

# Province urged to make workers' compensation automatic for essential employees diagnosed with COVID-19



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Worker advocates are urging the province to change worker compensation laws to make it easier for health-care and other essential workers infected with COVID-19 to access benefits, according to a new letter seen by the Star.

It comes as the provincial workers' compensation board has received some 450 benefit claims from workers who believe they contracted the virus on the job over the past month, the Star has learned. The board has also received some 200 reports from employers of potential workplace exposures to COVID-19.

The letter, sent Friday to Premier Doug Ford and Ontario's ministers of labour and health, outlines "vital" proposals needed to protect the province's essential workers, including "thousands of vulnerable non-unionized workers performing essential services."

"These workers are risking their health and for some, their lives, by carrying out their work responsibilities," says the letter from Ontario Federation of Labour President Patty Coates, and signed by 26 unions, legal clinics and injured-worker advocates.

"To do this, they must be confident that if they become sick from COVID-19 or must be isolated due to occupational exposure to this virus, they will have the full protection of the workers' compensation system."

Ontario workers are entitled to benefits and income replacement if their workplace played a significant role in their accident or illness. In most cases if a worker gets sick or hurt on the job, they must prove to the Workplace Safety and Insurance Board that it was work-related to be eligible for benefits, including income replacement.

But in light of the pandemic, advocates are urging the government to legislate automatic entitlement to workers' compensation for essential workers diagnosed with COVID-19.

The proposed changes would create a so-called non-rebuttable presumption that the virus was contracted on the job, the letter says. Current laws encode this presumption for a select list of diseases where there is a high degree of scientific certainty that the illness was caused by workplace exposure.

The letter calls for the new measure to cover health-care workers, first responders and other essential workers who come into contact with the public, such as those in child care, transit, retail and delivery.

“Cabinet could make these changes in a few days if it wished to do so,” the letter says.

In an emailed statement, Bradley Metlin, spokesperson for Minister of Labour Monte McNaughton, said government had “taken decisive action to support workers,” including job-protected leaves, beefing up inspections and doubling the number of phone agents at the ministry’s health and safety call centre.

“Minister McNaughton has been on the phone every day with labour leaders, businesses and, most importantly, workers. Their advice has been essential in our effort to keep workers safe during this difficult time,” the statement said.

“The premier has been clear that every option is on the table, and our government is prepared to take further action as required.”

As it stands, the WSIB is making decisions on COVID-19 claims on a case-by-case basis.

“We have great concerns with that policy,” said Janet Paterson, president of the Ontario Network of Injured Worker Groups.

“(Essential workers) should be able to feel confident that they are going to be taken care of.”

WSIB spokesperson Christine Arnott said the board has created a “dedicated team working through COVID-19-related claims as quickly as possible.

“We know this is a difficult time for people. We have moved quickly to deliver services remotely, including managing active claims, processing new claims and answering phones. We will do everything we can to help so people can focus on their loved ones and always on their health and safety,” she said.

Advocates are also calling for workers’ compensation coverage to extend to “independent operators” or self-employed workers — like those in the gig economy — who may not be covered.

Some gig employers, such as food-delivery service Foodora, do pay into the workers' compensation system. But the letter sent Friday notes that "many workers who may put themselves at risk by contact with the public do not have workers' compensation protection, either because they work in a non-covered sector of the economy or have been treated as independent operators."

"Finally, we need to protect community volunteers who step up to help others and become ill or need to be isolated," the letter adds. (Recently, the province enacted new emergency measures that allow hospitals to override collective agreements to draft in volunteer help).

Access to workers' compensation benefits — which are funded by employer premiums — could provide an alternate support system to employment insurance and government-funded emergency benefits, which have been inundated with applications.

According to its policy document on COVID-19, the WSIB is making entitlement decisions based on factors like whether the nature of the work puts people at risk of contact with the virus, as well as whether workers have personal protective gear — a mounting concern given existing shortages.

Jessica Ponting, a community legal worker with the Industrial Accident Victims Group of Ontario, said the board also needs to provide other assurances to injured workers amidst the pandemic.

Most at risk, she said, are those who were already off work because of a severe injury and may now be facing layoff.

"The board is basically presuming it's a temporary layoff. That's a problem because when people do start to get hired back, I think there's a lot of discrimination against people with disabilities," she said.

"The board needs to assume at least for now that it's a permanent layoff," she added.

That would allow for a continuation of benefits for injured workers who may have enough work hours to qualify for employment insurance.

The WSIB recently announced a \$1.9-billion relief package for businesses that will allow them to defer premium payments until August.

Paterson said she wants to see similar relief programs for injured workers — including an end to the practice known as deeming, which is when the board deems an injured worker capable of returning to work, identifies jobs they could theoretically do, and slashes their benefits accordingly.

“We realize businesses are very much getting impacted,” Paterson said.

“But injured workers are supposed to be the number one focus of the workers’ compensation system. And we feel like, where are we?”

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