo/2020-211_LE_-_Emergency_Rule_-_Workers_Disability_Compensation_Agency_General_Rules_705323_7.pdf

See also https://www.michigan.gov/documents/leo/WDCA_COVID-19_FAQ_688925_7.pdf

POSITIONS:

Representatives of the following entities testified in support of the bill (5-20-21):

- Police Officers Association of Michigan
- Wayne County Deputy Sheriff Association
- Michigan Professional Fire Fighters Union

The Fraternal Order of Police indicated support for the bill. (5-20-21)

Representatives of the following entities testified in opposition to the bill:

- Department of Labor and Economic Opportunity (6-15-21)
- Workers' Disability Compensation Agency (6-15-21)
- Us Against the Media.com (5-20-21)

The following entities indicated opposition to the bill (5-20-21):

- Michigan Municipal League
- Michigan Townships Association
- Michigan Association of Counties

Legislative Analyst: Rick Yuille
Fiscal Analyst: Marcus Coffin

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.