



## ANALYSIS OF KENTUCKY EXECUTIVE ORDER 2020-277 Regarding Presumptive Coverage for COVID-19 Exposure

**NCCI has evaluated the impact of Kentucky Executive Order 2020-277 (“the Order”), which states that an employee removed from work by a physician due to occupational exposure to the novel coronavirus (COVID-19) is entitled to temporary total disability (TTD) payments for the period of self-quarantine. The Order is effective as of April 9, 2020 and will be in effect for the duration of the State of Emergency or until the Order is rescinded. The Order will result in an increase in overall workers compensation (WC) costs in the Commonwealth of Kentucky while it is in effect<sup>1</sup>.**

NCCI has included scenarios in this analysis to illustrate the potentially significant impact that providing self-quarantine benefits to workers with occupational exposure to COVID-19 is expected to have on system costs<sup>2</sup>. Depending on the selection of key assumptions, primarily for the frequency in which these benefits are provided, the impact can range significantly.

**If many workers receive a physician’s directive to quarantine, it may be reasonable to assume that upward of 25% of workers in the “presumptive” occupations (described below) and 5% in the other occupations will receive the expanded TTD benefits<sup>3</sup>. This could result in an overall impact of +27% (\$210M)<sup>4</sup> on Kentucky WC system costs.**

**On the other hand, if few workers receive a physician’s directive to quarantine, potentially due to the increased and effective use of personal protective equipment, it could be reasonable to assume that as few as 5% of presumptive occupations and a negligible percentage of other**

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<sup>1</sup> This analysis has been completed in isolation and focuses only on the impact of the Order on WC system costs. However, other factors resulting from the COVID-19 crisis, such as the increased usage of telecommuting and longer-term effects to the economy, may also have significant, potentially offsetting, impacts to the WC system.

<sup>2</sup> NCCI has posted a whitepaper on [ncci.com](http://ncci.com) entitled, “COVID-19 and Workers Compensation: Modeling Potential Impacts.” It focuses on the potential impacts on WC costs due to workers being infected by COVID-19, whereas the focus of this writeup is to analyze the potential incremental costs of quarantine period benefits addressed in the Order. For this reason, the two analyses use different definitions of frequency and severity. Also, the definitions of first responders and healthcare workers differ slightly, since this analysis uses the wording of the Order to refine what workers should be included in the categories.

<sup>3</sup> This considers factors such as employers/insurers already voluntarily providing such benefits, the dedication of healthcare workers in serving the public, and the need for a physician’s order.

<sup>4</sup> The estimated dollar impact is the percentage impact(s) displayed multiplied by 2018 written premium of \$581M from NAIC Annual Statement data for Kentucky, adjusted to include self-insurance. It does not include the policyholder retained portion of deductible policies or adjustments for subsequent changes in premium levels. The use of adjusted premium as the basis for the dollar impact assumes that expenses and other premium adjustments will be affected proportionally to the change in benefit costs. Data on self-insurance is approximated using the National Academy of Social Insurance’s October 2019 publication “Workers’ Compensation: Benefits, Costs, and Coverages, 2017.”



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occupations may receive expanded TTD benefits. This would translate into an overall impact of +3% (\$23M) on WC system costs in the state.

A precise estimate of the impact of the Order cannot be determined and could potentially fall outside of the range shown above.

### Summary of the Order

Currently, Chapter 342 of the Kentucky Statutes provides WC benefits for employees who suffer an injury or occupational disease arising out of and in the course of employment.

The Order, signed by Governor Andy Beshear on April 9, 2020, expands certain WC benefits to employees who have been removed from work by a physician due to occupational exposure to COVID-19. Employees removed from work may be entitled to TTD wage replacement benefits under KRS 342.730(1)(a) with no waiting period<sup>5</sup>.

Note that the Order does not state that it applies to workers contracting COVID-19, but rather applies to workers with purported exposure to COVID-19 and subsequent removal from the workplace.

Additionally, the Order includes a rebuttable presumption that the removal from work by a physician is due to occupational exposure to COVID-19 for the following employees:

- Employees of a healthcare entity
- First responders (law enforcement, emergency medical services, fire departments)
- Corrections officers
- Military
- Activated National Guard
- Domestic violence shelter workers
- Child advocacy workers
- Rape crisis center staff
- Department for Community Based Services workers

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<sup>5</sup> The guidance to the Order states, "A worker whose removal from work falls within the presumption... is eligible for benefits immediately upon removal... The employer... may not deny payment of benefits pursuant to the Order without evidence forming a good faith basis for denial."



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- Grocery workers
- Postal service workers
- Childcare workers permitted by the Cabinet for Health and Family Services to provide childcare during the State of Emergency.

The TTD benefits payable pursuant to the Order are subject to offset by either the federal Families First Coronavirus Response Act (FFCRA) benefits paid<sup>6</sup> or unemployment benefits paid, if applicable for the same period.

On April 15, 2020, the Kentucky Labor Cabinet Department of Workers' Claims put forth guidance regarding the Order, although the guidance states that it is not binding upon an Administrative Law Judge in the resolution of a claim under the Order.

### Actuarial Analysis

Under the Order, employees removed from work by a physician due to occupational exposure to COVID-19 may be entitled to TTD benefits. This is expected to increase overall WC costs in Kentucky; however, the extent of such an increase cannot be precisely determined. The following analysis includes **hypothetical** scenarios to illustrate potential impacts to specific occupations and Kentucky's overall WC system costs. Note that the order only applies to workers that are otherwise subject to the Kentucky WC Act, and therefore military, active National Guard, and United States Postal Service workers were not included in this analysis.

### **Frequency**

There are many unknowns regarding COVID-19 and its ultimate impact on the US population. Estimates of its infection rate are very wide and changing over time. The frequency of claims resulting from occupational exposure to COVID-19 in Kentucky is unknown. In this analysis, claim frequency is defined as the product of the following probabilities:

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<sup>6</sup> FFCRA does not apply to employers with 500 or more employees. Also, businesses with fewer than 50 employees might be exempted when the requirements would "jeopardize the viability of the business." Census data for Kentucky suggests that the percentage of employees working for firms for which FFCRA does not apply may be as great as 80%. US Census Bureau, "2017 SUSB Annual Data Tables by Establishment Industry" <https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html>, workbook "U.S. and states, NAICS sectors, small employment sizes less than 500".



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- An employee claims occupational exposure AND
- A physician removes the employee from work AND
- The claim is deemed compensable AND
- The claim is not covered under FFCRA or unemployment benefits

Each factor in the frequency calculation is likely to vary depending on the occupation being analyzed. Since it is possible that some claims may be found compensable under the current statutory framework or be accepted by carriers, the frequency of the incremental TTD payments resulting from the Order may be less than the product of the four factors above.

### Severity

The Order does not specify a time period for TTD benefits, and the following example calculations assume that employees removed from work due to occupational exposure would be quarantined for two weeks, per the recommendation of the Centers for Disease Control and Prevention (CDC)<sup>7</sup>. Since the Order removes the requirement for a waiting period, the wage replacement estimate was calculated by trending Kentucky's average weekly TTD benefit to Accident Year 2020 (7/1/2020) and multiplying by the two-week duration. It should be noted that the adjustment to calculate wage replacement benefits by classification used relative average wages (as a multiplicative factor). To the extent that a specific occupation's wage replacement benefits would be subject to maximum/minimum thresholds, adjustments to the resulting scenario impacts may be warranted.

Additionally, since the claims expected to result from the Order are claims due to exposure and are not dependent on a positive COVID-19 test, the example calculations do not include medical benefits.

### Illustrative Scenarios

Using an occupation's workforce population<sup>8</sup> and estimates for frequency and severity, NCCI has calculated possible impacts on costs for all presumptive occupations detailed in the Order, all

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<sup>7</sup> *Public Health Recommendations for Community-Related Exposure*. CDC Coronavirus 2019 (COVID-19) Public Health, <https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html>

<sup>8</sup> US Bureau of Labor Statistics, "May 2019 State Occupational Employment and Wage Estimates Kentucky" [https://www.bls.gov/oes/current/oes\\_ky.htm](https://www.bls.gov/oes/current/oes_ky.htm). The use of BLS wages provides an estimate of the impact on all private and public employers regardless of how work-related injury costs are funded (i.e., privately insured, self-insured, policyholder retained portion of deductible policies, employees exempted from WC requirements, etc.).



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other occupations, and the overall potential impact to Kentucky WC costs<sup>9</sup>. Details behind this analysis, including scenario assumptions, can be found in the Appendix<sup>10</sup>.

**Table 1: Possible Increases to WC Losses for Presumptive Occupations  
by Frequency and Occupation**

	First Responders	Healthcare	Community Social Services	Childcare	Grocery Workers	Subtotal - All Presumptive	Total for Kentucky <sup>11</sup>
0%	0%	0%	0%	0%	0%	0%	0%
5%	7%	32%	11%	20%	16%	22%	3%
10%	14%	64%	23%	40%	33%	44%	6%
15%	21%	97%	34%	60%	49%	66%	8%
20%	28%	129%	45%	80%	65%	88%	11%
25%	35%	161%	57%	99%	82%	110%	14%
30%	42%	193%	68%	119%	98%	133%	17%
35%	49%	226%	79%	139%	114%	155%	19%
40%	56%	258%	91%	159%	131%	177%	22%
45%	63%	290%	102%	179%	147%	199%	25%
50%	70%	322%	114%	199%	163%	221%	28%

<sup>9</sup> Values in Tables 1 and 2 are not shown to full precision.

<sup>10</sup> The appendix contains the share of losses by occupation group, which could be used to further refine an estimate that involves different frequencies within the presumptive occupations.

<sup>11</sup> Assuming no change in WC losses due to the Order for all other occupations



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Occupations that are not granted a presumption under the Order would need to overcome a relatively higher hurdle to prove that exposure to COVID-19 was occupational in nature; hence, the hypothetical frequencies displayed in Table 2 are lower than for Table 1.

**Table 2: Possible Increases to WC Losses for All Other Occupations  
by Frequency**

	All Other Occupations	Total for Kentucky <sup>12</sup>
0%	0%	0%
1%	3%	3%
2%	6%	5%
3%	9%	8%
4%	12%	10%
5%	15%	13%
6%	18%	15%
7%	21%	18%
8%	24%	21%
9%	27%	23%
10%	29%	26%

To obtain possible impacts assuming alternative frequencies for the two groups, the overall totals from the Table 1 and Table 2 can be added. For example, to determine the possible total impact assuming a frequency of 25% for the presumptive occupations and 5% for the non-presumptive occupations, the overall total impact would be +27% = (+14% for presumptive occupations plus +13% for non-presumptive occupations).

<sup>12</sup> Assuming no change for all presumptive occupations



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To calculate values in between the frequencies displayed, linear interpolation may be used. For example, using a 2.5% frequency for first responders in Table 1, the impact would be 3.5% for first responders.

For a given assumed frequency (row), the differences in impacts between the various occupations are not mainly due to significant differences in the COVID-19 expected losses per worker (as we assumed the same frequency). Rather, the primary factor is the current expected losses (determined by the pure premium factor<sup>13</sup>) per worker in each occupation. This means that riskier classifications (relative to their payroll) will observe less of a percentage impact to their expected losses because the base, current expected losses, is larger.

The extent of the COVID-19 pandemic on individual states is uncertain at this time and the ultimate impact of the Order will depend not only on various assumptions, but also on differences in the handling of COVID-19 claims with or without the Order<sup>14</sup>. For these reasons, NCCI is not proposing a specific set of assumptions to be used. **The scenarios included in this document serve to provide insight into the potentially significant increase to expected losses in Kentucky resulting from the Order.**

### Other Considerations

- The Order references “employees of a healthcare entity.” It is unclear whether or not the wording of the Order will be interpreted to apply more broadly to include other healthcare-related occupations such as janitors, staffs for administration, cafeteria, and security, pharmacies, etc.
- If a worker in a presumptive occupation was sent home by a physician due to concerns of occupational exposure to COVID-19 prior to April 9, 2020 and is still home, it is unclear if they would be entitled to the TTD benefits under the Order.

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<sup>13</sup> “Pure premium factor” represents the expected losses as a percentage of payroll in hundreds.

<sup>14</sup> An example of a consideration when estimating the incremental impact on WC costs of the Order is the treatment by Kentucky Employers’ Mutual Insurance (KEMI) of first responders and medical personnel: “Effective immediately, KEMI will provide wage replacement benefits for first responders and medical personnel employed by a current KEMI policyholder who have been quarantined for COVID-19 as a result of their increased risk of exposure in the course of their work. The wage replacement benefits while in quarantine would cover first responders and any employee in the medical field that has had direct contact with a person diagnosed with the COVID-19.”  
[https://www.workerscompensation.com/news\\_read.php?id=35247](https://www.workerscompensation.com/news_read.php?id=35247) (March 16, 2020)



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- Despite the guidance accompanying the Order, when a physician removes an employee from work due to occupational exposure, it is unclear how the occupational exposure will ultimately be determined.
- Besides FFCRA and unemployment benefits, the wages or wage replacement payments during the quarantine period for those exposed to COVID-19 may be provided through means other than WC, such as paid sick leave<sup>15</sup>.
- The Order expands WC benefits for occupational exposure to COVID-19. The impact of claims resulting from *contracting* COVID-19 was not considered within the scope of this analysis.
- The Order does not state how long employees will receive TTD benefits and, as such, the duration of quarantine and length of TTD benefits could vary; for purposes of this analysis, two weeks of TTD benefits have been assumed.
- If a claim is ultimately denied, but TTD payments were made for the quarantine period, it is unclear if payments would be subject to refund.
- When considering frequencies, note that it is possible that the same worker could be quarantined more than once.

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<sup>15</sup> For example, Walmart is compensating employees for up to two weeks of pay if their store is part of a mandated quarantine, or if the employee is required to quarantine by a government agency or by Walmart. It is unclear if such pay would be made under WC or some other funding source.

<https://corporate.walmart.com/newsroom/2020/03/10/new-covid-19-policy-to-support-the-health-of-our-associates>





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### Appendix: Illustrative Scenario Details

#### Appendix : Scenario Inputs by Occupation Group

Occupation Group	Share of Losses <sup>2</sup>	Employee Count <sup>3</sup>	Average Salary <sup>3</sup>	Pure Premium Factor <sup>4</sup>	Wage Replacement Benefits <sup>5</sup>
First Responders	3%	27,610	41,311	1.70	985
Healthcare	6%	189,120	55,074	0.37	1,314
Community Social Services	1%	19,400	42,571	1.05	1,015
Childcare <sup>1</sup>	0%	11,160	22,160	0.60	529
Grocery Workers	2%	68,500	25,731	0.73	614
All Presumptive Occupations	13%	315,790	45,574	0.54	1,087
All Other Occupations	87%	1,581,110	43,710	0.81	1,043
Kentucky	100%	1,896,900	44,020	0.77	1,050

<sup>1</sup> Childcare share of losses is approximately 0.2%, but rounds to 0%

<sup>2</sup> Derived as (occupation-specific expected losses / overall expected losses)

<sup>3</sup> US Bureau of Labor Statistics by occupation in Kentucky

<sup>4</sup> Weighted average pure premium factor from the approved Kentucky loss cost filing effective 10/01/2019 for classifications that the occupation groups are comprised of.

<sup>5</sup> Derived as Kentucky Wage Replacement Benefits (Average Weekly TTD benefit multiplied by 2 and trended to 2020) multiplied by a salary relativity (occupation-specific salary / overall state salary)

The employee count for First Responders includes the following BLS occupations:

- First-Line Supervisors of Correctional Officers
- First-Line Supervisors of Police and Detectives
- First-Line Supervisors of Firefighting and Prevention Workers
- Miscellaneous First-Line Supervisors, Protective Service Workers
- Firefighters
- Fire Inspectors and Investigators
- Bailiffs
- Correctional Officers and Jailers
- Detectives and Criminal Investigators
- Police and Sheriff's Patrol Officers
- Emergency Medical Technicians and Paramedics

The employee count for Healthcare includes the following BLS occupations:

- Healthcare Practitioners and Technical Occupations (less Emergency Medical Technicians and Paramedics, which were included with First Responders)
- Healthcare Support Occupations



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Due to the various unknowns, the following scenarios utilize a hypothetical frequency selection of 5%. A specific frequency was used to better illustrate the calculation and does not imply it is expected to be more accurate than others.

### Hypothetical Scenario - First Responders Impact to Expected Losses

Row Description	Scenario Assumption
<b>(1) Average Salary<sup>1</sup></b>	<b>\$41,311</b>
<b>(2) Pure Premium Factor<sup>2</sup></b>	<b>\$1.70</b>
(3) COVID-19 Quarantine Claim Frequency <sup>3</sup>	5%
<b>(4) Wage Replacement Severity</b>	<b>\$985</b>
Row Description	Estimate
<b>(5) Workforce Population</b>	<b>27,610</b>
(6) Expected Payroll	\$1,141M    =(1) x (5)
(7) COVID-19 Expected Losses	\$1.4M        =(3) x (4) x (5)
(8) Current Expected Losses	\$19.4M       =(2) x (6)/100
(9) Scenario Expected Losses	\$20.7M       =(7) + (8)
(10) Scenario Impact (%) <sup>4</sup>	7%            =(9)/(8) - 1.0

*Displayed values not shown to full precision*

<sup>1</sup> Annual mean wage through May 2019 from the US Bureau of Labor Statistics for selected "Protective Service Occupations"

<sup>2</sup> Weighted average pure premium factor from approved Kentucky loss cost filing effective 10/1/2019 for the first responder classifications (7705, 7710, 7711, and 7720)

<sup>3</sup> Frequency is defined as the product of the probability an employee has occupational exposure to COVID-19, the probability a physician removes the employee from work, the probability that the claim is determined compensable, and the probability that the claim is not covered by the FFCRA or unemployment benefits.

<sup>4</sup> Impact to expected losses for the associated occupations, NOT overall state WC expected losses



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### Hypothetical Scenario - All Presumptive Occupations Impact to Expected Losses

Row Description	Scenario Assumption	
(1) <b>Average Salary</b> <sup>1</sup>	\$45,574	
(2) <b>Pure Premium Factor</b> <sup>2</sup>	\$0.54	
(3) COVID-19 Quarantine Claim Frequency <sup>3</sup>	5%	
(4) <b>Wage Replacement Severity</b>	\$1,087	
Row Description	Estimate	
(5) <b>Workforce Population</b>	315,790	
(6) Expected Payroll	\$14,392M	= (1) x (5)
(7) COVID-19 Expected Losses	\$17.2M	= (3) x (4) x (5)
(8) Current Expected Losses	\$77.7M	= (2) x (6) / 100
(9) Scenario Expected Losses	\$94.9M	= (7) + (8)
(10) Scenario Impact (%) <sup>4</sup>	22%	= (9) / (8) - 1.0

*Displayed values not shown to full precision*

<sup>1</sup> Annual mean wage through May 2019 from the US Bureau of Labor Statistics for all presumptive occupations

<sup>2</sup> Weighted average pure premium factor from approved Kentucky loss cost filing effective 10/1/2019 for all presumptive classifications

<sup>3</sup> Frequency is defined as the product of the probability an employee has occupational exposure to COVID-19, the probability a physician removes the employee from work, the probability that the claim is determined compensable, and the probability that the claim is not covered by the FFCRA or unemployment benefits.

<sup>4</sup> Impact to expected losses for the associated occupations, NOT overall state WC expected losses



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### Hypothetical Scenario - All Other Occupations Impact to Expected Losses

Row Description	Scenario Assumption	
<b>(1) Average Salary<sup>1</sup></b>	<b>\$43,710</b>	
<b>(2) Pure Premium Factor<sup>2</sup></b>	<b>\$0.81</b>	
(3) COVID-19 Quarantine Claim Frequency <sup>3</sup>	5%	
<b>(4) Wage Replacement Severity</b>	<b>\$1,043</b>	
Row Description	Estimate	
<b>(5) Workforce Population</b>	<b>1,581,110</b>	
(6) Expected Payroll	\$69,110M	=(1) x (5)
(7) COVID-19 Expected Losses	\$82.5M	=(3) x (4) x (5)
(8) Current Expected Losses	\$559.8M	=(2) x (6)/100
(9) Scenario Expected Losses	\$642.2M	=(7) + (8)
(10) Scenario Impact (%) <sup>4</sup>	15%	=(9)/(8) - 1.0

*Displayed values not shown to full precision*

<sup>1</sup> Annual mean wage through May 2019 from the US Bureau of Labor Statistics for all other occupations

<sup>2</sup> Weighted average pure premium factor from approved Kentucky loss cost filing effective 10/1/2019 for all other classifications

<sup>3</sup> Frequency is defined as the product of the probability an employee has occupational exposure to COVID-19, the probability a physician removes the employee from work, the probability that the claim is determined compensable, and the probability that the claim is not covered by the FFCRA or unemployment benefits.

<sup>4</sup> Impact to expected losses for the associated occupations, NOT overall state WC expected losses



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### Hypothetical Scenario - Kentucky Impact to Expected Losses

Row Description	Scenario Assumption	
<b>(1) Average Salary<sup>1</sup></b>	<b>\$44,020</b>	
<b>(2) Pure Premium Factor<sup>2</sup></b>	<b>\$0.77</b>	
(3) COVID-19 Quarantine Claim Frequency <sup>3</sup>	5%	
<b>(4) Wage Replacement Severity</b>	<b>\$1,050</b>	
Row Description	Estimate	
<b>(5) Workforce Population</b>	<b>1,896,900</b>	
(6) Expected Payroll	\$83,502M	=(1) x (5)
(7) COVID-19 Expected Losses	\$99.6M	=(3) x (4) x (5)
(8) Current Expected Losses	\$643.0M	=(2) x (6)/100
(9) Scenario Expected Losses	\$742.5M	=(7) + (8)
(10) Scenario Impact (%) <sup>4</sup>	15%	=(9)/(8) - 1.0

*Displayed values not shown to full precision*

<sup>1</sup> Annual mean wage through May 2019 from the US Bureau of Labor Statistics for all occupations

<sup>2</sup> Weighted average pure premium factor from approved Kentucky loss cost filing effective 10/1/2019 for all classifications

<sup>3</sup> Frequency is defined as the product of the probability an employee has occupational exposure to COVID-19, the probability a physician removes the employee from work, the probability that the claim is determined compensable, and the probability that the claim is not covered by the FFCRA or unemployment benefits.

<sup>4</sup> Impact to overall state WC expected losses, given the selected inputs

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