

House Bill 3025

Sponsored by Representative GRAYBER

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Adds exposure to or infection by SARS-CoV-2 to definition of occupational disease for purposes of workers' compensation. Specifies presumptions as to compensability for occupational disease or occupational injury that apply to subject worker's death, disability, impairment of health, loss of work time and expenses of medical treatment or services, including diagnostic or preventive medical treatment or services, as result of exposure to SARS-CoV-2 or COVID-19.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the compensability of COVID-19 for the purposes of workers' compensation; creating new
3 provisions; amending ORS 656.802; and declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS chapter 656.**

6 **SECTION 2. (1) As used in this section:**

7 (a) **"Essential worker" means a subject worker who:**

8 (A) **At an employer's direction, must or may work at the subject worker's regular or**
9 **temporarily assigned work site, other than the subject worker's residence, during a period**
10 **in which a declaration of a state of emergency issued by the Governor is in effect for a lo-**
11 **cation that includes the subject worker's work site; and**

12 (B) **Works in one of the following occupations:**

13 (i) **Public safety personnel, as defined in ORS 181A.355;**

14 (ii) **Peace officer, as defined in ORS 133.005;**

15 (iii) **Medical services provider, including emergency medical technician, physician, nurse,**
16 **physician assistant, nursing assistant, employee of a hospital or medical clinic, pharmacy**
17 **technician or employee of a home health care or long term care facility;**

18 (iv) **Employee of a retail store, including a grocery store;**

19 (v) **Employee of a public, private or charter school;**

20 (vi) **Employee of a child care facility who cares for the dependent of another essential**
21 **worker;**

22 (vii) **Agricultural worker, as defined in ORS 315.163;**

23 (viii) **Janitorial worker who provides services in locations, buildings or facilities that op-**
24 **erate in compliance with the provisions of a declaration of emergency by the Governor; or**

25 (ix) **Another occupation, if:**

26 (I) **More than 10 employees work at the subject worker's work site and 10 percent or**
27 **more of the employees at the work site have tested positive or presumptively positive for**
28 **exposure to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or for**
29 **coronavirus disease 2019 (COVID-19); or**

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

1 (II) Not more than 10 employees work at the subject worker’s work site and two or more
2 of the employees at the work site have tested positive or presumptively positive for exposure
3 to SARS-CoV-2 or for COVID-19.

4 (b) “Occupational disease” has the meaning given that term in ORS 656.802.

5 (c) “Occupational injury” means a compensable injury that results from exposure to
6 SARS-CoV-2 or COVID-19 arising out of and in the course of employment.

7 (2) A subject worker’s death, disability, impairment of health, loss of work time or ex-
8 penses of medical treatment or services, including diagnostic or preventive medical treat-
9 ment or services, are presumed to be compensable as an occupational disease or occupational
10 injury if the subject worker is an essential worker and:

11 (a) Was exposed at work to a known or suspected source of SARS-CoV-2 or COVID-19
12 and the employer, a medical provider or a federal, state or local public health authority re-
13 quired the subject worker to remain away from the subject worker’s work site;

14 (b) Was exposed at work to a known or suspected source of SARS-CoV-2 or COVID-19
15 and becomes symptomatic for COVID-19;

16 (c) Becomes symptomatic for COVID-19 and receives a diagnosis of COVID-19 from a
17 medical provider or a federal, state or local public health authority;

18 (d) Received a laboratory-confirmed diagnosis of COVID-19 or infection by SARS-CoV-2;
19 or

20 (e) Received a presumptive positive test result for COVID-19 or infection by SARS-CoV-2.

21 (3) An insurer or self-insured employer may rebut the presumption set forth in sub-
22 section (2) of this section, or may deny a claim filed under this section for exposure to or
23 infection by SARS-CoV-2 or COVID-19, only with clear and convincing evidence that:

24 (a) The conditions identified in subsection (2)(a), (b), (c), (d) and (e) of this section do not
25 apply to the subject worker; or

26 (b) A known and confirmed source of SARS-CoV-2 or COVID-19 unrelated to the subject
27 worker’s work as an essential worker caused the subject worker to have a condition identi-
28 fied in subsection (2)(c), (d) or (e) of this section.

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

33 (a) The provisions of this section; and

34 (b) For claims filed under this section for exposure to or infection by SARS-CoV-2 or
35 COVID-19, the time limitations for filing claims that are set forth in ORS 656.807 (1) and (2).

36 **SECTION 3.** ORS 656.802 is amended to read:

37 656.802. (1)(a) As used in this chapter, “occupational disease” means any disease or infection
38 arising out of and in the course of employment caused by substances or activities to which an em-
39 ployee is not ordinarily subjected or exposed other than during a period of regular actual employ-
40 ment therein, and which requires medical services or results in disability or death, including:

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

43 (B) Any mental disorder, whether sudden or gradual in onset, which requires medical services
44 or results in physical or mental disability or death.

45 (C) Any series of traumatic events or occurrences which requires medical services or results in

1 physical disability or death.

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

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

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

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

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

13 (d) Existence of an occupational disease or worsening of a preexisting disease must be estab-
 14 lished by medical evidence supported by objective findings.

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

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

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

20 (b) The employment conditions producing the mental disorder are conditions other than condi-
 21 tions generally inherent in every working situation or reasonable disciplinary, corrective or job
 22 performance evaluation actions by the employer, or cessation of employment or employment deci-
 23 sions attendant upon ordinary business or financial cycles.

24 (c) There is a diagnosis of a mental or emotional disorder which is generally recognized in the
 25 medical or psychological community.

26 (d) There is clear and convincing evidence that the mental disorder arose out of and in the
 27 course of employment.

28 (4) Death, disability or impairment of health of firefighters of any political division who have
 29 completed five or more years of employment as firefighters, caused by any disease of the lungs or
 30 respiratory tract, hypertension or cardiovascular-renal disease, and resulting from their employment
 31 as firefighters is an “occupational disease.” Any condition or impairment of health arising under this
 32 subsection shall be presumed to result from a firefighter’s employment. However, any such fire-
 33 fighter must have taken a physical examination upon becoming a firefighter, or subsequently thereto,
 34 which failed to reveal any evidence of such condition or impairment of health which preexisted
 35 employment. Denial of a claim for any condition or impairment of health arising under this sub-
 36 section must be on the basis of clear and convincing medical evidence that the cause of the condi-
 37 tion or impairment is unrelated to the firefighter’s employment.

38 (5)(a) Death, disability or impairment of health of a nonvolunteer firefighter employed by a pol-
 39 itical division or subdivision who has completed five or more years of employment as a nonvolunteer
 40 firefighter is an occupational disease if the death, disability or impairment of health:

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

44 (B) Results from the firefighter’s employment as a nonvolunteer firefighter; and

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

1 (b) Any condition or impairment of health arising under this subsection is presumed to result
 2 from the firefighter’s employment. Denial of a claim for any condition or impairment of health aris-
 3 ing under this subsection must be on the basis of clear and convincing medical evidence that the
 4 condition or impairment was not caused or contributed to in material part by the firefighter’s em-
 5 ployment.

6 (c) Notwithstanding paragraph (b) of this subsection, the presumption established under para-
 7 graph (b) of this subsection may be rebutted by clear and convincing evidence that the use of to-
 8 bacco by the nonvolunteer firefighter is the major contributing cause of the cancer.

9 (d) The presumption established under paragraph (b) of this subsection does not apply to pro-
 10 state cancer if the cancer is first diagnosed by a physician after the firefighter has reached the age
 11 of 55. However, nothing in this paragraph affects the right of a firefighter to establish the
 12 compensability of prostate cancer without benefit of the presumption.

13 (e) The presumption established under paragraph (b) of this subsection does not apply to claims
 14 filed more than 84 months following the termination of the nonvolunteer firefighter’s employment
 15 as a nonvolunteer firefighter. However, nothing in this paragraph affects the right of a firefighter
 16 to establish the compensability of the cancer without benefit of the presumption.

17 (f) The presumption established under paragraph (b) of this subsection does not apply to volun-
 18 teer firefighters.

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

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

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

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

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

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

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

38 (I) A full-time paid firefighter;

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

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

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

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

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

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

1 (C) "DSM-5" means the fifth edition of the Diagnostic and Statistical Manual of Mental Disor-
2 ders published by the American Psychiatric Association.

3 (D) "Post-traumatic stress disorder" has the meaning given that term in the DSM-5.

4 (E) "Psychiatrist" means a psychiatrist whom the Oregon Medical Board has licensed and cer-
5 tified as eligible to diagnose the conditions described in this subsection.

6 (F) "Psychologist" means a licensed psychologist, as defined in ORS 675.010, whom the Oregon
7 Board of Psychology has certified as eligible to diagnose the conditions described in this subsection.

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

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

23 (d) An insurer or self-insured employer may deny a claim under paragraph (c) of this subsection
24 only on the basis of clear and convincing medical evidence.

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

29 (A) The provisions of this subsection; and

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

32 **SECTION 4. Section 2 of this 2021 Act and the amendments to ORS 656.802 by section 3**
33 **of this 2021 Act apply to claims for occupational disease or occupational injury that are**
34 **submitted on and after the effective date of this 2021 Act and to claims for occupational**
35 **disease or occupational injury that were submitted and were pending but for which**
36 **compensability was not yet determined before the effective date of this 2021 Act.**

37 **SECTION 5. This 2021 Act being necessary for the immediate preservation of the public**
38 **peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect**
39 **on its passage.**

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