

What We Know

ARTICLES & INSIGHTS

ABOUT THE AUTHOR



[Connie Elder Carrigan](#) is a partner in the firm, with a practice concentration in Business Law. Her focus is assisting clients with issues regarding employment law, business advice and litigation, construction law, equipment leasing and creditor bankruptcy. Connie has lectured on topics ranging from employment law, bankruptcy, and equipment leasing to construction law.

New Threat on the Horizon for Employers Regarding COVID-19 and Workers Comp

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Ever since the world was introduced earlier this year to COVID-19, questions have been raised in legal circles regarding whether employee exposure to the virus could lead to a viable workers' compensation claim. On May 6, 2020, California Governor Gavin Newsom created consternation for business groups when he issued an executive order which establishes that for a 60-day period a rebuttable presumption that workers who must work outside of their homes during California's stay at home order and who test positive for COVID-19 within 14 days after performing labor or service at a place of work after the issuance of that state's stay at home order are eligible for workers' compensation coverage. Lest anyone believe that this decision is an outlier, North Carolina businesses should prepare for the possibility that equivalent workers' compensation coverage for COVID-19 will soon be law in this state as well.

House Bill 1057 was introduced in the North Carolina General Assembly on May 1, 2020. It proposes adding "pandemic infection contracted by a covered person" as an enumerated compensable disease under the Workers' Compensation Act, defining "pandemic" as "an outbreak of an emerging disease prevalent in the United States or the whole world." The definition of "covered person" includes law enforcement officers, jailers, prison guards, firefighters, emergency medical technicians or paramedics employed by a State or local governmental employer, health care workers, and employees required to work during a pandemic for a business declared essential by executive order of the Governor or by order of a local governmental authority, including foodservice and retail workers.

House Bill 1057 would create a rebuttable presumption that first responders, health care workers, and other essential workers infected with a pandemic infection had contracted the virus at work. This presumption would thus qualify them for worker's compensation coverage, including medical costs and two-thirds of lost wages, unless their employer can prove otherwise. The workers' compensation statute currently places the burden on employees to demonstrate that the injury or illness for which they seek compensation arose within the course and scope of their employment. The bill has more than 100 sponsors and bipartisan support. In the event it passes, it would become effective for claims filed on or after the date of its enactment.

Sponsors of House Bill 1057 note that the legislature's initial efforts to address COVID-19 provided liability protections for businesses and that the legislation levels the playing field, emphasizing a desire to protect workers on the front lines.

Balanced against this desire are the challenges of proving the source of infection and the burden of funding workers' compensation claims with premiums that were established before the pandemic. Business groups that lobby the General Assembly, including lobbyists for retail merchants, pork producers, trucking companies, restaurants, hotels, hospitals, and manufacturing companies, are pushing back against the pending legislation as "a fundamental threat to the continued viability of the workers' compensation system in our state." The North Carolina Chamber and the North Carolina Association of County Commissioners also oppose the bill.

It is anticipated that amendments will be proposed and debated. Stay tuned as this is a fast-evolving legislative process.

We at Smith Debnam continue to monitor pending legislation closely as part of our comprehensive response to the COVID-19 pandemic. If you have any questions, please call employment and human resources law partner [Connie Carrigan](mailto:ccarrigan@smithdebnamlaw.com) at (919) 250-2119 or e-mail her at ccarrigan@smithdebnamlaw.com.

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