COVID-19 WORKERS' COMPENSATION MODIFICATIONS

2020 FIFTH SPECIAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Kirk A. Cullimore

LONG TITLE

General Description:

This bill modifies provisions related to workers' compensation coverage for first responders.

Highlighted Provisions:

This bill:

- moves provisions related to coverage for first responders diagnosed with COVID-19 from the Workers' Compensation Act to the Utah Occupational Disease Act;
- modifies the definition of a first responder; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

RENUMBERS AND AMENDS:

34A-3-201, (Renumbered from 34A-2-1101, as enacted by Laws of Utah 2020, Third Special Session, Chapter 6)

34A-3-202, (Renumbered from 34A-2-1102, as enacted by Laws of Utah 2020, Third Special Session, Chapter 6)

34A-3-203, (Renumbered from 34A-2-1103, as enacted by Laws of Utah 2020, Third Special Session, Chapter 6)

34A-3-204, (Renumbered from 34A-2-1104, as enacted by Laws of Utah 2020, Third

Special Session, Chapter 6)

34A-3-205, (Renumbered from 34A-2-1105, as enacted by Laws of Utah 2020, Third Special Session, Chapter 6)

34A-3-206, (Renumbered from 34A-2-1106, as enacted by Laws of Utah 2020, Third Special Session, Chapter 6)

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **34A-3-201**, which is renumbered from Section 34A-2-1101 is renumbered and amended to read:

Part 2. Presumptions for First Responders

[~~34A-2-1101~~]. 34A-3-201. Definitions.

(1) As used in this part:

(a) "COVID-19" means the disease caused by severe acute respiratory syndrome coronavirus 2.

(b) "First responder" means:

[~~(i) an emergency responder as defined in 29 C.F.R. Part 826, Subpart C; or~~]

[~~(ii) a health care provider as defined in 29 C.F.R. Part 826, Subpart C.~~]

(i) a first responder as defined in Section 34A-2-102;

(ii) an individual employed by:

(A) a health care facility as defined in Section 26-21-2;

(B) an office of a physician, chiropractor, or dentist;

(C) a nursing home;

(D) a retirement facility;

(E) a home health care provider;

(F) a pharmacy;

(G) a facility that performs laboratory or medical testing on human specimens; or

(H) an entity similar to the entities listed in Subsections (1)(b)(ii)(A) through (G);

(iii) an individual employed by, working with, or working at the direction of a local

health department; or

(iv) a volunteer, as defined in Section 67-20-2, providing services to a local health department in accordance with Title 67, Chapter 20, Volunteer Government Workers Act.

(c) "Physician" means an individual licensed under:

(i) Title 58, Chapter 67, Utah Medical Practice Act;

(ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;

(iii) Title 58, Chapter 70a, Utah Physician Assistant Act; or

(iv) Title 58, Chapter 31b, Nurse Practice Act, as an advanced practice registered nurse.

(d) "Utah minimum wage" means the highest wage designated as Utah's minimum wage under Title 34, Chapter 40, Utah Minimum Wage Act.

(2) For purposes of this part, an individual is diagnosed with COVID-19 if the individual:

(a) through laboratory testing of a specimen the individual provides, tests positive for the virus that causes COVID-19; and

(b) is diagnosed with COVID-19 by a physician.

Section 2. Section **34A-3-202**, which is renumbered from Section 34A-2-1102 is renumbered and amended to read:

[~~34A-2-1102~~]. 34A-3-202. Workers' compensation presumption for first responders.

(1) A first responder who claims to have contracted COVID-19 during the performance of the first responder's duties as a first responder, is presumed to have contracted COVID-19 [~~by accident~~] during the course of performing the first responder's duties as a first responder if the first responder is diagnosed with COVID-19:

(a) while employed or serving as a first responder; or

(b) if the first responder's employment or service as a first responder terminates, within two weeks after the day on which the first responder's employment or service terminates.

(2) A first responder who makes a claim under this part shall provide [~~a copy of the~~

~~positive laboratory test or the~~] written documentation of a [~~physician's~~] COVID-19 diagnosis to the first responder's employer or insurer.

Section 3. Section **34A-3-203**, which is renumbered from Section 34A-2-1103 is renumbered and amended to read:

[~~34A-2-1103~~]. 34A-3-203. Workers' compensation claims.

(1) This part applies to a claim resulting from an [~~accident~~] exposure arising out of and in the course of a first responder's employment or service on or after March 21, 2020, and before June 1, 2021.

(2) For purposes of establishing a workers' compensation claim under this part, the ["]date of [~~accident"~~] exposure is presumed to be the earlier of the day on which:

(a) the first responder is diagnosed with COVID-19;

(b) the first responder is unable to work because of a symptom of a disease that is later diagnosed as COVID-19; or

(c) the first responder's employment or service as a first responder terminates, if the first responder is diagnosed with COVID-19 within two weeks after the day on which the first responder's employment or service as a first responder terminates.

(3) Death benefits payable under this chapter are payable only if a claimant establishes by competent evidence that death was a consequence of or a result of COVID-19.

Section 4. Section **34A-3-204**, which is renumbered from Section 34A-2-1104 is renumbered and amended to read:

[~~34A-2-1104~~]. 34A-3-204. Failure to be tested -- Rebuttable presumption.

(1) A first responder who refuses examination for COVID-19 or fails to be diagnosed with COVID-19 is not entitled to the presumption established under this part.

(2) The presumption established [~~in~~] under this part may be rebutted by a preponderance of the evidence.

Section 5. Section **34A-3-205**, which is renumbered from Section 34A-2-1105 is renumbered and amended to read:

[~~34A-2-1105~~]. 34A-3-205. Determining employers of first responders --

Volunteer first responders -- Workers' compensation premiums.

(1) For purposes of receiving workers' compensation benefits, a first responder performing the services of a first responder is considered an employee of an entity for whom the first responder provides those services.

(2) (a) A first responder who only performs the services of a first responder for minimal or no compensation or on a volunteer basis receives an amount of workers' compensation:

(i) calculated in accordance with Section 34A-2-409; and

[~~(i)~~] (ii) (A) based on the first responder's primary employment, if the first responder is primarily employed other than as a first responder; or

[~~(ii)~~] (B) [~~that is the minimum benefit~~] based on the Utah minimum wage, if the first responder has no employment other than as a first responder.

(b) An entity for whom a first responder provides first responder services for minimal or no compensation or on a volunteer basis shall:

(i) pay any excess premium necessary for workers' compensation, if the first responder is primarily employed other than as a first responder; and

(ii) pay any premium necessary for workers' compensation, if the first responder has no employment other than as a first responder.

(3) A first responder is not precluded from utilizing insurance a primary employer provides, or any other insurance benefits, in addition to workers' compensation benefits.

Section 6. Section **34A-3-206**, which is renumbered from Section 34A-2-1106 is renumbered and amended to read:

[~~34A-2-1106~~]. **34A-3-206. Rulemaking authority.**

[~~(1) This part supersedes any conflicting provisions of Utah law.~~]

[~~(2)~~] The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to carry out the provisions of this part.

Section 7. **Effective date.**

If approved by two-thirds of all the members elected to each house, this bill takes effect

upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.