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"Bar Report – Capitol Report," New Jersey Law Journal, May 18, 2020

RWH/CL

P.L. 2020, CHAPTER 84, *approved September 14, 2020*
Senate Committee Substitute (*First Reprint*) for
Senate, No. 2380

1 **AN ACT** concerning essential employees contracting coronavirus
2 disease 2019 and supplementing Title 34 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. As used in this act:

8 “Essential employee” means an employee in the public or private
9 sector who, during a state of emergency:

10 (1) is a public safety worker or first responder, including any
11 fire, police or other emergency responders;

12 (2) is involved in providing medical and other healthcare
13 services, emergency transportation, social services, and other care
14 services, including services provided in health care facilities,
15 residential facilities, or homes;

16 (3) performs functions which involve physical proximity to
17 members of the public and are essential to the public's health,
18 safety, and welfare, including transportation services, hotel and
19 other residential services, financial services, and the production,
20 preparation, storage, sale, and distribution of essential goods such
21 as food, beverages, medicine, fuel, and supplies for conducting
22 essential business and work at home; or

23 (4) is any other employee deemed an essential employee by the
24 public authority declaring the state of emergency.

25 ¹An employee who is an employee of the State who is offered
26 the option of working at home but has refused that option shall not
27 be regarded as an essential employee.¹

28 “Health care facility” means any non-federal institution, building
29 or agency, or portion thereof, whether public or private, for profit or
30 nonprofit, that is used, operated or designed to provide health
31 services, medical or dental treatment or nursing, rehabilitative, or
32 preventive care to any person. Health care facility includes, but is
33 not limited to: an ambulatory surgical facility, home health agency,
34 hospice, hospital, infirmary, intermediate care facility, dialysis
35 center, long-term care facility, medical assistance facility, mental
36 health center, paid and volunteer emergency medical services,

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AAP committee amendments adopted July 27, 2020.

1 outpatient facility, public health center, rehabilitation facility,
2 residential treatment facility, skilled nursing facility, and adult day
3 care center. Health care facility also includes, but is not limited to,
4 the following related property when used for or in connection with
5 the foregoing: a laboratory, research facility, pharmacy, laundry
6 facility, health personnel training and lodging facility, patient, guest
7 and health personnel food service facility, and the portion of an
8 office or office building used by persons engaged in health care
9 professions or services.

10 "Health care worker" means an individual employed by a health
11 care facility.

12 "Public safety worker" includes a member, employee, or officer
13 of a paid, partially-paid, or volunteer fire or police department,
14 force, company or district, including the State Police, a Community
15 Emergency Response Team approved by the New Jersey Office of
16 Emergency Management, or a correctional facility, or a basic or
17 advanced medical technician of a first aid or rescue squad, or any
18 other nurse, basic or advanced medical technician.

19
20 2. If, during the public health emergency declared by
21 ¹[Executive Order 103 of 2020 as extended by subsequent
22 executive orders] an executive order of the Governor and any
23 extension of the order¹, an individual contracts coronavirus disease
24 2019 during a time period in which the individual is working in a
25 place of employment other than the individual's own residence as a
26 health care worker, public safety worker, or other essential
27 employee, there shall be a rebuttable presumption that the
28 contraction of the disease is work-related and fully compensable for
29 the purposes of benefits provided under R.S.34:15-1 et seq.,
30 ordinary and accidental disability retirement, and any other benefits
31 provided by law to individuals suffering injury or illness through
32 the course of their employment. This prima facie presumption may
33 be rebutted by a preponderance of the evidence showing that the
34 worker was not exposed to the disease while working in the place of
35 employment other than the individual's own residence.

36
37 3. Any workers' compensation claims paid ¹[as a result of the
38 rebuttable presumption provided for in] according to section 2 of¹
39 this act shall not be considered in calculating an employer's
40 ¹[experience modifier rate or otherwise affect an employer's
41 insurance premium rate for the employer's workers' compensation
42 policy] Experience Modification Factor, pursuant to the New Jersey
43 Workers' Compensation and Employers Liability and Insurance
44 Manual administered by the Compensation Rating and Inspection
45 Bureau established by section 2 of P.L.1995, c.393 (C.34:15-89.1)
46 and section 1 of P.L.2008, c.97 (C. 34:15-90.1)¹.

1 4. This act is intended to affirm certain rights of essential
2 employees under the circumstances specified in this act, and shall
3 not be construed as reducing, limiting or curtailing any rights of any
4 worker or employee to benefits provided by law.

5

6 5. This act shall take effect immediately and shall be
7 retroactive to March 9, 2020.

8

9

10

11

12 Concerns employment benefits and coronavirus disease 2019
13 infections contracted by essential employees.

SENATE, No. 2380

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MAY 4, 2020

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

Senator ROBERT W. SINGER

District 30 (Monmouth and Ocean)

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

SYNOPSIS

Concerns employment benefits and coronavirus disease 2019 infections contracted by essential employees.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/11/2020)

1 AN ACT concerning essential employees contracting coronavirus
2 disease 2019 and supplementing Title 34 of the Revised Statutes.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. a. (1) For the purposes of benefits provided under R.S.34:15-
8 1 et seq., ordinary and accidental disability retirement, and any other
9 benefits provided by law to individuals suffering injury or illness
10 through the course of their employment, and notwithstanding any
11 other law to the contrary, to the extent an individual is eligible for
12 those benefits by virtue of the individual's employment, there is a
13 rebuttable presumption that the contraction of coronavirus disease
14 2019, or COVID-19, by an essential employee, including but not
15 limited to, a health care worker or a public safety worker, is work-
16 related. The presumption shall only apply to an essential employee
17 who performs functions pertaining to those roles and involving
18 interactions with the public during the public health emergency
19 declared by Executive Order 103 of 2020, as extended by subsequent
20 executive orders.

21 (2) This prima facie presumption may be rebutted by a
22 preponderance of the evidence showing that the worker was not
23 exposed to the disease.

24 b. The amount of time an essential employee is incapacitated or
25 unable to perform their duties as a result of contracting coronavirus
26 disease 2019, or COVID-19, or exposure to the disease or infection
27 and the required time of hospitalization, time of quarantine or time
28 of self-quarantine shall be considered as on duty time, and an
29 essential employee shall not be required to use paid leave or any other
30 contractual time-off to cover the period of incapacitation or inability
31 to perform regular duty work. This time of incapacitation or inability
32 to perform their duties shall be considered as "emergency hazard
33 health duty."

34 c. As used in this act:

35 "Essential employee" means that:

36 (1) the employee is considered essential in support of
37 gubernatorial or federally declared statewide emergency response
38 and recovery operations; or

39 (2) the employee is an employee in the public or private sector
40 with duties and responsibilities, the performance of which is essential
41 to the public's health, safety, and welfare.

42 "Health care facility" means any non-federal institution, building
43 or agency, or portion thereof whether public or private for profit or
44 nonprofit that is used, operated or designed to provide health
45 services, medical or dental treatment or nursing, rehabilitative, or
46 preventive care to any person. Health care facility includes, but is
47 not limited to: an ambulatory surgical facility, home health agency,
48 hospice, hospital, infirmary, intermediate care facility, dialysis

1 center, long-term care facility, medical assistance facility, mental
2 health center, paid and volunteer emergency medical services,
3 outpatient facility, public health center, rehabilitation facility,
4 residential treatment facility, skilled nursing facility, and adult day
5 care center. Health care facility also includes, but is not limited to,
6 the following related property when used for or in connection with
7 the foregoing: a laboratory, research facility, pharmacy, laundry
8 facility, health personnel training and lodging facility, patient, guest
9 and health personnel food service facility, and the portion of an office
10 or office building used by persons engaged in health care professions
11 or services.

12 "Health care worker" means an individual who is employed by a
13 health care facility.

14 "Public safety worker" includes a member, employee, or officer of
15 a paid, partially-paid, or volunteer fire or police department, force,
16 company or district, including the State Police, a Community
17 Emergency Response Team approved by the New Jersey Office of
18 Emergency Management, or a correctional facility, or a basic or
19 advanced medical technician of a first aid or rescue squad, or any
20 other nurse, basic or advanced medical technician responding to a
21 catastrophic incident and directly involved and in contact with the
22 public during such an incident, either as a volunteer, member of a
23 Community Emergency Response Team or employed or directed by
24 a health care facility.

25

26 2. This act is intended to affirm certain rights of essential
27 employees under the circumstances specified in this act, and shall not
28 be construed as reducing, limiting or curtailing any rights of any
29 worker or employee to benefits provided by law.

30

31 3. This act shall take effect immediately and shall be retroactive
32 to March 9, 2020.

33

34

35

STATEMENT

36

37 This bill creates a presumption that coronavirus disease 2019
38 infections contracted by essential employees, including but not
39 limited to, health care workers and public safety workers, are work-
40 related for the purpose of employment benefits provided for work-
41 related injuries and illnesses, including but not limited to, workers'
42 compensation benefits.

43 Additionally, this bill provides that an essential employee's
44 absence from work due to the employee contracting or being exposed
45 to coronavirus disease 2019 will be considered on duty time, and an
46 employer is prohibited from charging the employee any paid leave
47 for the absence.

S2380 SWEENEY, SINGER

4

1 The bill defines “essential employee” as (1) an employee who is
2 essential in support of gubernatorial or federally declared statewide
3 emergency response and recovery operations; or (2) an employee in
4 the public or private sector with duties and responsibilities, the
5 performance of which is essential to the public's health, safety, and
6 welfare.

7 The bill will be retroactive to March 9, 2020, the date of Governor
8 Murphy’s declaration of state of emergency with respect to the
9 coronavirus disease 2019 pandemic.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 2380**

with committee amendments

STATE OF NEW JERSEY

DATED: JULY 27, 2020

The Assembly Appropriations Committee reports favorably, and with committee amendments, Senate Committee Substitute for Senate Bill No. 2380.

This bill creates a rebuttable presumption that coronavirus disease 2019 contracted by health care workers, public safety workers, and other essential employees, is work-related and fully compensable for the purpose of workers' compensation benefits and other employment benefits provided for work-related injuries and illnesses.

The bill defines "essential employee" as an employee in the public or private sector who, during a state of emergency:

1. is a public safety worker or first responder, including any fire, police or other emergency responders;
2. is involved in providing medical and other healthcare services, emergency transportation, social services, and other care services, including services provided in health care facilities, residential facilities, or homes;
3. performs functions which involve physical proximity to members of the public and are essential to the public's health, safety, and welfare, including transportation services, hotel and other residential services, financial services, and the production, preparation, storage, sale, and distribution of essential goods such as food, beverages, medicine, fuel, and supplies for conducting essential business and work at home; or
4. is any other employee deemed an essential employee by the public authority declaring the state of emergency.

The bill provides that workers' compensation claims paid as a result of the rebuttable presumption provided by the bill shall not be considered in calculating an employer's experience modifier rate or otherwise affect an employer's insurance premium rate for the employer's workers' compensation policy.

The bill is retroactive to March 9, 2020, the date of Governor Murphy's declaration of a public health emergency with respect to the coronavirus disease 2019 pandemic.

As amended and reported, this bill is identical to Assembly Bill No. 3999 (ACS) of the 2020-2021 session.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) provide that any workers' compensation claims paid according to section 2 of this act will not be considered in calculating an employer's Experience Modification Factor, pursuant to the New Jersey Workers' Compensation and Employers Liability and Insurance Manual administered by the Compensation Rating and Inspection Bureau established by section 2 of P.L.1995, c.393 (C.34:15-89.1) and section 1 of P.L.2008, c.97 (C. 34:15-90.1);

(2) provide that an employee who is an employee of the State who is offered the option of working at home but has refused that option will not be regarded as an essential employee; and

(3) delete the following language from section 2: "Executive Order 103 of 2020 as extended by subsequent executive orders" and replace it with "an executive order of the Governor and any extension of the order."

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the enactment of this bill may result in an indeterminate increase in expenditures to the State tied to a potential increase in claims for workers' compensation benefits from essential workers who are incapacitated or unable to perform their duties as a result of contracting coronavirus disease 2019 through the course of their employment.

While it is worth noting that retirement costs for public employers may increase as a result of the bill lowering the burden for essential workers to demonstrate that they are eligible for Ordinary Disability and Accidental Disability Retirement for the Public Employees' Retirement System (PERS), and any other applicable benefits, the OLS does not have sufficient information on which to estimate the net fiscal impact of this bill for any individual public employer or for all public employers combined.

The bill will also most likely result in annual increased costs to State and local entities due to the shift of the burden of proof from the worker to the employer in certain cases, which may result in increased claims for workers' compensation benefits.

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR SENATE, No. 2380

STATE OF NEW JERSEY

DATED: MAY 12, 2020

The Senate Labor Committee reports favorably, a Senate Committee Substitute for Senate Bill No. 2380.

This bill creates a rebuttable presumption that coronavirus disease 2019 contracted by health care workers, public safety workers, and other essential employees, is work-related and fully compensable for the purpose of workers' compensation benefits and other employment benefits provided for work-related injuries and illnesses.

The bill defines "essential employee" as an employee in the public or private sector who, during a state of emergency:

1. is a public safety worker or first responder, including any fire, police or other emergency responders;
2. is involved in providing medical and other healthcare services, emergency transportation, social services, and other care services, including services provided in health care facilities, residential facilities, or homes;
3. performs functions which involve physical proximity to members of the public and are essential to the public's health, safety, and welfare, including transportation services, hotel and other residential services, financial services, and the production, preparation, storage, sale, and distribution of essential goods such as food, beverages, medicine, fuel, and supplies for conducting essential business and work at home; or
4. is any other employee deemed an essential employee by the public authority declaring the state of emergency.

The bill provides that workers' compensation claims paid as a result of the rebuttable presumption provided by the bill shall not be considered in calculating an employer's Experience Modifier Rate or otherwise affect an employer's insurance premium rate for the employer's workers' compensation policy.

The bill is retroactive to March 9, 2020, the date of Governor Murphy's declaration of state of emergency with respect to the coronavirus disease 2019 pandemic.

LEGISLATIVE FISCAL ESTIMATE
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2380
STATE OF NEW JERSEY
219th LEGISLATURE

DATED: MAY 21, 2020

SUMMARY

Synopsis: Concerns employment benefits and coronavirus disease 2019 infections contracted by essential employees.

Type of Impact: Indeterminate Expenditure Increase to the State and local entities.

Agencies Affected: Department of Labor and Workforce Development. Department of the Treasury, Division of Pensions and Benefits.

Office of Legislative Services Estimate

| Fiscal Impact | <u>Year 1</u> | <u>Year 2</u> | <u>Year 3</u> |
|----------------------------|----------------------|----------------------|----------------------|
| State Cost Increase | | Indeterminate | |
| Local Cost Increase | | Indeterminate | |

- The Office of Legislative Services (OLS) estimates that the enactment of this bill may result in an indeterminate increase in expenditures to the State tied to a potential increase in claims for workers' compensation benefits from essential workers who are incapacitated or unable to perform their duties as a result of contracting coronavirus disease 2019 through the course of their employment.
- While it is worth noting that retirement costs for public employers may increase as a result of the bill lowering the burden for essential workers to demonstrate that they are eligible for Ordinary Disability and Accidental Disability Retirement for the Public Employees' Retirement System (PERS), and any other applicable benefits, the OLS does not have sufficient information on which to estimate the net fiscal impact of this bill for any individual public employer or for all public employers combined.
- The bill will also most likely result in annual increased costs to State and local entities due to the shift of the burden of proof from the worker to the employer in certain cases, which may result in increased claims for workers' compensation benefits.

BILL DESCRIPTION

This bill creates a rebuttable presumption that coronavirus disease 2019 contracted by health care workers, public safety workers, and other essential employees is work-related and fully compensable for the purpose of workers' compensation benefits and other employment benefits provided for work-related injuries and illnesses.

The bill defines "essential employee" as an employee in the public or private sector who, during a state of emergency:

1. Is a public safety worker or first responder, including any fire, police or other emergency responders;
2. Is involved in providing medical and other healthcare services, emergency transportation, social services, and other care services, including services provided in health care facilities, residential facilities, or homes;
3. Performs functions which involve physical proximity to members of the public and are essential to the public's health, safety, and welfare, including transportation services, hotel and other residential services, financial services, and the production, preparation, storage, sale, and distribution of essential goods such as food, beverages, medicine, fuel, and supplies for conducting essential business and work at home; or
4. Is any other employee deemed an essential employee by the public authority declaring the state of emergency.

The bill provides that workers' compensation claims paid as a result of the rebuttable presumption provided by the bill are not to be considered in calculating an employer's Experience Modifier Rate or otherwise affect an employer's insurance premium rate for the employer's workers' compensation policy.

The bill is retroactive to March 9, 2020, the date of Governor Murphy's declaration of state of emergency with respect to the coronavirus disease 2019 pandemic.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the enactment of this bill may result in an indeterminate increase in expenditures due to a potential increase in workers' compensation benefit claims from certain workers who are incapacitated or unable to perform their duties as a result of contracting coronavirus disease 2019 through the course of their employment. The additional claims may further result in an indeterminate increase in PERS contributions for certain public employers.

The OLS does not have sufficient information on which to base a determination of the fiscal impact of this bill for any individual public employer or for all public employers' combined contribution to PERS. The OLS believes, however, that the overall impact will likely be felt primarily by local governments and not the State because most essential workers are employed at the local level.

The bill provides essential workers, as defined under the bill, who become incapacitated or unable to perform their work duties as a result of contracting coronavirus disease 2019, with a rebuttable

presumption that the incapacitation they experience is related to work place activities and is compensable through workers' compensation benefits. This is a shift in the current system for certain workers in which the worker has the burden of proving that the injury, disability or death is related to workplace activities. It is possible that this shift will result in the filing of additional claims for workers' compensation benefits. The OLS notes that individuals may be more likely to apply for workers' compensation benefits if there is an understanding that they do not have to bear the burden of proving the connection between their workplace activities and their contraction of the disease. However, it should be noted that the additional claims, and shifting the burden of proof, may have fiscal impact, which the OLS cannot quantify with any certainty.

The OLS does not have access to independent actuarial information to analyze and determine the impact of the possibility of increased claims on workers' compensation total cost of claims. However, since a majority of public entities are self-insured for workers' compensation, any increases to the costs of workers' compensation will be funded directly by these entities.

Section: Commerce, Labor and Industry
Analyst: Juan C. Rodriguez
Senior Fiscal Analyst
Approved: Frank W. Haines III
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

LEGISLATIVE FISCAL ESTIMATE
 [First Reprint]
 SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2380
STATE OF NEW JERSEY
219th LEGISLATURE

DATED: AUGUST 5, 2020

SUMMARY

Synopsis: Concerns employment benefits and coronavirus disease 2019 infections contracted by essential employees.

Type of Impact: Expenditure Increase to the State and local entities.

Agencies Affected: Department of Labor and Workforce Development. Department of the Treasury, Division of Pensions and Benefits.

Office of Legislative Services Estimate

| Fiscal Impact | <u>Year 1</u> | <u>Year 2</u> | <u>Year 3</u> |
|----------------------------|---------------|---------------|---------------|
| State Cost Increase | | Indeterminate | |
| Local Cost Increase | | Indeterminate | |

- The Office of Legislative Services (OLS) estimates that the enactment of this bill may result in an indeterminate increase in expenditures to the State tied to a potential increase in claims for workers' compensation benefits from essential workers who are incapacitated or unable to perform their duties as a result of contracting coronavirus disease 2019 through the course of their employment.
- While it is worth noting that retirement costs for public employers may increase as a result of the bill lowering the burden for essential workers to demonstrate that they are eligible for Ordinary Disability and Accidental Disability Retirement for the Public Employees' Retirement System (PERS), and any other applicable benefits, the OLS does not have sufficient information on which to estimate the net fiscal impact of this bill for any individual public employer or for all public employers combined.
- The bill will also most likely result in annual increased costs to State and local entities due to the shift of the burden of proof from the worker to the employer in certain cases, which may result in increased claims for workers' compensation benefits.

BILL DESCRIPTION

This bill creates a rebuttable presumption that coronavirus disease 2019 contracted by health care workers, public safety workers, and other essential employees is work-related and fully compensable for the purpose of workers' compensation benefits and other employment benefits provided for work-related injuries and illnesses.

The bill defines "essential employee" as an employee in the public or private sector who, during a state of emergency:

1. Is a public safety worker or first responder, including any fire, police or other emergency responders;

2. Is involved in providing medical and other healthcare services, emergency transportation, social services, and other care services, including services provided in health care facilities, residential facilities, or homes;

3. Performs functions which involve physical proximity to members of the public and are essential to the public's health, safety, and welfare, including transportation services, hotel and other residential services, financial services, and the production, preparation, storage, sale, and distribution of essential goods such as food, beverages, medicine, fuel, and supplies for conducting essential business and work at home; or

4. Is any other employee deemed an essential employee by the public authority declaring the state of emergency.

The bill provides that any workers' compensation claims paid under the bill will be excluded from an employer's experience modifier pursuant to the New Jersey Workers' Compensation and Employers Liability and Insurance Manual administered by the New Jersey Compensation Rating and Inspection Bureau.

The bill is retroactive to March 9, 2020, the date of Governor Murphy's declaration of state of emergency with respect to the coronavirus disease 2019 pandemic.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the enactment of this bill may result in an indeterminate increase in expenditures due to a potential increase in workers' compensation benefit claims from certain workers who are incapacitated or unable to perform their duties as a result of contracting coronavirus disease 2019 through the course of their employment.

The OLS does not have sufficient information on which to base a determination of the fiscal impact of this bill for any individual public employer or for all public employers' combined contribution to PERS. The OLS believes, however, that the overall impact will likely be felt primarily by local governments and not the State because most essential workers are employed at the local level.

The bill provides essential workers, as defined under the bill, who become incapacitated or unable to perform their work duties as a result of contracting coronavirus disease 2019, with a rebuttable presumption that the incapacitation they experience is related to work place activities and is compensable through workers' compensation benefits. This is a shift in the current system for certain

workers in which the worker has the burden of proving that the injury, disability or death is related to workplace activities. It is possible that this shift will result in the filing of additional claims for workers' compensation benefits. The OLS notes that individuals may be more likely to apply for workers' compensation benefits if there is an understanding that they do not have to bear the burden of proving the connection between their workplace activities and their contraction of the disease. However, it should be noted that the additional claims, and shifting the burden of proof, may have a fiscal impact, which the OLS cannot quantify with any certainty.

The OLS does not have access to independent actuarial information to analyze and determine the impact of the possibility of increased claims on workers' compensation total cost of claims. However, since a majority of public entities are self-insured for workers' compensation, any increases to the costs of workers' compensation will be funded directly by these entities.

Section: Commerce, Labor and Industry
Analyst: Juan C. Rodriguez
Senior Fiscal Analyst
Approved: Frank W. Haines III
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY, No. 3999

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MAY 4, 2020

Sponsored by:

Assemblyman THOMAS P. GIBLIN

District 34 (Essex and Passaic)

Assemblyman JOHN J. BURZICHELLI

District 3 (Cumberland, Gloucester and Salem)

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

Assemblywoman JOANN DOWNEY

District 11 (Monmouth)

Co-Sponsored by:

Assemblymen Holley, Benson, Verrelli and Assemblywoman Reynolds-Jackson

SYNOPSIS

Concerns employment benefits and coronavirus disease 2019 infections contracted by essential employees.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/22/2020)

1 AN ACT concerning essential employees contracting coronavirus
2 disease 2019 and supplementing Title 34 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. a. (1) For the purposes of benefits provided under R.S.34:15-
8 1 et seq., ordinary and accidental disability retirement, and any other
9 benefits provided by law to individuals suffering injury or illness
10 through the course of their employment, and notwithstanding any
11 other law to the contrary, to the extent an individual is eligible for
12 those benefits by virtue of the individual's employment, there is a
13 rebuttable presumption that the contraction of coronavirus disease
14 2019, or COVID-19, by an essential employee, including but not
15 limited to, a health care worker or a public safety worker, is work-
16 related. The presumption shall only apply to an essential employee
17 who performs functions pertaining to those roles and involving
18 interactions with the public during the public health emergency
19 declared by Executive Order 103 of 2020, as extended by subsequent
20 executive orders.

21 (2) This prima facie presumption may be rebutted by a
22 preponderance of the evidence showing that the worker was not
23 exposed to the disease.

24 b. The amount of time an essential employee is incapacitated or
25 unable to perform their duties as a result of contracting coronavirus
26 disease 2019, or COVID-19, or exposure to the disease or infection
27 and the required time of hospitalization, time of quarantine or time
28 of self-quarantine shall be considered as on duty time, and an
29 essential employee shall not be required to use paid leave or any other
30 contractual time-off to cover the period of incapacitation or inability
31 to perform regular duty work. This time of incapacitation or inability
32 to perform their duties shall be considered as "emergency hazard
33 health duty."

34 c. As used in this act:

35 "Essential employee" means that:

36 (1) the employee is considered essential in support of
37 gubernatorial or federally declared statewide emergency response
38 and recovery operations; or

39 (2) the employee is an employee in the public or private sector
40 with duties and responsibilities, the performance of which is essential
41 to the public's health, safety, and welfare.

42 "Health care facility" means any non-federal institution, building
43 or agency, or portion thereof whether public or private for profit or
44 nonprofit that is used, operated or designed to provide health
45 services, medical or dental treatment or nursing, rehabilitative, or
46 preventive care to any person. Health care facility includes, but is
47 not limited to: an ambulatory surgical facility, home health agency,
48 hospice, hospital, infirmary, intermediate care facility, dialysis

1 center, long-term care facility, medical assistance facility, mental
2 health center, paid and volunteer emergency medical services,
3 outpatient facility, public health center, rehabilitation facility,
4 residential treatment facility, skilled nursing facility, and adult day
5 care center. Health care facility also includes, but is not limited to,
6 the following related property when used for or in connection with
7 the foregoing: a laboratory, research facility, pharmacy, laundry
8 facility, health personnel training and lodging facility, patient, guest
9 and health personnel food service facility, and the portion of an office
10 or office building used by persons engaged in health care professions
11 or services.

12 "Health care worker" means an individual who is employed by a
13 health care facility.

14 "Public safety worker" includes a member, employee, or officer of
15 a paid, partially-paid, or volunteer fire or police department, force,
16 company or district, including the State Police, a Community
17 Emergency Response Team approved by the New Jersey Office of
18 Emergency Management, or a correctional facility, or a basic or
19 advanced medical technician of a first aid or rescue squad, or any
20 other nurse, basic or advanced medical technician responding to a
21 catastrophic incident and directly involved and in contact with the
22 public during such an incident, either as a volunteer, member of a
23 Community Emergency Response Team or employed or directed by
24 a health care facility.

25

26 2. This act is intended to affirm certain rights of essential
27 employees under the circumstances specified in this act, and shall not
28 be construed as reducing, limiting or curtailing any rights of any
29 worker or employee to benefits provided by law.

30

31 3. This act shall take effect immediately and shall be retroactive
32 to March 9, 2020.

33

34

35

STATEMENT

36

37 This bill creates a presumption that coronavirus disease 2019
38 infections contracted by essential employees, including but not
39 limited to, health care workers and public safety workers, are work-
40 related for the purpose of employment benefits provided for work-
41 related injuries and illnesses, including but not limited to, workers'
42 compensation benefits.

43 Additionally, this bill provides that an essential employee's
44 absence from work due to the employee contracting or being exposed
45 to coronavirus disease 2019 will be considered on duty time, and an
46 employer is prohibited from charging the employee any paid leave
47 for the absence.

A3999 GIBLIN, BURZICHELLI

4

1 The bill defines “essential employee” as (1) an employee who is
2 essential in support of gubernatorial or federally declared statewide
3 emergency response and recovery operations; or (2) an employee in
4 the public or private sector with duties and responsibilities, the
5 performance of which is essential to the public's health, safety, and
6 welfare.

7 The bill will be retroactive to March 9, 2020, the date of Governor
8 Murphy’s declaration of state of emergency with respect to the
9 coronavirus disease 2019 pandemic.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 3999

STATE OF NEW JERSEY

DATED: JULY 27, 2020

The Assembly Appropriations Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 3999.

This bill creates a rebuttable presumption that coronavirus disease 2019 contracted by health care workers, public safety workers, and other essential employees, is work-related and fully compensable for the purpose of workers' compensation benefits and other employment benefits provided for work-related injuries and illnesses.

The bill defines "essential employee" as an employee in the public or private sector who, during a state of emergency:

1. is a public safety worker or first responder, including any fire, police or other emergency responders;
2. is involved in providing medical and other healthcare services, emergency transportation, social services, and other care services, including services provided in health care facilities, residential facilities, or homes;
3. performs functions which involve physical proximity to members of the public and are essential to the public's health, safety, and welfare, including transportation services, hotel and other residential services, financial services, and the production, preparation, storage, sale, and distribution of essential goods such as food, beverages, medicine, fuel, and supplies for conducting essential business and work at home; or
4. is any other employee deemed an essential employee by the public authority declaring the state of emergency.

The bill provides that an employee who is an employee of the State who is offered the option of working at home but has refused that option will not be regarded as an essential employee.

The bill provides that any workers' compensation claims paid according to section 2 of this act will not be considered in calculating an employer's Experience Modification Factor, pursuant to the New Jersey Workers' Compensation and Employers Liability and Insurance Manual administered by the Compensation Rating and Inspection Bureau established by section 2 of P.L.1995, c.393 (C.34:15-89.1) and section 1 of P.L.2008, c.97 (C. 34:15-90.1).

The bill is retroactive to March 9, 2020, the date of Governor Murphy's declaration of state of emergency with respect to the coronavirus disease 2019 pandemic.

As reported, this bill is identical to Senate Bill No. 2380 (SCS) (1R) of the 2020-2021 session.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the enactment of this bill may result in an indeterminate increase in expenditures to the State tied to a potential increase in claims for workers' compensation benefits from essential workers who are incapacitated or unable to perform their duties as a result of contracting coronavirus disease 2019 through the course of their employment.

While it is worth noting that retirement costs for public employers may increase as a result of the bill lowering the burden for essential workers to demonstrate that they are eligible for Ordinary Disability and Accidental Disability Retirement for the Public Employees' Retirement System (PERS), and any other applicable benefits, the OLS does not have sufficient information on which to estimate the net fiscal impact of this bill for any individual public employer or for all public employers combined.

The bill will also most likely result in annual increased costs to State and local entities due to the shift of the burden of proof from the worker to the employer in certain cases, which may result in increased claims for workers' compensation benefits.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 3999
STATE OF NEW JERSEY
219th LEGISLATURE

DATED: AUGUST 5, 2020

SUMMARY

- Synopsis:** Concerns employment benefits and coronavirus disease 2019 infections contracted by essential employees.
- Type of Impact:** Indeterminate Expenditure Increase to the State and local entities.
- Agencies Affected:** Department of Labor and Workforce Development. Department of the Treasury, Division of Pensions and Benefits.

Office of Legislative Services Estimate

| Fiscal Impact | <u>Year 1</u> | <u>Year 2</u> | <u>Year 3</u> |
|----------------------------|----------------------|----------------------|----------------------|
| State Cost Increase | | Indeterminate | |
| Local Cost Increase | | Indeterminate | |

- The Office of Legislative Services (OLS) estimates that the enactment of this bill may result in an indeterminate increase in expenditures to the State tied to a potential increase in claims for workers' compensation benefits from essential workers who are incapacitated or unable to perform their duties as a result of contracting coronavirus disease 2019 through the course of their employment.
- While it is worth noting that retirement costs for public employers may increase as a result of the bill lowering the burden for essential workers to demonstrate that they are eligible for Ordinary Disability and Accidental Disability Retirement for the Public Employees' Retirement System (PERS), and any other applicable benefits, the OLS does not have sufficient information on which to estimate the net fiscal impact of this bill for any individual public employer or for all public employers combined.
- The bill will also most likely result in annual increased costs to State and local entities due to the shift of the burden of proof from the worker to the employer in certain cases, which may result in increased claims for workers' compensation benefits.

BILL DESCRIPTION

This bill creates a rebuttable presumption that coronavirus disease 2019 contracted by health care workers, public safety workers, and other essential employees is work-related and fully compensable for the purpose of workers' compensation benefits and other employment benefits provided for work-related injuries and illnesses.

The bill defines "essential employee" as an employee in the public or private sector who, during a state of emergency:

1. Is a public safety worker or first responder, including any fire, police or other emergency responders;

2. Is involved in providing medical and other healthcare services, emergency transportation, social services, and other care services, including services provided in health care facilities, residential facilities, or homes;

3. Performs functions which involve physical proximity to members of the public and are essential to the public's health, safety, and welfare, including transportation services, hotel and other residential services, financial services, and the production, preparation, storage, sale, and distribution of essential goods such as food, beverages, medicine, fuel, and supplies for conducting essential business and work at home; or

4. Is any other employee deemed an essential employee by the public authority declaring the state of emergency.

The bill provides that any workers' compensation claims paid under the bill will be excluded from an employer's experience modifier pursuant to the New Jersey Workers' Compensation and Employers Liability and Insurance Manual administered by the New Jersey Compensation Rating and Inspection Bureau.

The bill is retroactive to March 9, 2020, the date of Governor Murphy's declaration of state of emergency with respect to the coronavirus disease 2019 pandemic.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the enactment of this bill may result in an indeterminate increase in expenditures due to a potential increase in workers' compensation benefit claims from certain workers who are incapacitated or unable to perform their duties as a result of contracting coronavirus disease 2019 through the course of their employment.

The OLS does not have sufficient information on which to base a determination of the fiscal impact of this bill for any individual public employer or for all public employers' combined contribution to PERS. The OLS believes, however, that the overall impact will likely be felt primarily by local governments and not the State because most essential workers are employed at the local level.

The bill provides essential workers, as defined under the bill, who become incapacitated or unable to perform their work duties as a result of contracting coronavirus disease 2019, with a rebuttable presumption that the incapacitation they experience is related to work place activities and is compensable through workers' compensation benefits. This is a shift in the current system for certain

workers in which the worker has the burden of proving that the injury, disability or death is related to workplace activities. It is possible that this shift will result in the filing of additional claims for workers' compensation benefits. The OLS notes that individuals may be more likely to apply for workers' compensation benefits if there is an understanding that they do not have to bear the burden of proving the connection between their workplace activities and their contraction of the disease. However, it should be noted that the additional claims, and shifting the burden of proof, may have a fiscal impact, which the OLS cannot quantify with any certainty.

The OLS does not have access to independent actuarial information to analyze and determine the impact of the possibility of increased claims on workers' compensation total cost of claims. However, since a majority of public entities are self-insured for workers' compensation, any increases to the costs of workers' compensation will be funded directly by these entities.

Section: Commerce, Labor and Industry
Analyst: Juan C. Rodriguez
Senior Fiscal Analyst
Approved: Frank W. Haines III
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

Governor Murphy Takes Action on Legislation

09/14/2020

TRENTON – Today, Governor Phil Murphy signed the following bills and resolutions into law:

S-349/A-1993 (Smith, Greenstein/Pinkin, Benson, Kennedy) – Requires developers to offer electric vehicle charging stations as option in certain new home construction

S-806/A-895 (Cunningham, Pou/Giblin, Timberlake, Jasey) – Provides that New Jersey Better Educational Savings Trust (NJBEST) Program scholarship may be awarded in any semester of attendance or enrollment at institution of higher education in State

S-960/A-3628 (Rice/Lopez) – Requires parent to provide completed financial aid application to Higher Education Student Assistance Authority if parent's dependent applies to State for student financial aid

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S-971/A-2106 (Lagana, Cunningham, Weinberg/Swain, Tully, Wimberly) – "New Jersey Fair Play Act"; allows collegiate student-athletes to earn compensation for use of name, image, or likeness

S-2380/A-3999 (Sweeney, Scutari, Singer, Greenstein/Giblin, Burzichelli, Murphy, Downey) – Concerns employment benefits and coronavirus disease 2019 infections contracted by essential employees

S-2573/A-4378 (Ruiz, Codey/Karabinchak, Jasey, Lampitt) – Establishes position of State School Nurse Consultant in DOE to facilitate best practices in school nursing by advancing comprehensive school health services

SJR-79/AJR-167 (Greenstein, Gill/Vainieri Huttle, Tucker, Murphy) – Creates commission to study sexual assault, misconduct, and harassment by staff against inmates in State correctional facilities

A-2669/S-1198 (Mukherji/Pou, Oroho) – Concerning motor vehicle ancillary production products and service contracts

Governor Murphy absolute vetoed the following bill:

A-3965/S-2463 (Moen, Murphy, Mukherji/Greenstein, Cruz-Perez) – ABSOLUTE – Expands existing EDA loan program to include certain small producers and retailers of alcoholic beverages

[Copy of Statement](#)