

7-16 Potential amendments to LC 293:

(8)(a) As used in this subsection, “essential worker” means a subject worker who, at an employer’s direction, must or may work at the subject worker’s work site as a firefighter, a police or peace officer, a public safety personnel or officer as defined in ORS 181A.355, a medical services provider including emergency medical technicians, physicians, nurses, physician and nursing assistants, hospital or medical clinic employees, pharmacy technicians, and home health and long term care employees, a grocery or retail store employee, a provider of janitorial or house-keeping services, school employees, Child care employees who remained on the job to care for essential worker’s dependents, an agricultural worker as defined in ORS 315.163, employees at subject workers worksite where 10% or more of the employees have tested positive or presumed positive, employees whose job classification are not covered but who were nevertheless working with the public shall be covered under the presumption during a period in which a declaration of a state of emergency issued by the Governor is in effect for a location that includes the subject worker’s work site.

(b) A subject worker’s death, disability, impairment of health, loss of work time or expenses of medical treatment or services, including diagnostic or preventative medical treatment or services, is presumed to be compensable as an occupational injury or disease if:

(A) the subject worker is an essential worker; and

(B) the subject worker is exposed at work to a known or suspected source of COVID-19/SARS-CoV-2 and the employer, medical provider or federal, state or local public health authority required the subject worker to remain away from the subject worker’s work site ; or

(C) the subject worker is exposed at work to a known or suspected source of COVID-19/SARS-CoV-2 and becomes symptomatic with COVID-19/SARS-CoV-2; or

(D) the subject worker becomes symptomatic and receives a diagnosis of COVID-19/SARS-CoV-2 from a medical provider or a federal, state or local public health authority; or

(E) the subject worker receives a laboratory-confirmed diagnosis of COVID-19/SARS-CoV-2; or

(F) the subject worker receives a presumptive positive test result for COVID-19/SARS-CoV-2.

(c) An insurer or self-insured employer may rebut the presumption set forth in paragraph (b) of this subsection, or may deny a claim filed under this section for exposure to or infection by COVID-19/SARS-CoV-2, only:

(A) with clear and convincing evidence that the conditions identified in paragraph (b)(A), (B), (C), (D), (E), and/or (F) do not apply to the subject worker; and

(B) with clear and convincing medical evidence that the conditions identified in paragraph (b) (B), (C), (D), (E), and/or (F) were caused by a known and confirmed source of COVID-19/SARS-CoV-2 unrelated to work as an essential worker.

(d) Notwithstanding ORS 656.027 (6) [Portland also].

SECTION 2. This 2020 Act being necessary for the immediate preservation of the public peace, health and safety, and emergency is declared to exist, and this 2020 Act takes effect on its passage and shall

apply to work on or after March 8, 2020 and until 180 days after the date a declaration of a state of emergency issued by the Governor is lifted.

D R A F T

SUMMARY

Adds exposure to or infection by severe acute respiratory syndrome coronavirus 2 to definition of occupational disease for purposes of workers' compensation. Specifies presumptions as to compensability that apply to subject worker's death, disability, impairment of health, loss of work time and expenses of medical treatment or services, including diagnostic or preventative medical treatment or services.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the compensability of COVID-19 as an occupational disease for
3 the purposes of workers' compensation; amending ORS 656.802; and de-
4 claring an emergency.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1.** ORS 656.802 is amended to read:

7 656.802. (1)(a) As used in this chapter, "occupational disease" means any
8 disease or infection arising out of and in the course of employment caused
9 by substances or activities to which an employee is not ordinarily subjected
10 or exposed other than during a period of regular actual employment therein,
11 and which requires medical services or results in disability or death, in-
12 cluding:

13 (A) Any disease or infection caused by ingestion of, absorption of,
14 inhalation of or contact with dust, fumes, vapors, gases, radiation or other
15 substances.

16 (B) Any mental disorder, whether sudden or gradual in onset, which re-
17 quires medical services or results in physical or mental disability or death.

18 (C) Any series of traumatic events or occurrences which requires medical

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 services or results in physical disability or death.

2 **(D) Exposure to or infection by severe acute respiratory syndrome**
3 **coronavirus 2 (SARS-CoV-2).**

4 (b) As used in this chapter, “mental disorder” includes any physical dis-
5 order caused or worsened by mental stress.

6 (2)(a) The worker must prove that employment conditions were the major
7 contributing cause of the disease.

8 (b) If the occupational disease claim is based on the worsening of a pre-
9 existing disease or condition pursuant to ORS 656.005 (7), the worker must
10 prove that employment conditions were the major contributing cause of the
11 combined condition and pathological worsening of the disease.

12 (c) Occupational diseases shall be subject to all of the same limitations
13 and exclusions as accidental injuries under ORS 656.005 (7).

14 (d) Existence of an occupational disease or worsening of a preexisting
15 disease must be established by medical evidence supported by objective
16 findings.

17 (e) Preexisting conditions shall be deemed causes in determining major
18 contributing cause under this section.

19 (3) Notwithstanding any other provision of this chapter, a mental disorder
20 is not compensable under this chapter unless the worker establishes all of
21 the following:

22 (a) The employment conditions producing the mental disorder exist in a
23 real and objective sense.

24 (b) The employment conditions producing the mental disorder are condi-
25 tions other than conditions generally inherent in every working situation or
26 reasonable disciplinary, corrective or job performance evaluation actions by
27 the employer, or cessation of employment or employment decisions attendant
28 upon ordinary business or financial cycles.

29 (c) There is a diagnosis of a mental or emotional disorder which is gen-
30 erally recognized in the medical or psychological community.

31 (d) There is clear and convincing evidence that the mental disorder arose

1 out of and in the course of employment.

2 (4) Death, disability or impairment of health of firefighters of any poli-
3 tical division who have completed five or more years of employment as fire-
4 fighters, caused by any disease of the lungs or respiratory tract, hypertension
5 or cardiovascular-renal disease, and resulting from their employment as
6 firefighters is an “occupational disease.” Any condition or impairment of
7 health arising under this subsection shall be presumed to result from a
8 firefighter’s employment. However, any such firefighter must have taken a
9 physical examination upon becoming a firefighter, or subsequently thereto,
10 which failed to reveal any evidence of such condition or impairment of
11 health which preexisted employment. Denial of a claim for any condition
12 or impairment of health arising under this subsection must be on the basis
13 of clear and convincing medical evidence that the cause of the condition or
14 impairment is unrelated to the firefighter’s employment.

15 (5)(a) Death, disability or impairment of health of a nonvolunteer fire-
16 fighter employed by a political division or subdivision who has completed
17 five or more years of employment as a nonvolunteer firefighter is an occu-
18 pational disease if the death, disability or impairment of health:

19 (A) Is caused by brain cancer, colon cancer, stomach cancer, testicular
20 cancer, prostate cancer, multiple myeloma, non-Hodgkin’s lymphoma, cancer
21 of the throat or mouth, rectal cancer, breast cancer or leukemia;

22 (B) Results from the firefighter’s employment as a nonvolunteer fire-
23 fighter; and

24 (C) Is first diagnosed by a physician after July 1, 2009.

25 (b) Any condition or impairment of health arising under this subsection
26 is presumed to result from the firefighter’s employment. Denial of a claim for
27 any condition or impairment of health arising under this subsection must be
28 on the basis of clear and convincing medical evidence that the condition or
29 impairment was not caused or contributed to in material part by the
30 firefighter’s employment.

31 (c) Notwithstanding paragraph (b) of this subsection, the presumption es-

1 tablished under paragraph (b) of this subsection may be rebutted by clear and
2 convincing evidence that the use of tobacco by the nonvolunteer firefighter
3 is the major contributing cause of the cancer.

4 (d) The presumption established under paragraph (b) of this subsection
5 does not apply to prostate cancer if the cancer is first diagnosed by a phy-
6 sician after the firefighter has reached the age of 55. However, nothing in
7 this paragraph affects the right of a firefighter to establish the
8 compensability of prostate cancer without benefit of the presumption.

9 (e) The presumption established under paragraph (b) of this subsection
10 does not apply to claims filed more than 84 months following the termination
11 of the nonvolunteer firefighter's employment as a nonvolunteer firefighter.
12 However, nothing in this paragraph affects the right of a firefighter to es-
13 tablish the compensability of the cancer without benefit of the presumption.

14 (f) The presumption established under paragraph (b) of this subsection
15 does not apply to volunteer firefighters.

16 (g) Nothing in this subsection affects the provisions of subsection (4) of
17 this section.

18 (h) For purposes of this subsection, "nonvolunteer firefighter" means a
19 firefighter who performs firefighting services and receives salary, hourly
20 wages equal to or greater than the state minimum wage, or other compen-
21 sation except for room, board, lodging, housing, meals, stipends, reimburse-
22 ment for expenses or nominal payments for time and travel, regardless of
23 whether any such compensation is subject to federal, state or local taxation.
24 "Nominal payments for time and travel" includes, but is not limited to,
25 payments for on-call time or time spent responding to a call or similar non-
26 cash benefits.

27 (6) Notwithstanding ORS 656.027 (6), any city providing a disability and
28 retirement system by ordinance or charter for firefighters and police officers
29 not subject to this chapter shall apply the presumptions established under
30 subsection (5) of this section when processing claims for firefighters covered
31 by the system.

1 (7)(a) As used in this subsection:

2 (A) “Acute stress disorder” has the meaning given that term in the
3 DSM-5.

4 (B) “Covered employee” means an individual who, on the date a claim is
5 filed under this chapter:

6 (i) Was employed for at least five years by, or experienced a single trau-
7 matic event that satisfies the criteria set forth in the DSM-5 as Criterion A
8 for diagnosing post-traumatic stress disorder while employed by, the state,
9 a political subdivision of the state, a special government body, as defined in
10 ORS 174.117, or a public agency in any of these occupations:

11 (I) A full-time paid firefighter;

12 (II) A full-time paid emergency medical services provider;

13 (III) A full-time paid police officer;

14 (IV) A full-time paid corrections officer or youth correction officer;

15 (V) A full-time paid parole and probation officer; or

16 (VI) A full-time paid emergency dispatcher or 9-1-1 emergency operator;

17 and

18 (ii) Remains employed in an occupation listed in sub-subparagraph (i) of
19 this subparagraph or separated from employment in the occupation not more
20 than seven years previously.

21 (C) “DSM-5” means the fifth edition of the Diagnostic and Statistical
22 Manual of Mental Disorders published by the American Psychiatric Associ-
23 ation.

24 (D) “Post-traumatic stress disorder” has the meaning given that term in
25 the DSM-5.

26 (E) “Psychiatrist” means a psychiatrist whom the Oregon Medical Board
27 has licensed and certified as eligible to diagnose the conditions described in
28 this subsection.

29 (F) “Psychologist” means a licensed psychologist, as defined in ORS
30 675.010, whom the Oregon Board of Psychology has certified as eligible to
31 diagnose the conditions described in this subsection.

1 (b) Notwithstanding subsections (2) and (3) of this section, if a covered
2 employee establishes through a preponderance of persuasive medical evidence
3 from a psychiatrist or psychologist that the covered employee has more
4 likely than not satisfied the diagnostic criteria in the DSM-5 for post-
5 traumatic stress disorder or acute stress disorder, any resulting death, disa-
6 bility or impairment of health of the covered employee shall be presumed to
7 be compensable as an occupational disease. An insurer or self-insured em-
8 ployer may rebut the presumption only by establishing through clear and
9 convincing medical evidence that duties as a covered employee were not of
10 real importance or great consequence in causing the diagnosed condition.

11 (c) An insurer's or self-insured employer's acceptance of a claim of post-
12 traumatic stress disorder or acute stress disorder under this subsection,
13 whether the acceptance was voluntary or was a result of a judgment or or-
14 der, does not preclude the insurer or the self-insured employer from later
15 denying the current compensability of the claim if exposure as a covered
16 employee to trauma that meets the diagnostic criteria set forth as Criterion
17 A in the DSM-5 for post-traumatic stress disorder or acute stress disorder
18 ceases being of real importance or great consequence in causing the disabil-
19 ity, impairment of health or a need for treatment.

20 (d) An insurer or self-insured employer may deny a claim under paragraph
21 (c) of this subsection only on the basis of clear and convincing medical evi-
22 dence.

23 (e) Notwithstanding ORS 656.027 (6), a city that provides a disability or
24 retirement system for firefighters and police officers by ordinance or charter
25 that is not subject to this chapter, when accepting and processing claims for
26 death, disability or impairment of health from firefighters and police officers
27 covered by the disability or retirement system, shall apply:

28 (A) The provisions of this subsection; and

29 (B) For claims filed under this subsection, the time limitations for filing
30 claims that are set forth in ORS 656.807 (1) and (2).

31 **(8)(a) As used in this subsection, "essential worker" means a sub-**

1 **ject worker who, at an employer’s direction, must or may work at the**
2 **subject worker’s work site during a period in which a declaration of**
3 **a state of emergency issued by the Governor is in effect for a location**
4 **that includes the subject worker’s work site.**

5 **(b) A subject worker’s death, disability, impairment of health, loss**
6 **of work time or expenses of medical treatment or services, including**
7 **diagnostic or preventative medical treatment or services, is presumed**
8 **to be compensable as an occupational disease if the subject worker is**
9 **an essential worker and:**

10 **(A) Received a diagnosis of coronavirus disease 2019 (COVID-19)**
11 **from a medical provider or a federal, state or local public health au-**
12 **thority;**

13 **(B) Received a laboratory-confirmed diagnosis of COVID-19;**

14 **(C) Received a presumptive positive test result for COVID-19; or**

15 **(D) An employer, medical provider or federal, state or local public**
16 **health authority required the subject worker to remain away from the**
17 **subject worker’s work site because of a suspected or confirmed expo-**
18 **sure to SARS-CoV-2.**

19 **(c) An insurer or self-insured employer may rebut the presumption**
20 **set forth in paragraph (b) of this subsection, or may deny a claim filed**
21 **under this section for exposure to or infection by SARS-CoV-2, only**
22 **with clear and convincing evidence that the conditions identified in**
23 **paragraph (b)(A), (B), (C) and (D) of this subsection do not apply to**
24 **the subject worker.**

25 **(d) Notwithstanding ORS 656.027 (6), a city that provides a disability**
26 **or retirement system for firefighters and police officers by ordinance**
27 **or charter that is not subject to this chapter, when accepting and**
28 **processing claims from firefighters and police officers covered by the**
29 **disability or retirement system, shall apply:**

30 **(A) The provisions of this subsection; and**

31 **(B) For claims filed under this section for exposure to or infection**

1 by SARS-CoV-2, the time limitations for filing claims that are set
2 forth in ORS 656.807 (1) and (2).

3 SECTION 2. This 2021 Act being necessary for the immediate pres-
4 ervation of the public peace, health and safety, an emergency is de-
5 clared to exist, and this 2021 Act takes effect on its passage.

6

Who would get a presumption?

(8)(a) As used in this subsection, “essential worker” means a subject worker who, at an employer’s direction, must or may work at the subject worker’s work site as a:

Firefighter, a police or peace officer, a public safety personnel or officer as defined in ORS 181A.355,

Medical services provider including emergency medical technicians, physicians, nurses, physician and nursing assistants, hospital or medical clinic employees, pharmacy technicians, and home health and long term care employees,

Grocery or retail store employee,

Provider of janitorial or house-keeping services,

School employees,

Child care employees who remained on the job to care for essential worker’s dependents,

An agricultural worker as defined in ORS 315.163,

Employees at subject workers worksite where 10% or more of the employees have tested positive or presumed positive,

Employees whose job classification are not covered but who were nevertheless working with the public shall be covered under the presumption during a period in which a declaration of a state of emergency issued by the Governor is in effect for a location that includes the subject worker’s work site.

When would they get a presumption?

(b) A subject worker’s death, disability, impairment of health, loss of work time or expenses of medical treatment or services, including diagnostic or preventative medical treatment or services, is presumed to be compensable as an occupational injury or disease if:

(A) the subject worker is an essential worker; and

(B) the subject worker is exposed at work to a known or suspected source of COVID-19/SARS-CoV-2 and the employer, medical provider or federal, state or local public health authority required the subject worker to remain away from the subject worker’s work site ; or

(C) the subject worker is exposed at work to a known or suspected source of COVID-19/SARS-CoV-2 and becomes symptomatic with COVID-19/SARS-CoV-2; or

(D) the subject worker becomes symptomatic and receives a diagnosis of COVID-19/SARS-CoV-2 from a medical provider or a federal, state or local public health authority; or

(E) the subject worker receives a laboratory-confirmed diagnosis of COVID-19/SARS-CoV-2; or

(F) the subject worker receives a presumptive positive test result for COVID-19/SARS-CoV-2.

How would an employer rebut the presumption?

(c) An insurer or self-insured employer may rebut the presumption set forth in paragraph (b) of this subsection, or may deny a claim filed under this section for exposure to or infection by COVID-19/SARS-CoV-2, only:

(A) with clear and convincing evidence that the conditions identified in paragraph (b)(A), (B), (C), (D), (E), and/or (F) do not apply to the subject worker; **and** (should be OR)

(B) with clear and convincing medical evidence that the conditions identified in paragraph (b) (B), (C), (D), (E), and/or (F) were caused by a known and confirmed source of COVID-19/SARS-CoV-2 unrelated to work as an essential worker.

(d) Notwithstanding ORS 656.027 (6) [Portland also].

SECTION 2. This 2020 Act being necessary for the immediate preservation of the public peace, health and safety, and emergency is declared to exist, and this 2020 Act takes effect on its passage and shall apply to work on or after March 8, 2020 and until 180 days after the date a declaration of a state of emergency issued by the Governor is lifted.