

COVID-19 AMENDMENT – FAQ

1. What is the Amendment?

On May 22, 2020, the Illinois General Assembly passed an Amendment to the Illinois Occupational Diseases Act adding certain protections to certain categories of Employees that contract COVID-19. (The full text of the Amendment can be found [here](http://www.gssglaw.com/Text_of_Amendment_to_820_ILCS_310.pdf).)
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2. What specific protections does the Amendment put in place?

The Amendment creates a rebuttable presumption that any first responder or front-line worker who contracts, COVID-19 during certain dates, did so while working, thus making the condition causally related to the employment.

3. What is a rebuttable presumption?

A rebuttable presumption is a legal assumption by the Commission that a particular condition is causally related to the Employee's employment. It is rebuttable because the Employer can introduce evidence to overcome the rebuttable presumption and place the burden of proof back on the Petitioner to show that his condition was causally related to his work.

4. Does the Employee need to provide anything in order to be eligible for the rebuttable presumption at trial?

The Amendment requires certain medical diagnoses in order for the presumption to apply at trial:

- For diagnoses occurring on or before June 15, 2020, the Employee must provide either a confirmed medical diagnosis by a licensed medical professional or a positive laboratory test for COVID-19 or for COVID-19 antibodies.
- For diagnoses occurring after June 15, 2020, the Employee must provide a positive laboratory test for COVID-19 or for COVID-19 antibodies.

5. What evidence can the Employer introduce to rebut the presumption of causation?

The Employer can introduce a variety of evidence at trial and such evidence can best be discussed with your defense attorney, however, the

Amendment specifically notes that the presumption can be rebutted with evidence of the following:

- The Employee was either working from home, on leave, or a combination of both for a period of 14 or more consecutive days prior to the contraction of Covid-19.
- The Employer was enforcing to the fullest extent possible the best health and safety practices for that industry as defined by the Centers for Disease Control and Prevention and/or the Illinois Department of Public Health for at least 14 consecutive days prior to the contraction of COVID-19.
- The Employee was exposed to COVID-19 through an alternate source.

6. Does this apply to all employees?

No. The benefit of the presumption only applies to individuals employed as any of the following:

- Police personnel
- Fire personnel
- EMT or paramedic personnel
- All other personnel considered “first responders”
- All health-care provider personnel, including
 - Nursing home personnel
 - Rehabilitation facility personnel
 - Home care workers
- Corrections officers and personnel
- Any employee employed by an essential business or operation as defined in Executive Order 2020-10 (March 20, 2020) provided that they
 - Are required by their employment to encounter members of the general public, or
 - Work in an employment location of more than 15 employees

7. What is an essential employee?

It is any employee employed by an essential business or operation as defined in Executive Order 2020-10 (March 20, 2020). This includes, but is not limited to, those employed in the following industries:

- Stores that sell groceries and medicine;
- Food, beverage, and cannabis production and agriculture;
- Organizations that provide charitable and social services;

- Media;
- Gas stations and businesses needed for transportation;
- Financial institutions;
- Hardware and supply stores;
- “Critical trades”;
- Mail, post, shipping, logistics, delivery, and pick-up services;
- Educational institutions;
- Laundry services;
- Restaurants for consumption off-premises;
- Supplies to work from home and essential businesses and operations;
- Transportation;
- Home-based care and services;
- Residential facilities and shelters;
- Professional services;
- Daycare centers for employees exempted by this Executive Order;
- Manufacture, distribution, and supply chain for critical products and industries;
- Critical labor union functions;
- Hotels and motels; and
- Funeral services.

For more detailed information on what constitutes an “essential employee” please see Executive Order 2020-10 (March 20, 2020) which can be found here. http://www.gssglaw.com/Executive_Order_2020-10.pdf

8. How does this Amendment impact currently pending or future Illinois Workers’ Compensation Commission cases?

The Amendment applies to any case tried after the effective date of the Amendment for which the diagnosis of COVID-19 was made on or after March 9, 2020 but before December 31, 2020. Therefore this Amendment would apply to any currently pending case, not yet tried before the Illinois Workers Compensation Commission, where the diagnosis was made on or after March 9, 2020. As for future cases, it will apply to any case where the diagnosis of COVID-19 was made before December 31, 2020.

9. What do Illinois Employers need to do to be compliant with this Amendment? Postings? Notifications?

Illinois employers do not need to take any affirmative steps to become compliant. This change will mainly impact the judicial proceedings before the Illinois Workers’ Compensation Commission. Employers should continue to investigate all workers’ compensation claims of exposure,

including claims of exposure to COVID-19, as they would do in the normal course of business.

10. Does the Amendment expire?

No. However, the Amendment only applies to employees who receive a diagnosis of COVID-19 prior to December 31, 2020, so as the Amendment stands now, an employee, regardless of designation, who receives a diagnosis of COVID-19 on or after December 31, 2020, would not be entitled to the rebuttable presumption created by the Amendment.

11. Is there anything else Illinois Employers should consider in light of this Amendment?

Employers should continue to thoroughly investigate claims of exposure to or diagnoses of COVID-19 and let the results of the investigation determine whether to accept or dispute the claim. We are happy to answer any questions you may have regarding whether or not to accept or dispute a claim during this rapidly developing situation.