



Minnesota's workers' compensation response to COVID-19

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Executive summary

In April 2020, the Minnesota Legislature passed a bill providing a rebuttable presumption that certain employees who contract COVID-19 have an occupational disease covered by Minnesota workers' compensation law. The statute mandated that the Department of Labor and Industry (DLI), by Jan. 15, 2021, submit a report analyzing COVID-19 workers' compensation claims.

The rebuttable presumption has had a profound effect on the compensability of workers' compensation COVID-19 claims. Through Dec. 23, 2020, DLI received approximately 15,200 COVID-19 workers' compensation claim reports, compared with an annual average of 33,000 claim files for all injuries and illnesses.

Minnesota's COVID-19 presumption

Minnesota's presumption is effective for employees who contract COVID-19 between April 8, 2020, and May 1, 2021. Employees are entitled to the presumption if they contract COVID-19 while employed in one of these occupations:

- licensed peace officer, firefighter, paramedic or emergency medical technician;
- nurse or health care worker, correctional officer or security counselor employed by the state or a political subdivision (such as a city or county) at a corrections, detention or secure treatment facility;
- health care provider, nurse or assistive employee employed in a health care, home care or long-term care setting, with direct COVID-19 patient care or ancillary work in COVID-19 patient units; or
- person required to provide child care to children of first responders and health care workers under Gov. Tim Walz's Executive Orders 20-02 and 20-19.

All licensed peace officers, firefighters, paramedics and emergency medical technicians who contract COVID-19 qualify for the presumption; these workers are identified as the first responder presumption group. The statute identifies nurses, health care workers, correctional officers and security counselors who work at state or local government corrections, detention or secure treatment facilities as entitled to the presumption. This group is referred to as corrections workers in this report. Health care and assistive employees are identified as a collective industry in the report. Under the statute, these employees must provide direct care to persons with COVID-19 or perform ancillary work in a COVID-19 patient unit and must work at specific types of workplaces to be covered by the presumption.

Workers must meet both conditions of the statute to be covered by the presumption: they must be members of one of the groups of workers named in the statute; and they must have documentation of a positive test for COVID-19 or, if no test was available, been diagnosed by a qualified health care provider. Health care workers must also provide direct care to persons with COVID-19 or perform ancillary work in a COVID-19 patient unit. After the employee has established entitlement to the presumption, the employer may only rebut the presumption by showing the employee's employment was not a direct cause of the disease.

For workers not covered by the presumption, COVID-19 may be compensable as a personal injury or as an occupational disease under the existing workers' compensation statute. An employee who has contracted

COVID-19 but is not entitled to the presumption has the burden of proving the illness arose out of and in the course of employment.

Approximately 183,000 Minnesota workers are employed in the occupations and workplaces eligible for presumption coverage. In this report, the set of workers named in the presumption statute is collectively called the presumption group of workers because the presumption *may* apply to them. These include all first responders, corrections workers and workers in the health care industry. While the statute also provides a presumption for some child care workers, fewer than 20 claims have been filed for this class of workers, an insufficient number to reach conclusions about the presumption's effect on claims filing. The remainder of Minnesota's workforce covered by workers' compensation, approximately 2.7 million workers, is referred to as the non-presumption group of workers.

Minnesota is one of several states that created a presumption of workers' compensation coverage for employees in certain occupations who contract COVID-19 at work. As of Dec. 1, 2020, 15 states had provided a presumption through executive order, law or administrative action to make it easier for certain workers to file a compensable workers' compensation claim for COVID-19 as a work-related illness.

Major findings

Claims filed

- COVID-19 claims accounted for 36% of the workers' compensation claims received by DLI in 2020. Most of the claims reported to DLI have more than three days of lost-time (called "lost-time claims"). The COVID-19 percentage of claims grew from 0% in January and February to 2% of claims filed in March and to 74% of the claims filed in December.
- Total claims filed with DLI from January through December 2020 were 29% higher than the number of claims filed in 2019.
- The presumption group of workers accounted for 82% of the COVID-19 claims filed.
- Health care workers accounted for 71% of the COVID-19 claims filed. In addition to their high number of COVID-19 claims, health care industry workers have monthly numbers of non-COVID-19 injury claims comparable to the number of claims filed in 2019.

Denial of liability

- Among claims lost-time claims, 14% of the claims from workers in the presumption groups were denied, compared to 58% of the non-presumption worker claims.
- Presumption claims accounted for 98% of the COVID-19 claims accepted for workers' compensation benefits.
- An examination of the reasons given by insurers when filing the denials, taken from a random sample of denied claims, shows the two most commonly used reasons were that the worker had a negative test result (or no proof of a positive test result) and that health care workers had no COVID-19 patient contact. Both of these reasons indicate the workers did not establish the presumption requirements.
- The denial review indicated employers rarely tried to rebut claims when employees met the presumption requirements.

- None of the claims that were examined in a random sample had documents indicating the worker was contesting the insurer's denial of primary liability. However, some employees have filed claim petitions at the Office of Administrative Hearings to challenge denials.

Benefit payments and disability durations

Because this report is being written within one year of the beginning of each claim, only short-term claims have reports of monetary (indemnity) benefits paid. It is too early to know the long-term effects of COVID-19 on workers' health. Therefore, the results presented are preliminary and at least another year is needed to provide more definitive statistics about benefit payments to workers with COVID-19 claims.

- For closed indemnity claims with injury dates between April 8 and July 30, 2020, COVID-19 claims accounted for 35% of the claims and for 34% of the indemnity benefits paid.
- For this set of short-term claims, temporary disability payments were paid for an average of 2.7 weeks, half a week less than the average benefit duration for non-COVID-19 claims.
- The availability of the presumption had a large effect on indemnity benefits. Among non-presumption workers, COVID-19 claims accounted for 1% of indemnity closures and only 0.8% of indemnity benefit payments. For the presumption worker industry/occupation group, 68% of the closed indemnity claims were COVID-19 claims and 69% of their indemnity payments were for COVID-19 claims.
- Temporary disability payments were paid for an average of 2.7 weeks, half a week less than the benefit duration for non-COVID-19 claims. This difference was consistent for all worker groups except for health care workers, who had nearly the same average disability duration for COVID-19 and non-COVID-19 claims.

Discussion and conclusions

Throughout the COVID-19 pandemic, hundreds of thousands of Minnesotans continued working at their regular worksites and in jobs that involved contact with members of the public. The statutory presumption of work-relatedness provides access to workers' compensation benefits to certain first responders, certain workers in correctional, detention and secure treatment facilities, certain health care workers and education workers who contract COVID-19. After the employee has established the presumption, the insurer has the burden of rebutting it. All other workers have the burden of proving that their COVID-19 infection is work-related to receive workers' compensation benefits.

The statutory presumption has worked as intended; workers in the presumption group were much more likely to receive workers' compensation benefits for COVID-19 than were all other workers. Among workers in the groups eligible for the presumption, 27% of the primary liability determinations were a denial of liability and only 14% of lost-time claims were denied liability. Examination of the denials among presumption group workers showed most of their claims were denied because the worker tested negative for COVID-19 or a healthcare worker did not encounter patients with COVID-19 or work in COVID-19 treatment areas. The claims denial review did not find instances where an insurer denied a claim by successfully rebutting the work-relatedness of a COVID-19 claim that met the presumption requirements. For workers not in one of the presumption coverage groups, 81% of their claim liability determinations were denials and the denial percentage was 58% among lost-time claims.

The claims denial review did not find instances where an insurer successfully rebutted the work-relatedness of a health care worker's COVID-19 claim that met the presumption requirements.

Even with the vaccination process underway, the pandemic is not over and long-term effects on worker health and finances are not yet known. Workers who did not file a workers' compensation claim may also have financial difficulty covering their expenses and lost wages should any lingering effects of their COVID-19 illnesses require additional medical care or result in a permanent disability. Currently, not enough time has elapsed to identify COVID-19 claims with long-term health consequences and study the benefits these workers receive. DLI will continue to monitor COVID-19 claims and to advise policymakers using the most recent available data.

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Introduction

Legislative mandate

The Minnesota Legislature mandated that the Department of Labor and Industry (DLI), by Jan. 15, 2021, submit a report analyzing COVID-19 workers' compensation claims. The legislative requirement reads as follows:

(6) The commissioner shall provide a detailed report on COVID-19 workers' compensation claims under this paragraph to the Workers' Compensation Advisory Council, and chairs and ranking minority members of the house of representatives and senate committees with jurisdiction over workers' compensation, by January 15, 2021. ¹

Overview of report

The coronavirus pandemic has left an indelible imprint on Minnesota's workers' compensation system. No other single source of injury or illness in recent history has affected so many workers in such a short time. The Minnesota Department of Labor and Industry (DLI) has received approximately 15,200 COVID-19 workers' compensation claims reports in 2020 (through Dec. 23), compared with an average of 33,000 claim files created annually.² Claims related to coronavirus disease 2019 (COVID-19) account for a large proportion of the workers' compensation claims in some industries. This report describes the COVID-19 claims filed with DLI, claim reporting trends and how changes to Minnesota's workers' compensation statute have affected the receipt of benefits.

The fight against the pandemic led to unprecedented changes in employment and how and where people work. Although it is beyond the scope of this report, pandemic-related business closures, postponement of elective surgeries and increased unemployment have also affected non-COVID injury rates and claim-filing, interrupting the availability and timing of medical treatment for injured workers.³ COVID-19 has likely also hampered the ability of injured workers to find employment within their work restrictions, increasing benefit durations and adding to system costs.

Early in the pandemic, the Minnesota Legislature passed a bill providing that certain employees who contract COVID-19 are presumed to have an occupational disease covered by Minnesota workers' compensation law (codified as Minnesota Statutes § 176.011, subdivision 15 (f)); see Appendix A for the full text of the

¹ Minn. Stat. § 176.011, subd. 15 (f)(6)

² Only lost-time claims, claims with more than three days of disability due to the injury or illness, are required to be filed with DLI. Generally, about two-thirds of all claims received by DLI are lost-time claims. Claims with three or fewer days of lost-time are called medical-only claims.

³ *Cost impacts of medical care delays in the California workers' compensation system*. Workers' Compensation Insurance Rating Bureau of California, Oct. 2020; and *COVID-19's impact on medical treatment in workers compensation—a first look at 2020*. National Council on Compensation Insurance, Research Brief, Dec. 2020.

presumption statute). The presumption is effective for employees who contract COVID-19 between April 8, 2020, and May 1, 2021. This law change has had a profound effect on the compensability of workers' compensation COVID-19 claims.

This report describes the following:

- 1) how the COVID-19 presumption affects the compensability of COVID-19 claims for specified workers and how other workers might receive workers' compensation coverage for their COVID-19 illness;
- 2) a summary of actions taken by other states to provide workers' compensation coverage for COVID-19 for certain groups of workers; and
- 3) results of the analysis of COVID-19 claims filed with DLI, detailing how many claims have been filed, the characteristics of the workers filing claims, whether primary liability for workers' compensation claims is accepted, and claim duration and amount of indemnity benefits paid to accepted claims.

Background

Compensability of illnesses and the COVID-19 presumption

Injuries or occupational diseases that arise out of and in the course of employment are compensable under the Minnesota Workers' Compensation Act. For an injury to be compensable, it is sufficient that the employment be a substantial contributing factor to the condition or to an aggravation or acceleration of a pre-existing condition. It is not necessary that the employment be the only cause of the condition. For COVID-19 and other occupational diseases (also referred to as "illnesses"), the statutory language is more complex.

COVID-19 claims can be compensable under three statutory provisions:

1. Statutory presumption for certain employees on the front lines of the COVID-19 pandemic

Under the new COVID-19 presumption law in Minn. Stat. § 176.011, subd. 15 (f), the employees listed below are presumed to have contracted a workers' compensation occupational disease arising out of and in the course of their employment if they have contracted COVID-19. Employees who are covered by workers' compensation are entitled to the presumption if they contract COVID-19 on or after April 8, 2020, while employed in one of these occupations:

- licensed peace officer under Minnesota Statutes, section 626.84, subd. 1, firefighter, paramedic or emergency medical technician;
- nurse or health care worker, correctional officer or security counselor employed by the state or a political subdivision (such as a city or county) at a corrections, detention or secure treatment facility;
- health care provider, nurse or assistive employee employed in a health care, home care or long-term care setting, with direct COVID-19 patient care or ancillary work in COVID-19 patient units; or

- a person required to provide child care to children of first responders and health care workers under Gov. Tim Walz’s Executive Orders 20-02 and 20-19.⁴

An employee can show they contracted COVID-19 under the law if they have either a positive laboratory test or, if a test was not available, a diagnosis based on symptoms by a licensed physician, licensed physician’s assistant or licensed advanced practice registered nurse. If an employee has contracted COVID-19 in one of the employments described above, the illness is presumed to be a workers’ compensation occupational disease and is compensable, unless the employer “rebutts” (disproves) the presumption.

The employee must show all the elements of the presumption have been met. After the employee has established entitlement to the presumption, the employer may only rebut the presumption by showing that the employee’s employment was not a direct cause of the disease.

2. Personal injury

COVID-19 may be compensable as a personal injury under Minn. Stat. §176.011, subd. 16. Subdivision 16 reads (in part): “‘Personal injury’ means any ... physical injury arising out of and in the course of employment and includes personal injury caused by occupational disease; but does not cover an employee except while engaged in, on, or about the premises where the employee’s services require the employee’s presence as a part of that service at the time of the injury and during the hours of that service ...”⁵

An employee who has contracted COVID-19 but is not entitled to the presumption has the burden of proving the illness arose out of and in the course of employment.

3. Occupational disease

If the COVID-19 presumption in the new law does not apply, COVID-19 may also be compensable as an occupational disease under other paragraphs of Minn. Stat. § 176.011, subd. 15.

Under paragraph (a), an occupational disease arises out of and in the course of employment and is “peculiar to the occupation in which the employee is engaged and due to causes in excess of the hazards ordinary of employment.” The paragraph also provides, “An employer is not liable for compensation for any occupational disease that cannot be traced to the employment as a direct and proximate cause and is not recognized as a hazard characteristic of and peculiar to the trade, occupation, process or

⁴ Executive Order 20-82 and Executive Order 20-94 contain the following language: “Workers required to provide care to Eligible Children under this Executive Order, which extends the requirement under Executive Order 20-02, paragraph 11, and Executive Order 20-19, paragraph 18, [will] continue to enjoy the presumption provided under Minnesota Laws 2020, Chapter 72, section 1.” The Minnesota Department of Education has more information about this in its document, “School-age care guidance and FAQs for 2020-21 school year,” available at www.dli.mn.gov/sites/default/files/pdf/dept_of_education_school-age_children_critical_workers.pdf.

⁵ www.revisor.mn.gov/statutes/cite/176.011#stat.176.011.16

employment, or which results from a hazard to which the worker would have been equally exposed outside of the employment.”

Paragraph (b) provides two other presumptions that the employee has an occupational disease due to the nature of employment:

- certain first responders, corrections, and law enforcement officers with “myocarditis, coronary sclerosis, pneumonia or its sequel,” if at the time of employment the employee was given a “thorough physical examination by a licensed doctor of medicine,” and the written report was filed with the employer; and
- a person who, “by nature of their position provides emergency medical care or an employee who was employed as a licensed police officer under Minn. Stat. § 626.84, subd. 1; firefighter; paramedic; state correctional officer; emergency medical technician; or licensed nurse providing emergency medical care; and who contracts an infectious or communicable disease to which the employee was exposed in the course of employment outside of a hospital.”

DLI has strived to educate employees, employers and the workers’ compensation community about their responsibilities related to COVID-19 under Minnesota’s workers’ compensation laws and OSHA regulations. The top banner of the DLI website (www.dli.mn.gov) links directly to the DLI COVID-19 resources page, which has links to the workers’ compensation presumption statute and FAQs, to COVID-19 claims statistics, to employee rights information, and to resources for creating and maintaining safe workplaces. In August, DLI published a special edition of COMPACT, its quarterly workers’ compensation publication, devoted to COVID-19 information.⁶ Half of the edition was used to explain the evidence to consider for a primary liability determination and how to file a denial of liability that satisfies the statutory requirements. DLI has also created a more detailed handout explaining workers’ compensation rights for distribution to employees through unions and employee advocacy organizations.

COVID-19 workers’ compensation presumptions in other states

Minnesota is one of several states that created a presumption of workers’ compensation coverage for employees in certain occupations who contract COVID-19 at work. As of Dec. 1, 2020, 15 states have provided a presumption through executive order, law, or administrative action to make it easier for certain workers to file a compensable workers’ compensation claim for COVID-19 as a work-related illness. Generally, state presumptions like Minnesota’s have targeted workers who are at high-risk of contracting COVID-19, namely first responders and health care workers.

⁶ *COMPACT Special Edition: COVID-19*, August 2020. Minnesota Department of Labor and Industry. www.dli.mn.gov/sites/default/files/pdf/special_edition_COVID-19.pdf

Most of these states created rebuttable presumptions like Minnesota's law, while Alaska enacted a conclusive presumption for workers employed as a firefighter, emergency medical technician, paramedic, peace officer or health care provider who were exposed to COVID-19 in the course of employment and receive a COVID-19 diagnosis or positive test result.

- Nine states have enacted legislation: Alaska, California (originally an executive action), Illinois, Minnesota, New Jersey, Utah, Vermont, Wisconsin and Wyoming
- Four states have taken executive action: Connecticut, Kentucky, Michigan and New Hampshire
- Two states have changed administrative policies: Missouri and Washington.

As of this writing, several other states have legislation pending that would provide a workers' compensation presumption for COVID-19 for certain occupations. For additional details about the state presumptions described here, see Appendix B.

Most of the presumptions limit coverage to first responders and health care workers. However, some states cover other workers that are considered essential, such as grocery store employees and postal workers (Illinois, Kentucky). California's law goes even further than front-line workers and includes a rebuttable presumption for all employees if the employee tests positive for COVID-19 during an outbreak at the employee's place of employment.

The duration of the presumption also varies. For instance, while Minnesota's law sunsets May 1, 2021, Illinois' rebuttable presumption was in effect through Dec. 31, 2020, Vermont's through Jan. 15, 2021, Utah's through June 1, 2021, and California's through Jan. 1, 2023. Other laws establish a presumption for the duration of the public health emergency declared by the governor (Alaska) or 30 days after it expires (Wisconsin). Executive orders generally are in effect for the duration of a state of emergency (Kentucky, Michigan, New Hampshire) or expired earlier in 2020 (Connecticut's presumption expired May 20, 2020).

For those states that have not implemented a presumption for workers' compensation coverage for COVID-19, these workers' compensation claims may still be compensable under existing laws.

Identifying workers covered by Minnesota's presumption

Workers must meet both conditions of the statute to be covered by the presumption: they must be members of one of the groups of workers named in the statute; and they must have documentation of a positive test for COVID-19 or, if no test was available, have been diagnosed by a qualified health care providers.

All licensed peace officers, firefighters, paramedics and emergency medical technicians who contract COVID-19 qualify for the presumption; these workers are identified as the first responder presumption group. The statute identifies nurses, health care workers, correctional officers and security counselors who work at state or local government corrections, detention or secure treatment facilities as entitled to the presumption. This group is referred to as corrections workers in this report. Health care and assistive employees are identified as a collective industry in the tables. Under the statute, these employees must provide direct care to persons with COVID-19 or ancillary work in a COVID-19 patient unit and must work at specific types of workplaces.

For health care workers, it is not immediately apparent which individuals are covered by the presumption. Consider two registered nurses (RNs) at the same hospital, but in different units, both of whom contract COVID-19. The RN who provided care for COVID-19 patients would be covered by the presumption. To rebut the presumption, the employer would need to provide evidence that work was not a direct cause of the infection. The co-worker who treated non-COVID-19 cancer patients in an oncology unit (none of whom had COVID-19) would not be covered by the presumption, even though that RN may have interacted with coworkers who treated COVID-19 patients. If the employer denies the claim, it would be up to the worker to provide evidence that the infection was contracted at work to establish a compensable claim.

DLI does not receive information indicating whether an accepted COVID-19 claim for a healthcare worker is subject to the presumption. DLI only receives information about whether an employee meets the requirements for the presumption when an insurer files a primary liability denial that describes why the worker did not satisfy the requirements. Also, except for claims with a denial of liability, DLI does not uniformly receive information about whether a worker tested positive or negative for COVID-19.

In this report, the set of workers named in Minn. Stat. § 176.011, subd. 15, (f)(1) are collectively called the presumption group of workers because the presumption *may* apply to them. These include all first responders and corrections workers and all workers in the health care industry. While the statute also provides a presumption for some child care workers, fewer than 20 claims have been filed for this class of workers, an insufficient number to reach conclusions about the presumption's effect on claims filing for them. Injury reports also do not identify whether the child care workers provided care for children of first responders and health care workers. In some analyses, statistics are presented about the presumption group as a whole and in all other analyses, statistics are presented for the three presumption subgroups. The remainder of Minnesota's workforce covered by workers' compensation is referred to as the non-presumption group of workers.

Based on U.S. Bureau of Labor Statistics employment figures, approximately 183,000 Minnesota workers are employed in the occupations and workplaces eligible for presumption coverage. Depending on healthcare worker contact with COVID-19 patients, residents or clients, the number of employees likely covered by the presumption is in the range of 82,000 to 112,000. The Workers' Compensation Research Institute (WCRI) has also analyzed the number of workers covered by Minnesota's presumption.⁷ WCRI estimates the presumption would apply to 159,000 workers and after adjusting for risk of COVID-19 exposure, 81,000 workers would likely qualify for presumption coverage.

⁷ Workers' Compensation Research Institute. *COVID-19 workers' compensation presumption coverage: Minnesota. Dec. 2020.* www.wcrinet.org/images/uploads/files/wcri_presumption_coverage.pdf

Analysis of COVID-19 claims

COVID-19 claims filing

This initial examination of COVID-19 claims presents the entire set of claims reported to DLI, regardless of lost-time disability or benefit status. For purposes of this report, “claim” means either a first report of injury (FROI) or claim petition has been filed for a worker’s injury or illness. Minnesota’s workers’ compensation statute requires employers and insurers to file first reports of injury for all workers’ compensation claims with more than three days of claimed disability due to a work-related injury or illness. Prior to 2020, DLI received injury reports for about 8,000 to 10,000 claims each year that did not meet the three-day disability threshold (referred to as medical-only claims).

Many COVID-19 claims that do not meet the three-day disability threshold (according to the first report of injury) are being reported to DLI. While COVID-19 exposures and infections generally require more than three days of isolation or quarantine, creating a potential lost-time claim, this report uses all the claims reported to DLI. All the reported claims are included to take the broadest look at the incidence and reporting of COVID-19 in the workplace. Some analyses in this report focus on claims with lost-time or only on claims accepted for benefits (indemnity claims).

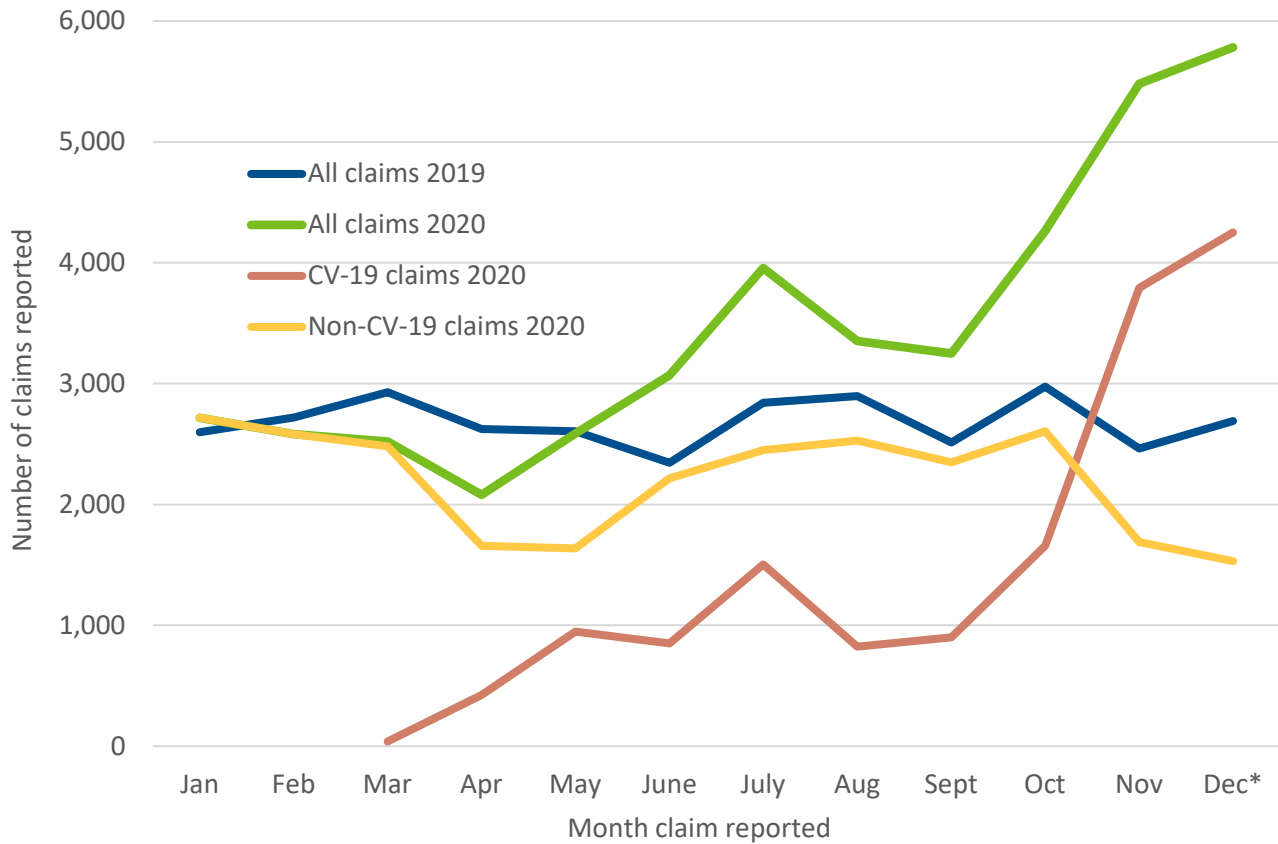
Information about a workplace injury or illness used to report a workers’ compensation claim may travel through several hands before arriving at DLI. The general model is that a worker reports an injury or illness to their supervisor or directly to the workers’ compensation claims reporter, often in the human resources or safety department. That person transmits the claims information to the workers’ compensation insurer, which transmits the information to DLI if the claim is required to be reported to DLI. Many factors may come into play, including company size and organization (the claim may need to go through company headquarters) and whether the employer is self-insured. Some other claims are initially reported through a claim petition, which often involves an attorney. Where a claim petition is filed (at the Office of Administrative Hearings), DLI may not receive notice of the injury until a few weeks after the injury occurred. For accepted claims, payment of benefits may begin prior to receipt of the claim at DLI.

COVID-19 claims are no exception to this reporting process. An additional complication is that while the statute states the reported date of injury (illness) is the date the worker was unable to work because of the COVID-19 diagnosis or because of symptoms later diagnosed as COVID-19, it is unclear whether this requirement was universally followed. Examination of claim reports suggests the date of exposure or date of test result may also have been given as the illness date.

COVID-19 claims constitute a significant percentage (36%) of the workers’ compensation claims filed at DLI in 2020. As of Dec. 23, 2020, DLI had received reports for 15,191 COVID-19 claims. Figure 1 shows the monthly number of all claims received by DLI for 2019 and 2020. As the pandemic took hold and businesses closed or curtailed activity, the numbers of claims filed in March and April 2020 dipped below their respective totals from 2019. Then, as COVID-19 cases increased in the general population and workers filed more COVID-19 claims, the number of 2020 claims surpassed the monthly totals for 2019. Even though the 2020 count is a week short of the full year, total claims filed in through Dec. 23, 2020 are 29% higher than the number of claims filed in 2019.

Figure 1 also shows the number of COVID-19 and other injury and illness claims in 2020. The number of non-COVID-19 claims has stayed below the monthly number of claims filed in 2019 since February. Non-COVID-19 claims in 2020 (through Dec. 23) are 82% of the claims amount received during 2019. COVID-19 claims grew from relatively modest numbers in March and April to account for 37% of the claims filed in May, and after dipping to 25% of the claims filed in August, increased to 69% of the claims filed in November and to 74% of the claims filed in Dec..

Figure 1. Monthly number of claims received by DLI, 2019 and 2020



*December 2020 is through Dec. 23.

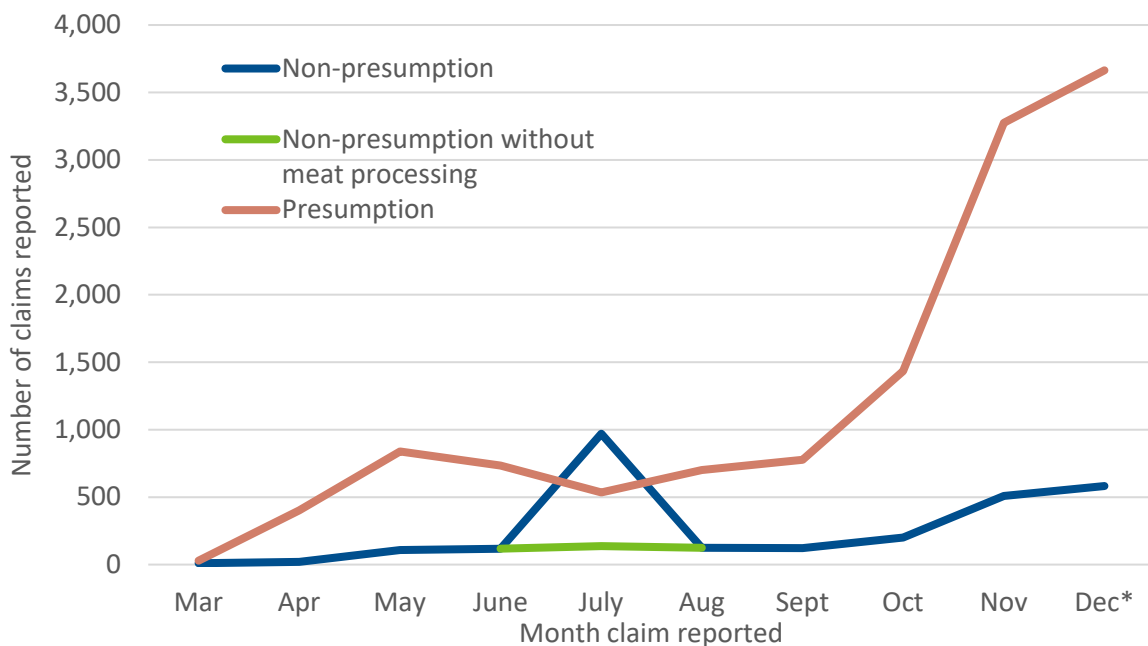
Claims filing by presumption status

The monthly COVID-19 claims for the presumption and non-presumption groups show very different trends (Figure 2). The presumption group accounted for 82% of all COVID-19 claims filed. COVID-19 claims filed by presumption workers averaged about 720 claims a month from May through September, increasing to 1,430 claims in October to an average of 3,470 claims in November and December. For the presumption group workers, COVID-19 claims accounted for 52% of their 2020 lost-time claims filed through September.

The most noticeable aspect of the non-presumption COVID-19 claims is the high number of claims reported in July. These July reports include 834 claims from the meat processing industry filed in response to DLI requests that meat processing employers file claims for workers with COVID-19. With the exception of this unique reporting event in July, the non-presumption trend does not follow the same pattern as the presumption claims, staying relatively level until increasing in October. COVID-19 claims for non-presumption workers averaged about 120 claims a month from May through September (excluding the meat processing claims reported in July), increasing to 200 claims in October and to an average of 550 claims in November and December. For the non-presumption group, COVID-19 claims accounted for 5% of lost-time claims filed through September 2020. See Appendix C for a listing of the industries with the most non-presumption COVID-19 claims filed.

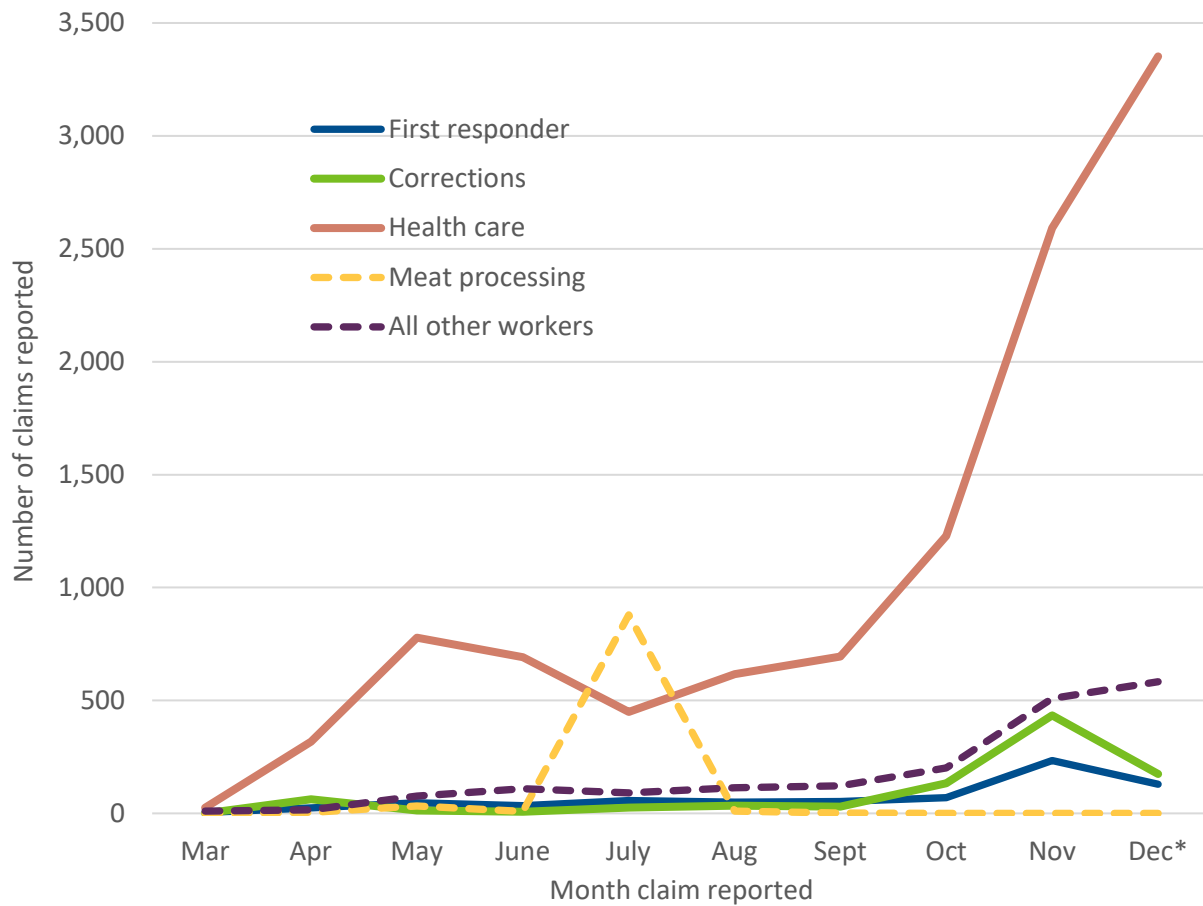
The presumption and non-presumption worker groups are split into the industry/occupation groups for Figure 3. Health care industry workers filed 71% of all COVID-19 claims, with greatly increasing monthly numbers after September. The number of claims filed for all industry/occupation groups (except meat processing) increased after September, with a noticeable surge among corrections workers.

Figure 2. Monthly number of claims received by DLI by COVID-19 presumption status



*December 2020 is through Dec. 23.

Figure 3. Monthly reported COVID-19 claims by presumption worker group



*December 2020 is through Dec. 23.

A closer look at health care industry workers

As Figure 3 indicates, healthcare workers represent a substantial majority (71%) of COVID-19 claims filed with DLI. Data from the Minnesota Department of Health (MDH) shows health care industry workers accounted for 12% of all COVID-19 cases reported in Minnesota for people between 16 and 65 year of age.⁸ Health care industry workers account for approximately 10% of Minnesota’s working-age population.

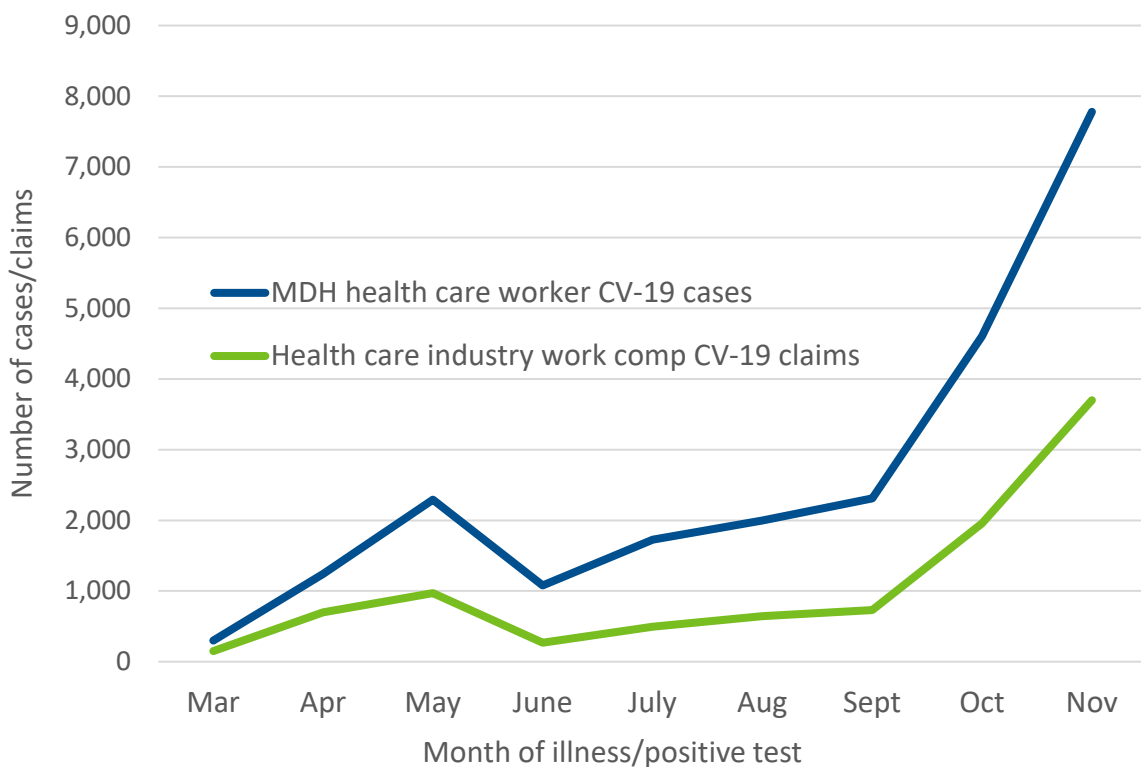
Figure 4 compares the monthly trends in the number of health care worker COVID-19 cases reported to MDH with the number of health care industry COVID-19 workers’ compensation claims (by month of reported illness

⁸ For data related to workers who reported their occupation as health care staff member in acute care and congregate living, see Minnesota Dept. of Health, *Weekly COVID-19 Report, Dec. 17, 2020*. Occupational related cases: Health care, page 32, shows data for workers in health care occupations. www.health.state.mn.us/diseases/coronavirus/stats/

start date). The MDH cases include both work-related infections and cases in which workers were not exposed at work. The figure shows that the trends for both sets of cases follow a similar pattern. While the workers' compensation claims averaged 40% of the monthly MDH case count, the percentage ranged from a low of 25% in June to a high of 56% in April.

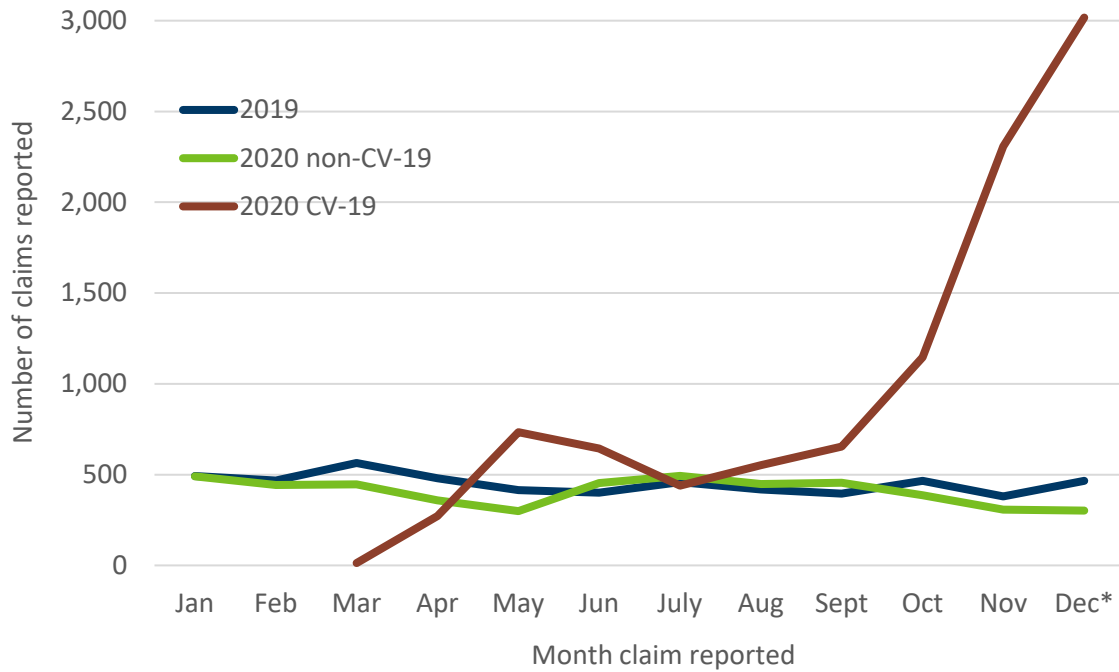
In addition to their high number of COVID-19 claims, health care industry workers have monthly numbers of non-COVID-19 injury claims comparable to the number of claims filed in 2019 (Figure 5). This comparison shows the extent to which health care workers in hospitals and long-term care facilities, who filed the largest number of workers' compensation claims of any industry in 2019, have continued to submit claims for other work-related injuries.

Figure 4. Monthly number of COVID-19 health care worker cases reported by the Minnesota Department of Health and workers' compensation claims [1]



1. MDH cases by month of test specimen collection, workers' compensation claims by month of reported illness date.

Figure 5. Monthly number of reported COVID-19 health care worker claims by year and COVID-19 status



*December 2020 is through Dec. 23.

The statutory presumption language for health care workers allows for presumption coverage for a wide range of occupations at health care establishments. Figure 6 shows, for only hospitals and nursing homes, the occupations with at least 20 claims accepted for workers' compensation benefits. These include health care providers and assistive employees. Another 24 occupations with between 19 and five claims are not shown.

Figure 6. Occupations of hospital and nursing home workers with accepted COVID-19 claims [1]

Occupation	Hospitals	Nursing homes	Total
Registered nurses	769	185	954
Nursing assistants	307	496	803
Licensed practical and licensed vocational nurses	73	141	214
Healthcare support workers all other	150	14	164
Emergency medical technicians and paramedics	95	0	95
Pharmacy aides	32	59	91
Medical assistants	39	33	72
Home health aides	20	44	64
Medical and health services managers	35	24	59
Maintenance and repair workers general	32	25	57
Maids and housekeeping cleaners	14	40	54
Janitors and cleaners except maids and housekeeping cleaners	39	5	44
Dietetic technicians	7	25	32
Physical therapists	17	14	31
Recreation workers	8	23	31
Radiologic technologists	29	0	29
Office clerks general	24	2	26
Physicians and surgeons all other	25	1	26
Medical and clinical laboratory technicians	23	0	23
Occupational therapists	10	13	23
Respiratory therapists	21	1	22
Mental health counselors	16	4	20

1. Occupations with 20 or more claims filed by Dec. 23, 2020.

Characteristics of workers with COVID-19 claims

Figure 7 presents the distributions of worker characteristics for workers with lost-time claims⁹, by industry/occupation group, with injury dates after the presumption law became active and reported through October. Men account for a higher percentage of the COVID-19 claims in all groups except the health care

⁹ "Lost-time claims" is the term used for claims indicating the worker has been work-disabled for more than three days, making the worker eligible for temporary disability benefits if the claim is accepted.

industry. Women account for 78% of both the workforce and the COVID-19 claims of the health care and social assistance industry sector, and, because of this group’s size, women account for 68% all COVID-19 claims.¹⁰

Workers in the 25 to 34 years age group account for 27% of the claims, higher than any other age group. Workers younger than 25 years old are the largest group among non-presumption workers. The mean age for workers with COVID-19 claims is 40 years.

The job tenure distribution shows that the longer-tenured workforce among first responders and corrections workers results in a high percentage of claims for these older workers. Nearly 30% of the claims from health care industry and non-presumption group workers had less than one year at their job.

Figure 7. Characteristics of workers with lost-time COVID-19 claims [1]

	Emergency response	Corrections	Health care	All other workers	Total
Number of claims	392	222	4,038	602	5,256
Gender					
Female	16.8%	31.5%	78.0%	45.3%	67.7%
Male	83.2%	68.5%	20.8%	50.7%	30.9%
Age					
14-24 years	6.1%	5.4%	15.0%	25.6%	15.1%
25-34 years	34.2%	27.9%	26.7%	22.0%	26.8%
35-44 years	28.1%	32.9%	22.9%	20.8%	23.5%
45-54 years	25.5%	26.6%	18.5%	16.4%	19.2%
55 or more years	6.1%	7.2%	16.9%	15.2%	15.5%
Job tenure					
Less than one year	10.0%	13.1%	28.5%	29.9%	26.6%
1-5 years	27.6%	28.4%	39.8%	37.2%	38.1%
5 years or longer	62.5%	58.6%	31.7%	32.9%	35.3%
Weekly wage					
\$500 or less	9.9%	2.3%	28.8%	41.1%	27.6%
\$500-\$750	3.6%	0.5%	23.6%	24.9%	21.2%
\$750-\$1000	7.7%	36.5%	18.1%	19.0%	18.2%
\$1000-\$1500	34.2%	45.0%	18.2%	11.1%	19.8%
More than \$1500	44.6%	15.8%	11.3%	3.8%	13.2%

1. Lost-time claims with injuries on or after April 8, 2020 and reported through Oct. 2020. Percentages within worker categories may not sum to 100% due to claims with missing data.

Weekly wages of the workers reflect the job tenure differences of the worker groups, with higher wages for emergency responders and corrections workers. Among health care industry and non-presumption workers, the

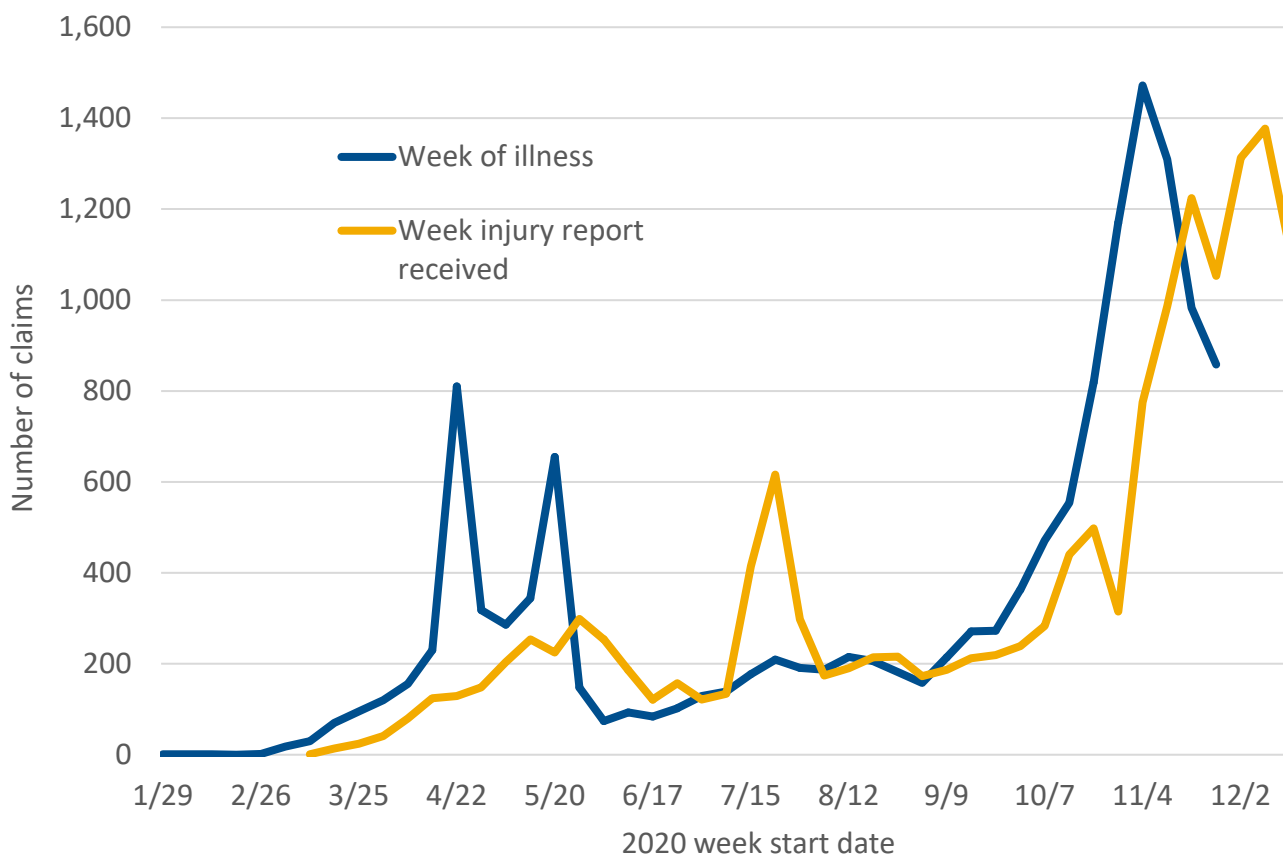
¹⁰ Gender percentage averages the first two quarters of 2020. Quarterly Employment Demographics data tool, Minnesota Department of Employment and Economic Development. <https://mn.gov/deed/data/data-tools/qed/>

majority of claims were filed by workers with weekly wages of \$750 or less, with the largest proportions among workers earning \$500 or less weekly. This result highlights the risks of contracting COVID-19 encountered by many lower-wage workers.

Claim reporting

Figure 8 shows the weekly claim trends with lines for the claims by week of illness and by week of the claim’s arrival at DLI. The number of claims received each week lag behind the actual date of illness by a couple of weeks. On average, it takes 19 days for COVID-19 claims with lost-time to reach DLI, with half the claims reaching DLI within 14 days. It is common to receive claims many months after the injury occurs or illness has started; for example, 16 claims with dates of illness in April were received in December.

Figure 8. Weekly COVID-19 claims by illness date and report date



*December 2020 is through Dec. 23.

Primary liability denials

The effectiveness of the statute rests upon whether workers meeting the presumption requirements received benefits and the extent to which employers and insurers were able to rebut the presumption and provide evidence the employment was not a direct cause of the disease. Denials were received at DLI, on average, about 2.5 days after receipt of the first report of injury.

As discussed earlier in this report, it is not possible to determine the presumption status of health care worker claims that are paid benefits; only the presumption status of denied claims can be ascertained. For purposes of this report, it assumed workers in a presumption occupation who were paid benefits were able to meet the presumption requirements. However, some workers were able to establish the work-relatedness of their COVID-19 infections and receive benefits as work-related even without meeting the presumption requirements or working in one of the presumption occupations.

Figure 9 shows the primary liability status for different claim sets for each of the worker groups. Claims that do not reach past the three-day lost-time threshold are not eligible for temporary disability indemnity benefits. However, it is possible some employers did not record the actual number of disability days on their claim reports for claims they were denying. While 85% of the claims for presumption worker were lost-time claims, only 46% of the claims from workers not covered by the presumption were lost-time claims.

Figure 9. Primary liability determinations for COVID-19 claims, as of Dec. 23, 2020

Worker group	Lost-time 3 days or fewer [1]			Lost-time more than 3 days					
	Number of claims			Number of claims				Percentage of determinations	
	Pending or no determination	Denied	Total	Pending determination	Denied	Accepted (Indemnity claims)	Total	Denied	Accepted
First responders	13	68	81	224	29	341	594	7.8%	92.2%
Corrections	34	50	84	508	24	236	768	9.2%	90.8%
Health care	472	1,132	1,604	2,364	907	5,466	8,737	14.2%	85.8%
Non-presumption workers	241	1,244	1,485 [2]	200	605	440	1,245	57.9%	42.1%
Total [3]	763	2,496	3,259	3,314	1,570	6,499	11,383	19.5%	80.5%

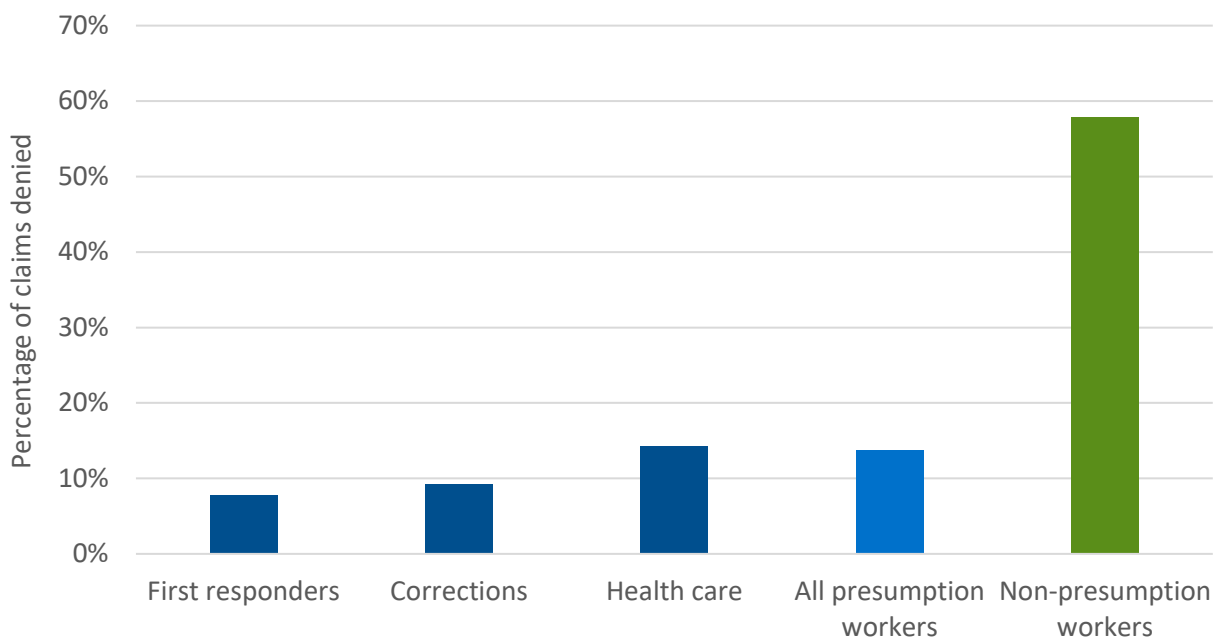
Note: Dates of injury on or after April 8, 2020.

1. All determinations filed for claims with three days or fewer of lost-time were denials of primary liability.
2. Includes 936 claims for meat processing workers: 149 with no determination and 787 denials.
3. Total includes child care workers and claims missing industry and occupation codes.

Among claims meeting the lost-time requirement and with primary liability determinations, 14% of the claims from workers in the presumption groups were denied, compared to 58% of the non-presumption worker claims. To put these percentages in perspective, 13% of the non-COVID-19 claims filed by all workers in 2020 have had a denial. The percentages of the denied claims by worker group are displayed graphically in Figure 10. Overall, presumption claims accounted for 89% of the COVID-19 claims accepted for workers' compensation benefits.

An examination of primary liability determinations for nurses and nursing aides provides further insight into the effectiveness of the presumption. There have been 2,961 primary liability determinations for lost-time COVID-19 claims filed by registered nurses, licensed practical nurses and nursing aides with illness dates after April 8, 2020, accounting for 29% of all presumption group lost-time COVID-19 claims. Among these workers, 13% of the claims were denied, with denial rates of 10% for registered nurses, 16% for licensed practical nurses and 15% for nursing aides.

Figure 10. Percentage of lost-time claims denied by presumption and nonpresumption worker groups



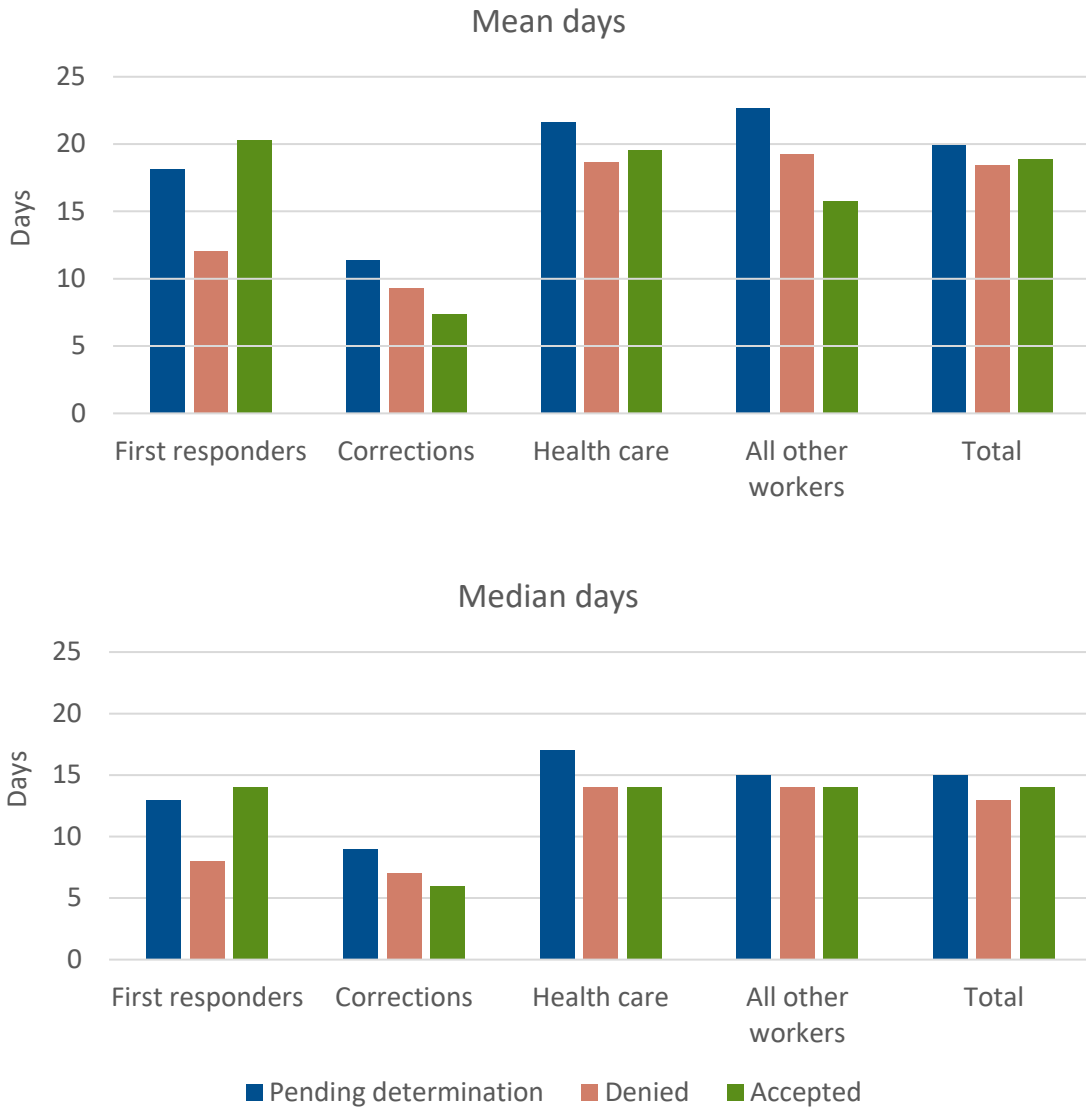
Note: Claims included are post law change (dates of injury on or after April 8, 2020).

Claims reporting and primary liability determinations

Figure 11 shows the mean and median number of days, by presumption worker group, from illness date to the date DLI received the claim report, for lost-time claims with illnesses after the presumption law became effective. For workers other than first responders, claims that an insurer had not yet determined whether to accept or deny were received at DLI a few days later than claims with a liability determination. Among claims at corrections facilities, the average length of time from date of injury to claim receipt by DLI were much lower

than for the other groups. First responders was the only worker group where the median claim receipt lag for denied claims was less than the median for accepted claims. The mean and median reporting lag times did not indicate reporting differences between presumption and non-presumption workers.

Figure 11. Days from date of illness to DLI receipt of claim report for lost-time claims



Denial percentages for employers and insurers

There is large variation in insurer and employer denial activity. Among the 48 employers with 10 or more lost-time claims in the presumption groups reported by the end of September, only four denied at least 20% of their claims. At the other end of the distribution, 24 of these employers accepted all of the claims filed.

The 33 insurers with 10 or more lost-time claims in the presumption groups reported by the end of September were composed of 17 insurance companies and 16 self-insured employers and employer groups. Only three insurers denied at least 20% of their claims and eight insurers accepted all of their claims.

Reasons given for denials

DLI reviewed the reasons insurers provided when reporting a denial of primary liability to understand how denials differed between workers automatically covered by the presumption, health care workers who could be covered by the presumption, and workers who were not covered by the presumption. DLI analyzed whether reasons changed over time as insurers became more experienced with COVID-19 claims, COVID-19 testing became more readily available, and pandemic conditions changed. Appendix D presents a list of sample text submitted by insurers on the Notice of Insurer's Primary Liability Determination form.

Members of the DLI Workers' Compensation Division's Compliance, Records and Training (CRT) unit regularly review denials to ascertain whether the reasons met the statutory requirements for a denial of primary liability. CRT staff members reviewed a stratified, random sample of 176 denied claims representing the various presumption industry/occupation groups and taken from claims reported during each of the months from April through October. The denial reasons were classified into categories developed from an initial review of denials and the statutory provisions. The results are shown in Figure 12.

Among the denial reasons that are not specific to health care workers, the most commonly-used reason was the worker had a negative test result or no proof of a positive test result. Sixteen of the 18 claims denials for first responders mentioned a negative test result.

Most health care claim denials indicated the worker did not meet the presumption requirements because the worker either had a negative test result or did not have contact with COVID-19 patients, residents or clients. Another common reason in health care denials was a claim that no COVID-19 infections were present in the workplace and, thus, no possibility of infection from the patients, residents or clients.

Only in a very low percentage (6%) of denied claims did the employee meet both presumption requirements. These claims were more complex than other claims with a denial; some claims were denied after benefits were initially paid and some of the denials were for issues other than the presumption. The denial review indicates that employers rarely tried to rebut claims when the employee met both of the presumption requirements.

Figure 12. Reasons given for denials [1]

Denial reason	First responders	Corrections	Health care	All other workers	Total
<i>Number of denials reviewed</i>	18	14	115	29	176
No COVID-19 patient contact	1	2	71	0	74
Negative test result	16	5	27	11	59
No work exposure	0	4	21	7	32
Transmission from specific non-work contact	1	2	19	4	26
No evidence of work-relationship	0	3	7	3	13
Not a presumption claim	0	0	6	4	10
Workers wear PPE	0	0	4	4	8
General community transmission	0	0	2	3	5
No co-worker cases	0	2	1	2	5
Other	1	1	19	4	25

1. Up to three reasons were categorized for each denial.

Among health care workers denied workers’ compensation benefits, there was a decrease in denials citing negative test results over the time period and an increase in denials specifying that the worker contracted COVID-19 from an individual outside of the work environment.

DLI requested clarification for 11% of the denial submissions. Of the reviews that resulted in a letter to the insurer to provide additional explanation of the denial, 84% were for claims with a positive COVID-19 test result. None of the claims that were examined had documents indicating the worker was contesting the insurer’s denial of primary liability. Very few workers have contacted DLI asking for information about how to contest a denial.

Benefit payments and disability duration

DLI only collects detailed information about the indemnity and vocational rehabilitation benefits provided to workers; detailed and complete medical benefit information is not submitted to DLI.¹¹ DLI estimates indemnity and vocational rehabilitation benefits accounted for 47% of total benefits paid for 2018 injuries.¹² Complete

¹¹ Certain benefit payment forms include a field for “Total medical expenses paid to date,” but it is not entered into the database and most short duration claims do not include an amount because the time needed to process and pay medical expenses makes the information unavailable for the timely filing of the benefit form.

¹² *Minnesota Workers’ Compensation System Report, 2018*. Minnesota Department of Labor and Industry, Sept. 2020. See figure 2.5. www.dli.mn.gov/sites/default/files/pdf/wcfact18.pdf

information about the amount of benefits paid is only available when the insurer submits a final benefits payment report after a claim has closed. COVID-19 claims are no exception and analysis of benefit payments is presented only for claims that include a report that temporary and permanent disability benefit payments are completed.

Because this report is being written well-within one year of the beginning of each claim, only short-term claims have benefit reports. It is also too early to know the long-term effects of COVID-19 on workers' health. COVID-19 can lead to possible permanent disabilities and workers with closed claims or with claims that were initially denied might decide to petition to reopen their claims to cover these additional disabilities. Likewise, the overall effects on the workers' compensation system are still very preliminary; workers' compensation history shows data can change significantly as claims mature. Therefore, the results presented are preliminary and at least another year is needed to provide more definitive statistics about benefit payments to workers with COVID-19 claims in Minnesota's workers' compensation system.

Of the 7,031 COVID-19 claims reported to DLI through October, 5,089 lost-time claims had a primary liability review and 3,292 of these lost-time claims (65%) were accepted for indemnity benefits. Results for COVID-19 claims were compared to those from non-COVID-19 indemnity claims in the same worker groups.

As shown in Figure 13, there were 4,521 indemnity claims with injury dates after April 8 and with benefit closure reports received by the end of September. COVID-19 claims accounted for 35% of the closed indemnity claims. Looking at the closed claims as a whole, indemnity payments for the COVID-19 claims and all other claims were very similar; the mean indemnity payment for COVID-19 claims was within \$100 of the mean benefit for all other injuries and illnesses. Temporary total disability benefits accounted for 95% of all indemnity benefits paid to these short-duration indemnity claims. COVID-19 claims accounted for \$2.8 million of the \$8.0 million (34%) indemnity benefits paid to these workers.

For this set of short-term claims, temporary disability payments (which include temporary total disability and temporary partial disability) were paid for an average of 2.7 weeks, half a week less than the benefit duration for non-COVID-19 claims. This average benefit duration, compared with the 2.7 weeks average for the claim report to reach DLI, means benefit payments for many claims were already completed by the time the claim was reported to DLI.

The availability of the presumption had a large effect on indemnity benefits. Among non-presumption workers, COVID-19 claims accounted for 1% of their indemnity closures and for only 0.8% of indemnity benefit payments. Mean indemnity benefits were \$800 less for COVID-19 claims than for other injuries and illnesses, and the average benefit duration was 1.2 weeks shorter.

Figure 13. Indemnity payments and duration of disability, COVID-19 and non-COVID-19 claims with injuries on or after April 8 and closed by Sept. 30

Worker group	Injury/illness group	Number of claims	Mean indemnity paid	Sum of indemnity paid	Mean weeks of temporary disability benefits
Emergency response	Non-CV-19	114	\$2,800	\$ 318,800	3.1
	CV-19	102	\$1,700	\$ 177,800	2.0
	Total	216	\$2,300	\$ 496,600	2.6
Corrections	Non-CV-19	20	\$1,900	\$ 37,100	2.9
	CV-19	41	\$1,600	\$ 65,200	2.1
	Total	61	\$1,700	\$ 102,300	2.4
Health care	Non-CV-19	613	\$1,400	\$ 876,000	2.9
	CV-19	1,418	\$1,800	\$2,484,700	2.8
	Total	2,031	\$1,700	\$3,360,700	2.8
All other workers	Non-CV-19	2,170	\$1,900	\$4,015,400	3.4
	CV-19	29	\$1,100	\$ 32,600	2.2
	Total	2,199	\$1,800	\$4,048,000	3.4
Total	non-CV-19	2,929	\$1,800	\$5,252,200	3.3
	CV-19	1,592	\$1,700	\$2,761,400	2.7
	Total	4,521	\$1,800	\$8,013,600	3.1

Note: Indemnity values rounded to the nearest \$100.

For the presumption worker industry/occupation group, 68% of the closed indemnity claims were COVID-19 claims and 69% of their indemnity payments were for COVID-19 claims. While the mean indemnity payment was lower for COVID-19 claims than for non-COVID-19 claims among emergency responders and corrections workers, indemnity benefits for health care workers with COVID-19 claims averaged \$400 higher compared to other injuries and illnesses. For emergency responders and corrections workers, the average COVID-19 claim benefit duration was noticeably shorter than for non-COVID-19 claims. Health care industry workers with COVID-19 claims had the longest average benefit duration of the claim groups and nearly matched the average duration for non-COVID-19 health care industry claims.

The effect of the presumption on benefit payments (and ultimately on system costs) is highlighted in Figure 14, which shows total indemnity payments for COVID-19 and non-COVID-19 claims for the presumption and non-presumption worker groups for claims closed by the end of September.

Figure 14. Total indemnity payments, COVID-19 and non-COVID-19 claims with injuries on or after April 8 and closed by Sept. 30

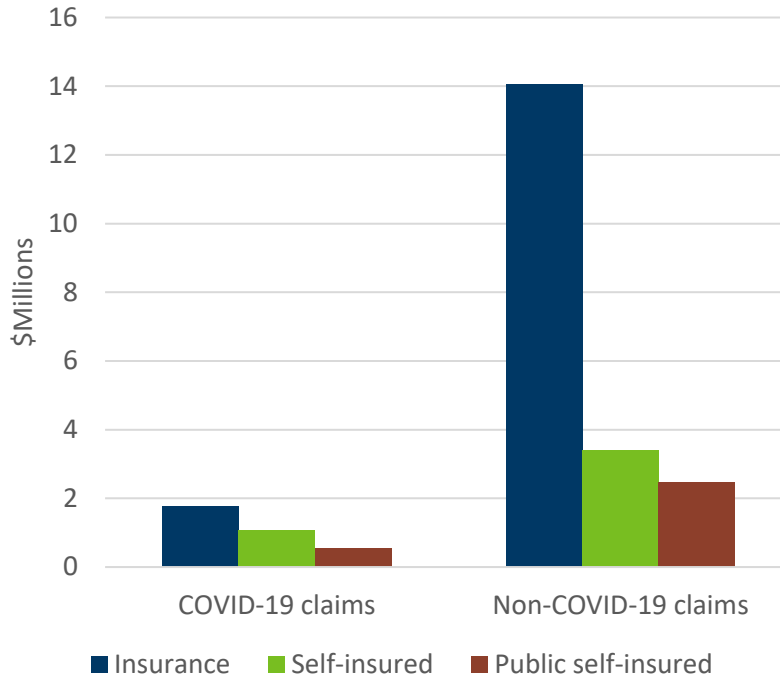


Many of the workers covered by the presumption, especially emergency responders and corrections workers, are employed by state and local governments. In Minnesota, most of these government entities are self-insured for workers’ compensation, either individually or through public entity self-insurance groups. Figure 15 shows the distribution of indemnity benefits for COVID-19 claims is very different from the distribution for non-COVID-19 claims, with nearly half the COVID-19 claim costs borne by self-insured employers and governments. Among non-COVID-19 claims, insurance companies paid 71% of the benefits for the closed claims. For comparison, insurance companies, including insurance through the Minnesota Workers’ Compensation Assigned Risk Plan, accounted for 75% of market share in 2018, as measured by paid indemnity claims.¹³

While claim costs and benefit durations are expected to increase as the claims mature, claim closure rates indicate the potential increase for COVID-19 claims might not match the increase for non-COVID-19 claims. Among the indemnity claims with illness dates between April 8 and July 30, DLI has received indemnity benefit closure reports for 79% of the COVID-19 claims compared with 60% of the non-COVID-19 claims.

¹³ *Minnesota Workers’ Compensation System Report, 2018*. Minnesota Department of Labor and Industry, Sept. 2020. See figure 2.2. www.dli.mn.gov/sites/default/files/pdf/wcfact18.pdf

Figure 15. Indemnity payments by insurance type, COVID-19 and non-COVID-19 claims with injuries on or after April 8 and closed by Sept. 30



A preliminary look at claims with medical benefits

In Dec. 2020, the National Council on Compensation Insurance (NCCI) issued a report giving a preliminary look at the cost of medical care for some COVID-19 claims, covering 40 states plus Washington, D.C., including Minnesota.¹⁴ The NCCI medical data provides information through the first half of 2020. NCCI is planning to create a dashboard to make state-specific medical results available.

NCCI’s initial, multi-state results found approximately 1,200 COVID-19 claims with medical services beyond lab testing (hereafter called COVID-19 medical claims). NCCI found around 200 COVID-19 medical claims per 100,000 active workers’ compensation claims. Twenty percent of workers with a COVID-19 medical claim had an inpatient hospital stay, and 19% of these workers were in an ICU for some part of their stay. The average cost per inpatient stay was \$38,500.

¹⁴ *COVID-19’s impact on medical treatment in workers compensation — a first look at 2020*. National Council on Compensation Insurance, Research Brief, Dec. 2020.

Women represent 70% of the NCCI's COVID-19 medical claims, similar to the 68% found in Minnesota's lost-time claims. NCCI also found that 16% of the workers with COVID-19 medical claims had comorbidities such as hypertension, chronic pulmonary disorders and diabetes.

Discussion and conclusions

Data considerations affecting results

The presumption of work-relatedness of COVID-19 for certain workers separated workers into two groups – workers able to receive benefits for their occupational disease and workers who could not easily collect benefits. The widespread nature of COVID-19 and the burden of proof required for non-presumption workers to establish their infection was contracted at work kept many workers not covered by the presumption from receiving workers' compensation benefits and may have deterred some workers from filing a claim.

Some workers of temporary employment agencies may also be eligible for coverage by the presumption. Temporary workers such as nurses, nursing aides and cleaning staff, might be contracted to work at health care facilities. However, the industry reported for the claim will be the industry of the employment or janitorial services agency, so the workers might not be identified in this report as eligible for the presumption even though they provided services in a COVID-19 treatment area.

The workers' compensation accepted claims number represents the minimum number of Minnesota's work-related COVID-19 cases. Minnesota's workers' compensation insurance does not cover self-employed persons, sole proprietors, federal government workers, certain farm laborers or family members working on a family farm and some household workers, among others.¹⁵ The Minnesota Department of Health tracks workplace outbreaks and DLI is aware of workplaces with large numbers of COVID-19 cases that have not resulted in filed claims. While this report details all workers' compensation claims reported to DLI, the results presented might not be generalizable outside this set of claims.

The underreporting of workplace injuries and illnesses for workers' compensation claims and OSHA log records is well-documented.¹⁶ There are several reasons that workers may not have reported their COVID-19 infections or that employers did not file claims with insurers, a few of which are listed below.

¹⁵ Minn. Stat. § 176.041, subd. 1.

¹⁶ See for example, Boden LI, Ozonoff A. 2008, *Capture-recapture estimates of nonfatal workplace injuries and illnesses*. *Annals of Epidemiology* 18: 500-506; Cox R, Lippel, K. 2008, *Falling through the legal cracks: the pitfalls of using workers' compensation data as indicators of work-related injuries and illnesses*, *Policy and Practice in Health and Safety* 6(2):63-84; Spieler EA, Burton JF Jr. 2012, *The lack of correspondence between work-related disability and receipt of workers' compensation benefits*, *American Journal of Industrial Medicine* 45(4):487-505; Wiatrowski, WJ, 2014, *Examining the completeness of occupational injury and illness data: an update on current research*, *Monthly Labor Review*, U.S. Bureau of Labor Statistics.

- Employers may not have filed claims with their insurers because they believed their workers' COVID-19 infections were not work-related.
- Workers may not have been aware the workplace was the source of their infection.
- Workers may not have been aware they could file a workers' compensation claim for their COVID-19 infection.
- Workers had asymptomatic COVID-19 and were not tested.
- Workers in a presumption group may not have known the burden was on the employer to disprove their claim.
- Workers not in a presumption group may have believed that they were unlikely to qualify for benefits or may have been told by their employers that their illness would not be covered.
- Employers paid workers their regular salary or told workers to use personal time off while they were quarantined for COVID-19.
- Workers used the federal Families First Coronavirus Response Act paid leave or were able to receive an enhanced unemployment benefits instead of filing a workers' compensation claim.
- Workers may have feared shame, retaliation, job loss or financial uncertainty if they filed a claim.

While claim costs and benefit durations are expected to increase as open claims mature, claim closure rates indicate the cost and duration increase for COVID-19 claims might not match the increase for non-COVID-19 claims. The severity of the open COVID-19 claims is unknown, as is the likelihood that the illness will result in permanent disability. It is also possible workers who have returned to work might have to reopen benefits if they are diagnosed with a permanent disability resulting from COVID-19.

Indemnity benefits provide a partial picture of the full cost of claims; medical benefits accounted for 53% of benefits paid to workers injured in 2018.¹⁷ DLI does not collect comprehensive medical cost data, and later in 2021, the Minnesota Workers' Compensation Insurers Association will collect, analyze and report Minnesota's insurance companies' medical cost data related to COVID-19 claims. As an indication of potential medical costs for workers hospitalized for COVID-19, the average cost of a non-surgical inpatient hospital stay for a Minnesota's workers' compensation claim is approximately \$26,100.¹⁸

Summary of results

Workers' compensation COVID-19 claims followed the same pattern as the spread of the infection in the general population. The DLI analysis of workers' compensation COVID-19 claims showed that membership in a presumption coverage group was the determining factor in whether a worker received workers' compensation benefits.

¹⁷ *Minnesota Workers' Compensation System Report, 2018*. Minnesota Department of Labor and Industry, Sept. 2020. See figure 2.5. www.dli.mn.gov/sites/default/files/pdf/wcfact18.pdf

¹⁸ *CompScope™ Medical Benchmarks for Minnesota, 21st Edition*. Workers' Compensation Research Institute, Oct. 2020. Non-surgical hospital stay cost calculated from figure 27 values.

Claims filed

- COVID-19 claims accounted for 36% of the workers' compensation claims received by DLI in 2020. This grew from 0% in January and February to 2% of claims filed in March to 74% of the claims filed in November.
- Total claims filed with DLI from January through Dec. 2020 were 29% higher than the number of claims filed in 2019.
- The presumption group of workers accounted for 82% of the COVID-19 claims filed.
- Health care workers accounted for 71% of the COVID-19 claims filed. In addition to their high number of COVID-19 claims, health care industry workers have monthly numbers of non-COVID-19 injury claims comparable to the number of claims filed in 2019.

Characteristics of workers filing claims

- Men accounted for a higher percentage of the COVID-19 claims in all groups except the health care industry. Women accounted for 78% of the COVID-19 claims of the health care and social assistance industry sector, and because of the size of this group, women accounted for 68% the state's total COVID-19 claims.
- Workers in the 25 to 34 years age group accounted for 27% of the COVID-19 claims, higher than any other age group. Workers younger than 25 years old were the largest group among non-presumption workers. The mean age for workers with COVID-19 claims was 40 years.
- Nearly 30% of the claims from health care industry and non-presumption group workers had less than one year at their job.
- Among health care industry workers and non-presumption group workers, workers with weekly wages of \$750 or less filed the majority of COVID-19 claims, with the largest proportions among workers earning \$500 or less weekly.

Denial of liability

- Among claims meeting the three-day lost-time requirement, 14% of the claims from workers in the presumption groups were denied, compared to 58% of the non-presumption worker claims.
- Presumption claims accounted for 98% of the COVID-19 claims accepted for workers' compensation benefits.
- An examination of the reasons given by insurers when filing the denials, from a random sample of denied claims, shows the two most commonly used reasons were the worker had a negative test result (or no proof of a positive test result) and health care workers had no COVID-19 patient contact.
- The denial review indicated employers rarely tried to rebut claims when employees met the presumption requirements.
- None of the claims that were examined in a random sample had documents indicating the worker was contesting the insurer's denial of primary liability. However, some employees have filed claim petitions at the Office of Administrative Hearings to challenge denials.

Benefit payments and disability durations

Because this report is being written within one year of the beginning of each COVID-19 claim, only short-term claims have reports of monetary (indemnity) benefits paid. It is too early to know the long-term effects of COVID-19 on workers' health. Therefore, the results presented are preliminary and at least another year is needed to provide more definitive statistics about benefit payments to workers with COVID-19 claims in Minnesota's workers' compensation system.

- For closed indemnity claims with injury dates between April 8 and July 30, COVID-19 claims accounted for 35% of the claims and for 34% of the indemnity benefits paid.
- For this set of short-term claims, temporary disability payments (which include temporary total disability and temporary partial disability) were paid for an average of 2.7 weeks, half a week less than the average benefit duration for non-COVID-19 claims.
- The availability of the presumption had a large effect on indemnity benefits. Among non-presumption workers, COVID-19 claims accounted for 1% of indemnity closures and only 0.8% of indemnity benefit payments. For the presumption worker industry/occupation group, 68% of the closed indemnity claims were COVID-19 claims and 69% of their indemnity payments were for COVID-19 claims.
- Temporary disability payments were paid for an average of 2.7 weeks, half a week less than the benefit duration for non-COVID-19 claims. This difference was consistent for all worker groups except for health care workers, who had nearly the same average disability duration for COVID-19 and non-COVID-19 claims.

Conclusion

Throughout the COVID-19 pandemic, hundreds of thousands of Minnesotans continued working at their regular worksites in jobs that involved contact with members of the public. Workers' compensation is the exclusive remedy to hold employers responsible for the income losses, medical costs and disabilities caused by workplace injuries and illnesses. The statutory presumption of work-relatedness provides access to workers' compensation benefits to certain first responders, corrections workers and health care workers in COVID-19 infections. All other workers, in order to access workers' compensation benefits, have the burden of proving their COVID-19 infection is work-related.

The statutory presumption has worked as intended; workers in the presumption group were much more likely to receive workers' compensation benefits for COVID-19 than were all other workers. Among workers in the groups eligible for the presumption, 27% of the primary liability determinations were a denial of liability and only 14% of lost-time claims were denied liability. Examination of the denials among presumption group workers showed most of their claims were denied because a worker tested negative for COVID-19 or a healthcare worker did not encounter patients with COVID-19 or work in COVID-19 treatment areas. The claims denial review did not find instances where an insurer denied a claim by rebutting the work-relatedness of a COVID-19 claim that met the presumption requirements. For workers not in one of the presumption coverage groups, 81% of their claim liability determinations were denials and the denial percentage was 58% among lost-time claims.

A major concern about providing workers' compensation benefits to workers with COVID-19 is the cost of benefit payments for insurers, employers and especially self-insured governments that employ first responders,

corrections workers and some health care workers. In the early stages of the pandemic, many states and some national organizations, using the epidemiological pandemic models available from public health researchers, estimated costs could potentially overwhelm state workers' compensation systems. At this time, claim counts and system costs have not yet reached the levels estimated earlier in 2020.

The pandemic is not over and long-term effects on worker health and finances are not yet known. Workers who did not file a workers' compensation claim may also have financial difficulty covering their expenses and lost wages should any lingering effects of their COVID-19 illnesses require additional medical care or result in a permanent disability. Currently, not enough time has elapsed to identify COVID-19 claims with long-term health consequences and study the benefits these workers receive. However, we are able to compare the amount of indemnity benefits paid to COVID-19 claims with the amount paid for claims of workers in the same industries with other injuries and illnesses. The results show COVID-19 claims have shorter claim durations and similar average costs compared to non-COVID-19 claims. Significant COVID-19 claim costs are isolated to the occupation and industry groups covered by the presumption.

DLI regularly reviews workers' compensation COVID-19 claims and shares its analyses with stakeholders and the general public through postings to the agency's website, articles in its quarterly workers' compensation publication, *COMPACT*, presentations to agency boards and councils, and presentations to state and national organizations. DLI will continue to monitor COVID-19 claims and to advise policymakers using the most recent available data.

Appendix A

Statutory language creating the COVID-19 presumption

CHAPTER 72--H.F.No. 4537

An act relating to workers' compensation; providing a presumption for COVID-19 workers' compensation claims for certain employees; requiring a report; authorizing extension of the implementation date of the CAMPUS system; amending Minnesota Statutes 2018, section 176.011, subdivision 15.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2018, section 176.011, subdivision 15, is amended to read:

Subd. 15. **Occupational disease.**(a) "Occupational disease" means a mental impairment as defined in paragraph (d) or physical disease arising out of and in the course of employment peculiar to the occupation in which the employee is engaged and due to causes in excess of the hazards ordinary of employment and shall include undulant fever. Physical stimulus resulting in mental injury and mental stimulus resulting in physical injury shall remain compensable. Mental impairment is not considered a disease if it results from a disciplinary action, work evaluation, job transfer, layoff, demotion, promotion, termination, retirement, or similar action taken in good faith by the employer. Ordinary diseases of life to which the general public is equally exposed outside of employment are not compensable, except where the diseases follow as an incident of an occupational disease, or where the exposure peculiar to the occupation makes the disease an occupational disease hazard. A disease arises out of the employment only if there be a direct causal connection between the conditions under which the work is performed and if the occupational disease follows as a natural incident of the work as a result of the exposure occasioned by the nature of the employment. An employer is not liable for compensation for any occupational disease which cannot be traced to the employment as a direct and proximate cause and is not recognized as a hazard characteristic of and peculiar to the trade, occupation, process, or employment or which results from a hazard to which the worker would have been equally exposed outside of the employment.

(b) If immediately preceding the date of disablement or death, an employee was employed on active duty with an organized fire or police department of any municipality, as a member of the Minnesota State Patrol, conservation officer service, state crime bureau, as a forest officer by the Department of Natural Resources, state correctional officer, or sheriff or full-time deputy sheriff of any county, and the disease is that of myocarditis, coronary sclerosis, pneumonia or its sequel, and at the time of employment such employee was given a thorough physical examination by a licensed doctor of medicine, and a written report thereof has been made and filed with such organized fire or police department, with the Minnesota State Patrol, conservation officer service, state crime bureau, Department of Natural Resources, Department of Corrections, or sheriff's department of any county, which examination and report negated any evidence of myocarditis, coronary sclerosis, pneumonia or its sequel, the disease is presumptively an occupational disease and shall be presumed to have been due to the nature of employment. If immediately preceding the date of disablement or death, any individual who by nature of their position provides emergency medical care, or an employee who was employed as a licensed police officer under section 626.84, subdivision 1; firefighter; paramedic; state correctional officer; emergency medical technician; or licensed nurse providing emergency medical care; and who contracts an infectious or communicable disease to which the employee was exposed in the course of employment outside

of a hospital, then the disease is presumptively an occupational disease and shall be presumed to have been due to the nature of employment and the presumption may be rebutted by substantial factors brought by the employer or insurer. Any substantial factors which shall be used to rebut this presumption and which are known to the employer or insurer at the time of the denial of liability shall be communicated to the employee on the denial of liability.

(c) A firefighter on active duty with an organized fire department who is unable to perform duties in the department by reason of a disabling cancer of a type caused by exposure to heat, radiation, or a known or suspected carcinogen, as defined by the International Agency for Research on Cancer, and the carcinogen is reasonably linked to the disabling cancer, is presumed to have an occupational disease under paragraph (a). If a firefighter who enters the service after August 1, 1988, is examined by a physician prior to being hired and the examination discloses the existence of a cancer of a type described in this paragraph, the firefighter is not entitled to the presumption unless a subsequent medical determination is made that the firefighter no longer has the cancer.

(d) For the purposes of this chapter, "mental impairment" means a diagnosis of post-traumatic stress disorder by a licensed psychiatrist or psychologist. For the purposes of this chapter, "post-traumatic stress disorder" means the condition as described in the most recently published edition of the Diagnostic and Statistical Manual of Mental Disorders by the American Psychiatric Association. For purposes of section 79.34, subdivision 2, one or more compensable mental impairment claims arising out of a single event or occurrence shall constitute a single loss occurrence.

(e) If, preceding the date of disablement or death, an employee who was employed on active duty as: a licensed police officer; a firefighter; a paramedic; an emergency medical technician; a licensed nurse employed to provide emergency medical services outside of a medical facility; a public safety dispatcher; an officer employed by the state or a political subdivision at a corrections, detention, or secure treatment facility; a sheriff or full-time deputy sheriff of any county; or a member of the Minnesota State Patrol is diagnosed with a mental impairment as defined in paragraph (d), and had not been diagnosed with the mental impairment previously, then the mental impairment is presumptively an occupational disease and shall be presumed to have been due to the nature of employment. This presumption may be rebutted by substantial factors brought by the employer or insurer. Any substantial factors that are used to rebut this presumption and that are known to the employer or insurer at the time of the denial of liability shall be communicated to the employee on the denial of liability. The mental impairment is not considered an occupational disease if it results from a disciplinary action, work evaluation, job transfer, layoff, demotion, promotion, termination, retirement, or similar action taken in good faith by the employer.

(f) Notwithstanding paragraph (a) and the rebuttable presumption for infectious or communicable diseases in paragraph (b), an employee who contracts COVID-19 is presumed to have an occupational disease arising out of and in the course of employment if the employee satisfies the requirements of clauses (1) and (2).

(1) The employee was employed as a licensed peace officer under section 626.84, subdivision 1; firefighter; paramedic; nurse or health care worker, correctional officer, or security counselor employed by the state or a political subdivision at a corrections, detention, or secure treatment facility; emergency medical technician; a health care provider, nurse, or assistive employee employed in a health care, home care, or long-term care setting, with direct COVID-19 patient care or ancillary work in COVID-19 patient units; and workers required to provide child care to first responders and health care workers under Executive Order 20-02 and Executive Order 20-19.

(2) The employee's contraction of COVID-19 must be confirmed by a positive laboratory test or, if a laboratory test was not available for the employee, as diagnosed and documented by the employee's licensed physician, licensed physician's assistant, or licensed advanced practice registered nurse (APRN), based on the employee's symptoms. A copy of the positive laboratory test or the written documentation of the physician's, physician assistant's, or APRN's diagnosis shall be provided to the employer or insurer.

(3) Once the employee has satisfied the requirements of clauses (1) and (2), the presumption shall only be rebutted if the employer or insurer shows the employment was not a direct cause of the disease. A denial of liability under this paragraph must meet the requirements for a denial under section 176.221, subdivision 1.

(4) The date of injury for an employee who has contracted COVID-19 under this paragraph shall be the date that the employee was unable to work due to a diagnosis of COVID-19, or due to symptoms that were later diagnosed as COVID-19, whichever occurred first.

(5) An employee who has contracted COVID-19 but who is not entitled to the presumption under this paragraph is not precluded from claiming an occupational disease as provided in other paragraphs of this subdivision or from claiming a personal injury under subdivision 16.

(6) The commissioner shall provide a detailed report on COVID-19 workers' compensation claims under this paragraph to the Workers' Compensation Advisory Council, and chairs and ranking minority members of the house of representatives and senate committees with jurisdiction over workers' compensation, by January 15, 2021.

EFFECTIVE DATE. This section is effective for employees who contract COVID-19 on or after the day following final enactment. Paragraph (f) sunsets on May 1, 2021.

Sec. 2. [omitted]

Presented to the governor April 7, 2020

Signed by the governor April 7, 2020, 5:04 p.m.

Official Publication of the State of Minnesota Revisor of Statutes Ch 72, s 2 LAWS of MINNESOTA 2020 3

Appendix B

Resources for detailed information about COVID-19 presumption and compensability in state workers' compensation systems

[Remove these extra line spaces.]The following is a limited list; there are other organizations providing information about state activity concerning the compensability of COVID-19. DLI is also aware there are organizations that provide resources to members that are not available to the general public. Some other organizations have published tracking pages that are not regularly updated.

1. The National Conference of State Legislatures maintains a list of state government legislation, executive order and other administrative policy changes related to workers' compensation coverage of COVID-19.

www.ncsl.org/research/labor-and-employment/covid-19-workers-compensation.aspx

2. Sedgwick Claims Management Services produces a "Workers' compensation reference guide on COVID-19 compensability" that includes a detailed discussion of each state's COVID-19 compensability situation.

https://marketing.sedgwick.com/acton/attachment/4952/f-82e4e1b4-6fc7-4389-843a-c00aaecac590/1/-/-/-/-/Workers%E2%80%99%20Compensation%20Reference%20Guide%20on%20COVID-19%20Compensability.pdf?utm_term=C&utm_campaign=Coronavirus%20communications%20updates&utm_content=landing+page&utm_source=Act-On+Software&utm_medium=landing+page&cm_mmc=Act-On%20Software-_-Landing%20Page-_-Coronavirus%20communications%20updates-_-C&sid=TV2:QIDVisS3h

3. The National Council on Compensation Insurance provides a state-by-state guide to COVID-19 coverage activity and to regulatory activity affecting workers' compensation procedures, medical benefits, unemployment benefits, insurance coverage and insurance premiums related to COVID-19.

www.ncci.com/Articles/Pages/II_Covid-19-RegLeg-Activity.pdf

4. Ogletree Deakins, a national labor law firm, maintains a list of currently enacted and proposed presumption laws and orders in each state. The table provides links to the presumption language and to each state's workers' compensation website.

<https://ogletree.com/app/uploads/covid-19/COVID-19-Workers-Compensation-Coverage.pdf?Version=1>

Appendix C

Industry groups with 20 or more COVID-19 claims filed by workers not covered by the presumption

(Claim reports received through Dec. 28, 2020)

Number of claims filed	Industry group	Four-digit NAICS code
936	Animal slaughtering and processing	3116
147	Local messengers and local delivery	4922
132	Machinery, equipment and supplies merchant wholesalers	4238
131	Building material and supplies dealers	4441
118	Services to buildings and dwellings	5617
112	Grantmaking and giving services	8132
108	Elementary and secondary schools	6111
100	Executive, legislative and other general government support	9211
100	Individual and family services	6241
99	Restaurants and other eating places	7225
97	Lessors of real estate	5311
72	Couriers and express delivery services	4921
70	Colleges, universities and professional schools	6113
50	Civic and social organizations	8134
43	Religious organizations	8131
29	Grocery and related product merchant wholesalers	4244
22	Architectural, engineering and related services	5413
20	Other general purpose machinery manufacturing	3339

Appendix D

Examples of reasons for denial of primary liability

These examples are actual statements submitted to DLI by insurers on the Notice of Insurer's Primary Liability Determination form. Text was modified to remove worker names and other identifying information.

Claims from workers in non-presumption group

After conducting an investigation it was determined there was no indication the employee's work at [employer] was a direct or proximate cause of the alleged occupational disease and the employee was equally exposed to the disease outside of the employment due to community transmission.

There has been no known medical treatment. There is no known medical documentation establishing causal connection for a workplace condition. There is no salary lost. At this time, this is community transmission of COVID-19. This is a disease of ordinary living. There is no medical evidence that indicates the infection was contracted by the employee at work. For these reasons, the employer and insurer deny the condition arose out of or in the course of employment.

The employee is reporting a negative COVID-19 test result. There is nothing to support that the employee contracted COVID-19 from the work environment. The employee's work environment did not in any way increase her risk of exposure and the current medical issues, along with the need for any medical treatment, is considered personal in nature.

Our investigation of this claims has included discussions with the employer and worker. Our investigation has shown the cause and need for the worker seeking medical care was the result of a personal medical condition of COVID-19 that did not arise out of employment.

The employer and insurer deny the employee suffered COVID-19 as a result of her employment. There is no medical support to indicate the cause of the employee's COVID-19. In addition, there is currently community-wide transmission of this illness, to include transmission by asymptomatic carriers. As such, the employer and insurer deny that the evidence supports the employee's employment was the cause of her COVID-19.

This worker has family members who work in congregated environments, some of whom have contracted COVID-19. This employee does not work in a presumption worker group. Testing positive does not deem the condition work-related. The employee does not work at a breakout facility and there appears to be greater hazard outside of work or at least the same as the general public.

Minnesota Statutes 176.011, subd. 15 -- The employer is not liable for compensation for any occupational disease which cannot be traced to the employment as a direct and proximate cause and is not recognized as a

hazard characteristic and peculiar to the trade, occupation, process or employment of which results from a hazard to which the worker would have been equally exposed outside of the employment.

Claims from workers in presumption group

Worker tested positive. Worker had no direct COVID-19 patient contact at work. Worker has a personal/community exposure from a friend. We consider this an ordinary disease of life and deny primary liability.

Worker was in contact with a resident who tested positive. Employee tested negative and has not provided documentation of a positive COVID-19 test.

Worker reported claim and learned of a positive COVID-19 test the next day. At this time, there is no medical confirmation of the diagnosis. It is not clear this claimant had any direct COVID-19 patient care or ancillary work in COVID-19 patient units. (Claim later accepted.)

Employee tested negative, but also had a positive serology test that does not establish when the disease occurred. The illness would not have arisen out of or in the course and scope of employment. The employees all wear masks and gloves while working and the employee wasn't working between [time period two to four weeks earlier]. No employees or patients at worksite have tested positive.

The employee was diagnosed with COVID-19. The residents at the facility tested negative. The condition is not work-related.

Employer records show the worker was not on any roster that shows the worker provided care to any patients diagnosed with the COVID-19 virus. At the time of the claim, the insured does not show any employees with the virus. Worker provided notice to employer that a household member was tested and diagnosed with the virus.

Although you tested positive for COVID-19, there were no known cases of COVID-19 among residents at your work facility. There is no evidence you were exposed to or contracted COVID-19 at work. An employer is not liable for compensation when the workplace is not the direct and proximate cause of infection.

Worker tested positive. She did not come in contact with a COVID-19 patient, she does not work on a COVID-19 floor and no co-workers in her department have COVID-19. In addition, a family member tested positive for COVID-19. As there is no direct correlation of work or specific exposure to a COVID-19 patient, we consider this an ordinary disease of life, which is not compensable under workers' compensation. Primary liability is denied.