



# NORTH CAROLINA GENERAL ASSEMBLY

Session 2019

## Legislative Fiscal Note

**Short Title:** WC/COVID-19 Front Line Coverage/Funds.  
**Bill Number:** House Bill 1057 (First Edition)  
**Sponsor(s):** Representatives Jackson, Boles, Setzer, and R. Smith

### SUMMARY TABLE

#### FISCAL IMPACT OF H.B. 1057, V.1 (\$ in millions)

	<u>FY 2019-20</u>	<u>FY 2020-21</u>	<u>FY 2021-22</u>	<u>FY 2022-23</u>	<u>FY 2023-24</u>
<b>State Impact</b>					
General Fund Revenue	-	-	-	-	-
Less Expenditures					
<i>OSHR Workers Comp. Fund</i>	-	5.0	Likely Reduced Expenditures		
<i>Agency Workers Comp Exp.</i>	Likely Minor Budget Cost - Refer to Fiscal Analysis Section				
<b>General Fund Impact</b>	<b>Likely Minor Budget Cost - Refer to Fiscal Analysis Section</b>				
<b>NET STATE IMPACT</b>	<b>Likely Minor Budget Cost - Refer to Fiscal Analysis Section</b>				
<b>Local Impact</b>					
Local Revenue	-	-	-	-	-
Less Local Expenditures	Likely Minor Budget Cost - Refer to Fiscal Analysis Section				
<b>NET LOCAL IMPACT</b>	<b>Likely Minor Budget Cost - Refer to Fiscal Analysis Section</b>				

### FISCAL IMPACT SUMMARY

The bill would expand workers' compensation coverage for certain employee groups that are generally required to continue their normal duties during a pandemic (e.g. correction officers, first responders, other essential employees). The expansion would create a rebuttable presumption that if these employees contracted a pandemic infection, the infection was likely contracted during the performance of their job duties and they would be eligible for workers' compensation. While this analysis is unable to quantify the net fiscal impact of the legislation on State and local governments, this analysis assumes the bill would have a relatively small negative fiscal impact on both State and local governments, with potential positive fiscal impacts for the State in the intermediate to long-term.

## FISCAL ANALYSIS

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The bill expands workers' compensation coverage for "covered persons" by creating a rebuttable presumption that a covered person contracted a pandemic infection due to their job duties.

Covered person is defined as:

1. Certain State and Local Government Employees (e.g.):
  - a. Law enforcement officer
  - b. Jailer
  - c. Prison guard
  - d. Firefighter
  - e. Emergency medical technician
  - f. Paramedic
2. Health care worker
3. Other employees required to work as essential employees during the pandemic under an executive order from the Governor or by order from a local government authority

Based on an examination of active employee records obtained as of December 31, 2018 from the Teachers' and State Employees Retirement System and the Local Government Employees Retirement System, this analysis assumes approximately 26,200 State employees and 45,200 local employees would be considered a covered person under the bill.

The bill also appropriates \$5 million in nonrecurring funding to the Office of State Human Resources (OSHR) to assist State agencies with workers compensation costs associated with the bill through December 31, 2020. After December 31, 2020, OSHR may use these funds to settle any previous outstanding workers' compensation claims against the State.

To estimate the fiscal impact associated with this legislation, the analysis examines:

1. Existing benefits available to covered State and local employees
2. Expansion of workers' compensation coverage to covered State and local employees in this bill
3. How #1 and #2 would likely interact in the COVID-19 pandemic

### **1. Existing Benefits**

#### *Sick and Vacation Leave*

State government employees are provided 8 hours of paid sick leave per month and between 9.33-17.33 hours of vacation leave per month, based on service length, for full-time positions. When this leave is used by the employee, the employee is compensated at their full wage rate. Unused sick leave accumulates indefinitely, and accumulated vacation leave in excess of 240 hours converts to sick leave at the end of each fiscal year. While local leave policies vary, most provide similar levels of leave for their employees.

#### *Special State-Sponsored COVID-19 Paid Leave for State Employees*

In March 2020, OSHR encouraged agencies to provide 80 hours of additional paid leave if an employee was exhibiting symptoms of COVID-19. In addition, OSHR has advised agencies that additional special paid leave may be provided to State employees subject to the State Human



Resources Act from March 16<sup>th</sup> through May 31<sup>st</sup> for certain purposes (e.g. exhibiting COVID-19 symptoms, caring for child unable to attend school/childcare, etc.).

### *Families First Coronavirus Response Act (FFCRA)*

Congress enacted legislation that became effective in April 2020 that provides 80 hours of paid sick leave in addition to other types of leave available to most employees of State and local governments. The additional paid sick leave is at the employee's full wage rate (up to \$511/day) if the employee is exhibiting COVID-19 symptoms. In addition, the Act provided paid Family and Medical Leave (FMLA) for up to 10 of the 12 weeks of FMLA leave provided under existing federal law. Paid FMLA leave would be two-thirds of the employee's regular wage rate (up to \$200/day). An employer may exclude certain employee groups from this additional leave that are defined as covered employees in the bill (e.g. health and first responder employees).

### *Health Coverage*

The State Health Plan is a self-insured plan that provides health coverage to most State employees and some local government employees. In March 2020 the State Health Plan Board of Trustees announced that testing and treatment of COVID-19 would be covered by the Plan at no cost to members. Local government employees that are not in the State Health Plan would likely have health insurance provided by their respective employer, similar to employees at larger private companies.

## **2. Workers Compensation Expansion**

At a summary level, workers' compensation provides employees medical care and partial compensatory support (generally two-thirds of pay until the employee can return to work<sup>1</sup>) due to an accident or illness that occurs due to their job responsibilities. The State is self-insured for workers' compensation claims. For State employee claims, medical care and compensation are funded from the agency's respective budget. Local governments may self-insure or purchase insurance to cover workers' compensation claims. Both county<sup>2</sup> and municipal<sup>3</sup> association organizations provide insurance risk pools that their respective members may participate in.

The bill creates a rebuttable presumption that if a covered employee contracts a pandemic infection, it is considered an illness arising as a result of their job duties and would entitle the employee to workers' compensation benefits.

## **3. Analysis of Impact of Workers Compensation Expansion**

For the current pandemic, much remains unknown about COVID-19. Estimates and forecasts vary regarding:

- The number of asymptomatic infections or level of community immunity
- If the virus becomes more or less contagious
- If the virus becomes more or less deadly
- If the virus will recur or not recur

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<sup>1</sup> Certain law enforcement and correction positions are eligible for special salary continuation at full pay for up to 2 years if injured in the line-of-duty. Additional payments if injury listed in G.S. 97-31.

<sup>2</sup> <https://www.ncacc.org/137/Workers-Compensation>

<sup>3</sup> <https://www.nclm.org/insurance/WC>



- When or if a vaccine or effective treatment is developed and widely available

Early studies of COVID-19 have indicated that most identified cases only require self-care, with more serious symptoms experienced as age increases. For working age employees<sup>4</sup>, an early study from the Centers for Disease Control and Prevention (CDC) found the following hospitalization, intensive care, and death rates per identified infection<sup>5</sup>:

- Hospitalization – 14.3% to 30.1%
- Intensive Care Unit – 2.0% to 11.2%
- Death – 0.1% to 2.6%

As of May 8, 2020, the North Carolina Department of Health and Human Services (DHHS) has reported a cumulative total of approximately 14,000 confirmed COVID-19 cases in the state. While this figure has continued to increase since March 2020, it currently represents 0.14% of the estimated state population. While the covered employees are likely at increased risk of infection due to their job responsibilities, it is currently unlikely that a significant percentage of these employees will experience a COVID-19 infection that leads to expensive medical care (hospitalization) or death. Current guidance suggests that those that contract a symptomatic infection at a working age will most likely only need self-care for 2-3 weeks to recover from the infection.

#### *Workers' Compensation - Wages*

If this bill becomes law, a covered employee of a State or local government that becomes infected with COVID-19 would most likely use their existing and new benefits in the following manner:

- Mild symptoms – Employee would use additional paid leave provided by their employer (if available) or under the FFCRA (if available). If additional leave not available, employee would likely use existing sick or vacation leave to maintain full pay rate.
- Serious symptoms (Hospitalization) – Employee would use additional paid leave from their employer (if available) or under the FFCRA (if available). Extended recovery times not covered under additional paid leave policies could be covered by existing sick or vacation leave if the employee wants to maintain full wage replacement. Alternatively, the employee could use paid FMLA leave (if available) or workers' compensation for partial wage replacement.
- Death – Employee's beneficiary would receive workers' compensation benefit due to job related illness resulting in death.

This analysis assumes that wages paid to State and local government employees due to this legislation would be relatively small for the following reasons:

- Existing sick and vacation leave balances that pay full wage rate,
- Additional leave already provided to certain employees due to COVID-19 by the State and federal governments,
- Potential that employee would have been awarded workers' compensation claim without creation of rebuttable presumption, and,

<sup>4</sup> Working age defined as 20-64 in this analysis to align with selected CDC report ranges.

<sup>5</sup> [https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e2.htm#T1\\_down](https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e2.htm#T1_down)

- The likelihood that most infections do not require extended recovery periods.

*Workers' Compensation – Medical Care*

Workers' compensation medical care costs have no additional impact on the State as the State Health Plan already covers COVID-19 treatment at no cost to the employee. Any increase in workers' compensation medical care costs on the State would be offset by savings to the State Health Plan.

Increased workers' compensation medical care costs on local governments could result in negative claims experience as it relates to workers' compensation insurance. However, assuming the workers' compensation insurance covers the medical care costs for covered employees who contract a pandemic infection, a positive claims experience would be realized on the local governments' health insurance coverage.

Based on workers' compensation data at the State level and the current low death rate associated with COVID-19, this analysis assumes that most governmental workers' compensation costs would be due to medical care costs. However, since the medical care paid under workers' compensation would have otherwise been paid under existing health care coverage, this analysis assumes the net impact is negligible.

*Workers' Compensation – Death Benefit*

This analysis assumes the largest net fiscal impact on both State and local governments due to this legislation would be deaths occurring due to a pandemic infection. Workers' compensation death benefits generally equate to 500 weeks of wages to beneficiaries at two-thirds of the employee's wage rate, plus burial expenses up to \$10,000<sup>6</sup>. For an employee with a prior salary of \$45,000, the nominal cost of the death is approximately \$300,000, paid over several years.

To approximate the fiscal impact of COVID-19 deaths covered under workers' compensation, the table below assumes:

- Covered State and local government employees contract COVID-19 at four times the rate of the general population (~0.14% as of May 8, 2020) in calendar year 2020 only (i.e. 0.56%)
- The average weekly wage for these employees is approximately \$865 (~\$45,000 annually)
- Beneficiaries receive 500 weeks of two-thirds the average weekly wage, plus \$10,000 in burial expenses
- Deaths occur at a rate of 1.3% of confirmed infections (midpoint of earlier CDC range)

**Workers' Compensation Costs for Covered State/Local Employees COVID-19 Deaths**

	<b>State Employees</b>	<b>Local Employees</b>
Covered Employees	26,200	45,200
Estimated Deaths	2	3-4
Estimated Cost	\$600,000	\$0.9-1.2 million

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<sup>6</sup> G.S. 97-38.

While these approximated death benefits would not be necessary in the absence of COVID-19, it is uncertain whether they would be paid even in the absence of the rebuttable presumption established in the bill for pandemic infections for covered employees.

The bill also appropriates \$5 million to OSHR, effective July 1, 2020, to cover State employee workers' compensation costs due to the pandemic infection through December 31, 2020. Given the uncertainty discussed earlier, it is uncertain how much of this funding will be necessary to cover State employees' costs or if it will be sufficient. Current workers' compensation costs for State employees is approximately \$60-70 million annually, with approximately two-thirds of this total due to medical costs. If workers' compensation costs remain below the \$5 million appropriated in the bill, OSHR may use these funds to settle existing workers' compensation claims against the State. Based on findings presented by OSHR on previous appropriations provided to settle outstanding workers' compensation claims<sup>7</sup>, funds available for this purpose could reduce State expenditures in the long-term.

Due to the uncertainty regarding COVID-19 and any future pandemic, this analysis is unable to provide a numerical fiscal impact estimate. However, for the reasons listed earlier in this document, this analysis assumes that the bill would have a relatively minor negative impact on State and local governments if infection and death rates do not increase significantly.

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## **DATA SOURCES**

Centers for Disease Control and Prevention, NC Department of Health and Human Services, NC Accounting System, and NC Department of State Treasurer.

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## **LEGISLATIVE FISCAL NOTE – PURPOSE AND LIMITATIONS**

This document is an official fiscal analysis prepared pursuant to Chapter 120 of the General Statutes and rules adopted by the Senate and House of Representatives. The estimates in this analysis are based on the data, assumptions, and methodology described in the Fiscal Analysis section of this document. This document only addresses sections of the bill that have projected direct fiscal impacts on State or local governments and does not address sections that have no projected fiscal impacts.

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## **CONTACT INFORMATION**

Questions on this analysis should be directed to the Fiscal Research Division at (919) 733-4910.

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## **ESTIMATE PREPARED BY**

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<sup>7</sup> <https://www.ncleg.gov/documentsites/committees/JointAppropriationsGeneralGovernment/2017%20Session/03-23-2017/OSHR%20App%20Presentation.pdf#page=15>



**ESTIMATE APPROVED BY**

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May 14, 2020



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