Sixty-seventh Legislative Assembly of North Dakota

## **HOUSE BILL NO. 1433**

Introduced by

Representatives Ista, Adams, P. Anderson, Boschee, Dobervich, Guggisberg, Hager, Schneider

Senators Bakke, Hogan

- 1 A BILL for an Act to create and enact a new section to chapter 65-01 of the North Dakota
- 2 Century Code, relating to workers' compensation benefits for essential workers; to provide for
- 3 retroactive application; and to provide an expiration date.

## 4 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

- 5 **SECTION 1.** A new section to chapter 65-01 of the North Dakota Century Code is created 6 and enacted as follows:
- 7 <u>COVID-19 claims for benefits Rebuttable presumption.</u>
- 8 1. As used in this section:
- 9 <u>a.</u> <u>"COVID-19" means:</u>
- (1) Severe acute respiratory syndrome coronavirus 2 identified as SARS-CoV-2
   and any mutation or viral fragments of SARS-CoV-2; and
- 12 (2) A disease or condition caused by severe acute respiratory syndrome

  13 coronavirus 2 identified as SARS-CoV-2.
- 14 <u>b.</u> <u>"Essential worker" means:</u>
- 15 (1) A state or local government employee;
- 16 (2) A health and human services employee;
- 17 (3) A public health employee;
- 18 (4) A mortuary service provider;
- 19 <u>(5)</u> <u>An emergency services provider;</u>
- 20 (6) A public transportation, taxi, or rideshare driver;
- 21 (7) An educator or school employee, including an employee of an institute of higher education;
- 23 (8) A pharmacist, pharmacy technician, or other pharmacy employee;

## Sixty-seventh Legislative Assembly

1	<u>(9)</u>	A child care provider:
2	(10)	A cashier, stocker, clerk, or any other employee who enables the sale of
3		food for human consumption;
4	(11)	A food assistance program employee;
5	<u>(12)</u>	A food ingredient production and processing facility employee;
6	<u>(13)</u>	A slaughter and processing facility employee;
7	<u>(14)</u>	An individual employed in the direct extraction, processing, or delivery of
8		wind, water, solar, oil, gas, or coal energy;
9	<u>(15)</u>	A community water and wastewater treatment facility employee:
10	<u>(16)</u>	A plumber, electrician, builder, or any other trade professional employed in
11		repair and maintenance except a new construction builder;
12	<u>(17)</u>	A communication infrastructure technician, operator, or call center provider;
13	<u>(18)</u>	An information technology command center employee;
14	<u>(19)</u>	An individual employed to preempt and respond to cyber incidents involving
15		critical infrastructure;
16	<u>(20)</u>	An individual employed to administer and deliver unemployment programs;
17	<u>(21)</u>	A 2020 census worker;
18	(22)	An individual employed for emergency-related permitting, credentialing,
19		certifying, and licensing for essential critical infrastructure operations;
20	<u>(23)</u>	A member of the armed forces, North Dakota national guard, or armed
21		forces reserve component stationed in this state;
22	<u>(24)</u>	An individual employed to support public radio, print, internet, or television
23		news services;
24	<u>(25)</u>	An individual employed to support a dependent care provider, including child
25		care and elder care, and an individual employed by a residential facility or
26		mental health facility:
27	<u>(26)</u>	A hotel or temporary lodging facility employee;
28	<u>(27)</u>	An individual employed to provide food, shelter, or social services to
29		vulnerable populations or to COVID-19 responders;
30	<u>(28)</u>	An individual employed to produce, deliver, or distribute hygiene and
31		cleaning products;

## Sixty-seventh Legislative Assembly

1			<u>(29)</u>	An individual employed to provide disinfection services;
2			<u>(30)</u>	A health care provider as defined in section 23-07.5-01;
3			<u>(31)</u>	A firefighter, peace officer, correctional officer, court officer, law enforcement
4				officer, emergency medical technician, or an individual trained and
5				authorized by law or rule to render emergency medical assistance or
6				treatment;
7			(32)	An individual employed to provide home care services;
8			<u>(33)</u>	An individual working in or employed to work in the agricultural industry; and
9			<u>(34)</u>	An airport or commercial airline employee.
10		<u>C.</u>	<u>"Pei</u>	rsonal protective equipment" means equipment worn to prevent or minimize
11			<u>exp</u>	osure to hazards that cause injuries or illnesses.
12	<u>2.</u>	<u>Not</u>	twiths	tanding any other provision of law:
13		<u>a.</u>	<u>The</u>	organization shall approve a claim for benefits in which the employee is an
14			esse	ential worker whose injury resulted from the exposure to and contraction of
15			CO/	VID-19 as provided under this subsection.
16		<u>b.</u>	<u>Ехр</u>	osure to and contraction of COVID-19 for purposes of benefits under this
17			<u>sub</u> :	section is presumed to have arisen out of and in the course of the essential
18			wor	ker's employment and is presumed to be causally connected to the hazards
19			or e	exposures of the essential worker's employment.
20		<u>C.</u>	An e	essential worker's home or residence is not a place of employment, except for
21			a ho	ome care worker.
22		<u>d.</u>	<u>A pa</u>	arty may rebut a presumption created in this subsection by submitting
23			<u>evid</u>	lence, which may include:
24			<u>(1)</u>	The essential worker was working from home, on leave from employment,
25				or some combination thereof, for a period of fourteen or more consecutive
26				days immediately before the essential worker's injury or period of incapacity
27				resulting from exposure to COVID-19;
28			<u>(2)</u>	The employer was engaging in and applying to the fullest extent possible or
29				enforcing to the best of the employer's ability industry-specific workplace
30				sanitation, social distancing, and health and safety practices consistent with
31				recommendations issued by the federal centers for disease control and

1		prevention and the state department of health, or was using a combination	
2		of administrative controls, engineering controls, or personal protective	
3		equipment to reduce the transmission of COVID-19 to all essential workers	
4		for at least fourteen consecutive days before the essential worker's injury or	
5		period of incapacity resulting from exposure to COVID-19; or	
6		(3) The essential worker was exposed to COVID-19 by an alternate source.	
7	<u>e.</u>	A presumption created in this subsection applies if an essential worker provides a	
8		positive laboratory test for COVID-19 or for COVID-19 antibodies.	
9	<u>f.</u>	Except as provided under subdivision c, a presumption created in this subsection	
10		does not apply if the essential worker's place of employment was solely the	
11		essential worker's home or residence for a period of fourteen or more	
12		consecutive days immediately before the essential worker's injury or period of	
13		incapacity resulting from exposure to COVID-19.	
14	<u>g.</u>	The date of injury is either the date the essential worker was unable to work due	
15		to contraction of COVID-19 or was unable to work due to symptoms later	
16		diagnosed as COVID-19, whichever came first.	
17	<u>h.</u>	To qualify for temporary total disability benefits under the presumptions created in	
18		this subsection, the essential worker must be certified for or recertified for	
19		temporary disability.	
20	<u>i.</u>	The organization may not deny a claim for benefits in which the employee is an	
21		essential worker whose injury resulted from the exposure to and contraction of	
22		COVID-19 if the reason for the denial would be the essential worker received	
23		financial assistance for COVID-19 related expenses under the North Dakota	
24		medical expense assistance program. The organization shall subtract any	
25		amount received by an essential worker under the North Dakota medical	
26		expense assistance program from any benefits approved under this section.	
27	SECTION 2. RETROACTIVE APPLICATION. This Act applies retroactively to a claim for		
28	workers' compensation benefits filed after March 24, 2020, regardless of date of injury. An		
29	essential worker who has submitted a claim for benefits between March 24, 2020, and the		
30	effective date of this Act for exposure to and contraction of COVID-19 may resubmit the claim if		
31	the initial claim was denied by the organization for not being a compensable injury.		

Sixty-seventh Legislative Assembly

- 1 **SECTION 3. EXPIRATION DATE.** This Act is effective through July 31, 2023, and after that
- 2 date is ineffective.