

HOUSE BILL NO. 1433

Introduced by

Representatives Ista, Adams, P. Anderson, Boschee, Dobervich, Guggisberg, Hager,
Schneider

Senators Bakke, Hogan

1 A BILL for an Act to create and enact a new section to chapter 65-01 of the North Dakota
2 Century Code, relating to workers' compensation benefits for essential workers; to provide for
3 retroactive application; and to provide an expiration date.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new section to chapter 65-01 of the North Dakota Century Code is created
6 and enacted as follows:

7 **COVID-19 claims for benefits - Rebuttable presumption.**

8 1. As used in this section:

9 a. "COVID-19" means:

- 10 (1) Severe acute respiratory syndrome coronavirus 2 identified as SARS-CoV-2
11 and any mutation or viral fragments of SARS-CoV-2; and
12 (2) A disease or condition caused by severe acute respiratory syndrome
13 coronavirus 2 identified as SARS-CoV-2.

14 b. "Essential worker" means:

- 15 (1) A state or local government employee;
16 (2) A health and human services employee;
17 (3) A public health employee;
18 (4) A mortuary service provider;
19 (5) An emergency services provider;
20 (6) A public transportation, taxi, or rideshare driver;
21 (7) An educator or school employee, including an employee of an institute of
22 higher education;
23 (8) A pharmacist, pharmacy technician, or other pharmacy employee;

- 1 (9) A child care provider;
- 2 (10) A cashier, stocker, clerk, or any other employee who enables the sale of
- 3 food for human consumption;
- 4 (11) A food assistance program employee;
- 5 (12) A food ingredient production and processing facility employee;
- 6 (13) A slaughter and processing facility employee;
- 7 (14) An individual employed in the direct extraction, processing, or delivery of
- 8 wind, water, solar, oil, gas, or coal energy;
- 9 (15) A community water and wastewater treatment facility employee;
- 10 (16) A plumber, electrician, builder, or any other trade professional employed in
- 11 repair and maintenance except a new construction builder;
- 12 (17) A communication infrastructure technician, operator, or call center provider;
- 13 (18) An information technology command center employee;
- 14 (19) An individual employed to preempt and respond to cyber incidents involving
- 15 critical infrastructure;
- 16 (20) An individual employed to administer and deliver unemployment programs;
- 17 (21) A 2020 census worker;
- 18 (22) An individual employed for emergency-related permitting, credentialing,
- 19 certifying, and licensing for essential critical infrastructure operations;
- 20 (23) A member of the armed forces, North Dakota national guard, or armed
- 21 forces reserve component stationed in this state;
- 22 (24) An individual employed to support public radio, print, internet, or television
- 23 news services;
- 24 (25) An individual employed to support a dependent care provider, including child
- 25 care and elder care, and an individual employed by a residential facility or
- 26 mental health facility;
- 27 (26) A hotel or temporary lodging facility employee;
- 28 (27) An individual employed to provide food, shelter, or social services to
- 29 vulnerable populations or to COVID-19 responders;
- 30 (28) An individual employed to produce, deliver, or distribute hygiene and
- 31 cleaning products;

- 1 (29) An individual employed to provide disinfection services;
2 (30) A health care provider as defined in section 23-07.5-01;
3 (31) A firefighter, peace officer, correctional officer, court officer, law enforcement
4 officer, emergency medical technician, or an individual trained and
5 authorized by law or rule to render emergency medical assistance or
6 treatment;
7 (32) An individual employed to provide home care services;
8 (33) An individual working in or employed to work in the agricultural industry; and
9 (34) An airport or commercial airline employee.
10 c. "Personal protective equipment" means equipment worn to prevent or minimize
11 exposure to hazards that cause injuries or illnesses.
12 2. Notwithstanding any other provision of law:
13 a. The organization shall approve a claim for benefits in which the employee is an
14 essential worker whose injury resulted from the exposure to and contraction of
15 COVID-19 as provided under this subsection.
16 b. Exposure to and contraction of COVID-19 for purposes of benefits under this
17 subsection is presumed to have arisen out of and in the course of the essential
18 worker's employment and is presumed to be causally connected to the hazards
19 or exposures of the essential worker's employment.
20 c. An essential worker's home or residence is not a place of employment, except for
21 a home care worker.
22 d. A party may rebut a presumption created in this subsection by submitting
23 evidence, which may include:
24 (1) The essential worker was working from home, on leave from employment,
25 or some combination thereof, for a period of fourteen or more consecutive
26 days immediately before the essential worker's injury or period of incapacity
27 resulting from exposure to COVID-19;
28 (2) The employer was engaging in and applying to the fullest extent possible or
29 enforcing to the best of the employer's ability industry-specific workplace
30 sanitation, social distancing, and health and safety practices consistent with
31 recommendations issued by the federal centers for disease control and

1 prevention and the state department of health, or was using a combination
2 of administrative controls, engineering controls, or personal protective
3 equipment to reduce the transmission of COVID-19 to all essential workers
4 for at least fourteen consecutive days before the essential worker's injury or
5 period of incapacity resulting from exposure to COVID-19; or

6 (3) The essential worker was exposed to COVID-19 by an alternate source.

7 e. A presumption created in this subsection applies if an essential worker provides a
8 positive laboratory test for COVID-19 or for COVID-19 antibodies.

9 f. Except as provided under subdivision c, a presumption created in this subsection
10 does not apply if the essential worker's place of employment was solely the
11 essential worker's home or residence for a period of fourteen or more
12 consecutive days immediately before the essential worker's injury or period of
13 incapacity resulting from exposure to COVID-19.

14 g. The date of injury is either the date the essential worker was unable to work due
15 to contraction of COVID-19 or was unable to work due to symptoms later
16 diagnosed as COVID-19, whichever came first.

17 h. To qualify for temporary total disability benefits under the presumptions created in
18 this subsection, the essential worker must be certified for or recertified for
19 temporary disability.

20 i. The organization may not deny a claim for benefits in which the employee is an
21 essential worker whose injury resulted from the exposure to and contraction of
22 COVID-19 if the reason for the denial would be the essential worker received
23 financial assistance for COVID-19 related expenses under the North Dakota
24 medical expense assistance program. The organization shall subtract any
25 amount received by an essential worker under the North Dakota medical
26 expense assistance program from any benefits approved under this section.

27 **SECTION 2. RETROACTIVE APPLICATION.** This Act applies retroactively to a claim for
28 workers' compensation benefits filed after March 24, 2020, regardless of date of injury. An
29 essential worker who has submitted a claim for benefits between March 24, 2020, and the
30 effective date of this Act for exposure to and contraction of COVID-19 may resubmit the claim if
31 the initial claim was denied by the organization for not being a compensable injury.

1 **SECTION 3. EXPIRATION DATE.** This Act is effective through July 31, 2023, and after that
2 date is ineffective.