

Department of Planning and Budget
2021 Special Session 1 Fiscal Impact Statement

1. Bill Number: HB1985-H2

House of Origin Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. Patron: Hurst

3. Committee: Conference

4. Title: Workers' compensation; presumption of compensability for COVID-19.

5. Summary: Establishes a presumption that COVID-19 causing the death or any health condition or impairment resulting in total or partial disability of, any health care provider, as defined in § 8.01-581.1, who as part of the provider's employment is directly involved in diagnosing or treating persons known or suspected to have COVID-19, shall be presumed to be an occupational disease, that is covered under the Virginia Workers' Compensation Act unless such presumptions are overcome by a preponderance of competent evidence to the contrary. The bill provides that such presumptions shall apply to any death or disability occurring on or after March 12, 2020, caused by infection from the COVID-19 virus, provided that for any such death or disability that occurred on or after March 12, 2020, and prior to December 31, 2021. The presumptions shall also apply to any person who received a positive diagnosis of COVID-19, prior to July 1, 2020, from a licensed physician, nurse practitioner, or physician assistant after either (i) a presumptive positive test or a laboratory-confirmed test for COVID-19 and presenting with signs and symptoms of COVID-19 that required medical treatment, or (ii) presenting with signs and symptoms of COVID-19 that required medical treatment absent a presumptive positive test or a laboratory-confirmed test for COVID-19. The presumptions shall also apply to the claimant who received a positive diagnosis of COVID-19 from a licensed physician, nurse practitioner, or physician assistant after a presumptive positive test or a laboratory-confirmed test for COVID-19 and presented with signs and symptoms of COVID-19 that required medical treatment on or after July 1, 2020 and prior to December 31, 2021.

6. Budget Amendment Necessary: No – see Item 8.

7. Fiscal Impact Estimates: Indeterminate – see Item 8.

8. Fiscal Implications: The bill establishes a presumption that COVID-19 causing the death or any health condition or impairment resulting in total or partial disability of any health care provider who as part of the provider's employment is directly involved in diagnosing or treating persons known or suspected to have COVID-19 is an occupational disease under the Virginia Workers' Compensation Act.

Department of Human Resource Management

According to the Department of Human Resource Management (DHRM), the proposed legislation is expected to impact the experience-based workers' compensation premium paid by state agencies whose employees would be covered with the presumption of compensability; however, the fiscal impact for those affected agencies cannot be determined at this time. Although DHRM expects an increase in the workers' compensation premium for the state agencies that have staff impacted by these presumptions, an actuarial study to determine the premium increase per agency will have to be conducted.

Attorney General and Department of Law

The Attorney General and Department of Law (OAG) may need to hire an outside counsel or attorneys on a temporary basis to handle the expected increase in COVID-19 claims. The funding for the additional staff would be supported through an increase in the memorandum of understanding (MOU) with DHRM, or additional appropriation provided to the OAG's Workers' Compensation Unit.

It is not possible to estimate how many additional claims will result from this bill. To date, DHRM has received 809 claims submitted for COVID-19, however, more than 700 of the claims are dormant, meaning they have been denied or the injured workers are not pursuing them. If the presumption is enacted, not all of those cases will qualify for the presumption, and not all of the claimants will pursue their claims further. If 10% decided to litigate a presumption claim, the OAG's Workers' Compensation Unit would handle an additional 100 claims. The four-attorney Unit handled 390 new matters last year, with an average of 100 cases per lawyer. An increase of 100 cases would require one additional lawyer in the Workers' Compensation Unit. The OAG may also need one additional support person if the number of additional claims increased to 150 or 200.

Virginia Retirement System

According to the Virginia Retirement System (VRS), while there are expected to be costs to the Line of Duty Act (LODA), VRS disabilities, and workers' compensation premiums for applicable agencies related to COVID-19, those impacts cannot be determined at this time.

The retirement allowance calculation for a VRS disability retirement depends on whether the disabling condition is work-related. If the disabling condition is not compensable under the Workers' Compensation Act, then it is not a work-related disability. If the disabling condition is compensable under the Workers' Compensation Act, then it is a work-related disability. Members retiring due to a work-related disability receive a higher VRS disability retirement benefit. Any bill that impacts the likelihood of compensability under the Workers' Compensation Act impacts the likelihood that a VRS member's disabling disease or condition will be considered work-related.

VRS managed disability programs include the Virginia Sickness and Disability Program (VSDP) for state employees and the Virginia Local Disability Program (VLDP) or a comparable plan for local employees who are in the Hybrid Retirement Plan. In both VSDP and VLDP, the calculation of benefits depends on whether the disabling condition is work-related. If the disabling condition is not compensable under the Workers' Compensation Act,

then it is not a work-related disability. If the disabling condition is compensable under the Workers' Compensation Act, then it is a work-related disability. Members receiving VSDP, VLDP, or comparable benefits due to a work-related disability receive a higher benefit. Any bill that impacts the likelihood of compensability under the Workers' Compensation Act impacts the calculation of VSDP and VLDP benefits.

Virginia Workers' Compensation Commission

According to the Virginia Workers' Compensation Commission, the legislation will likely increase the number of workers' compensation claims in Virginia. Although the number of workers' compensation claims is expected to increase, the Commission projects that the legislation will not have a significant financial impact upon the agency unless the claims become the liability of the Uninsured Employer's Fund, which provides compensation benefits awarded against any uninsured or self-insured employer.

- 9. Specific Agency or Political Subdivisions Affected:** Department of Human Resource Management, Virginia Workers' Compensation Commission, Attorney General and Department of Law, Virginia Retirement System, all state agencies with LODA-eligible personnel, and all localities with LODA-eligible personnel

10. Technical Amendment Necessary: No.

11. Other Comments: No.