

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

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House Bill 4822 (proposed substitute H-1)

Sponsor: Rep. Mike Mueller

Committee: Government Operations

Complete to 6-15-21

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 under certain circumstances.

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.

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
- 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

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>

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>

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

Except for a claim filed under the above provisions, COVID-19 would be considered 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, and it would apply to a first response employee who contracts COVID-19 after March 20, 2021, and before the earlier of the following dates:

- September 1, 2021.
- The date the Michigan Occupational Safety and Health Administration emergency COVID-19 rules that took effect May 24, 2021, and are effective through October 14, 2021, are lifted or expire.⁷

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. The rules expired March 20, 2021.⁸ The bill would extend that presumption through September 1, 2021, unless the 5-24-21 MIOSHA rules described above are lifted or expire before that date.

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.

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■ 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.

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

⁸ 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