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## PETERSON, LOGREN & KILBURY, P.A.

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*Attorneys At Law*

Larry J. Peterson\*  
Arlen R. Logren  
T. Michael Kilbury\*  
Brent C. Kleffman\*†  
Beth A. Butler  
Bretta I. Hines  
Kristine L. Cook  
\*Also Licensed in Wisconsin  
† Also Licensed in Iowa

300 Winsor Office Plaza  
1935 County Road B2 West  
Roseville, Minnesota 55113

(651) 647-0506 · (800) 228-3288  
Fax (651) 647-0532  
www.plklawfirm.com

*Paralegals*  
Stefanie L. Blommer  
Laura R. Wassman  
Becca J. McInnis  
Joelle A. Beyer

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WHICH HEALTH CARE PROVIDERS HAVE THE  
COVID – 19 PRESUMPTION OF COVERAGE UNDER THE  
WORKERS' COMPENSATION LAW

The law firm of Peterson, Logren & Kilbury, P.A., has reviewed the language of the newly enacted amendment to 176.011, subd. 15 (f)(1). Here is our legal interpretation of which health care providers have the presumption that if they contract the COVID-19 virus it will be covered under the workers' compensation law. Specifically, we reviewed the following language contained in the section (f)(1) presumption:

**a health care provider, nurse, or assistive employee employed in a health care, home care, or long-term care setting, with direct COVID-19 patient care or ancillary work in COVID-19 patient units;**

Under the laws of statutory construction, the above occupations are the only ones contained in section (f)(1) that require work "with direct COVID-19 patient care or ancillary work in COVID--19 patient units".

Put differently, while employees working in health care, home care, or long-term care settings are only covered if they work in a specified environment for patients diagnosed with COVID-19. Whereas any of the other occupations contained in section (f)(1) are covered by the presumption in their entirety because they are on the "front lines" of providing emergency care to all those in need of medical treatment. This essentially creates a 2 part-test for employees working in health care, home care, or long-term care settings:

1. They have a positive COVID-19 test and they cared for patient with a positive COVID-19 test; and
2. They worked in a specified physical environment designated for COVID-19 patient care.

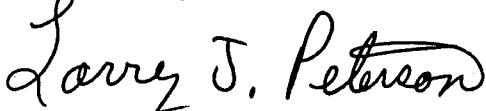
By way of example, if a CNA is working in a nursing home which contains a patient known to have COVID-19, she is not entitled to the presumption. On other hand, if the nursing home had designated a specific wing for COVID-19 patients and the CNA worked in that wing, then she would be entitled to the presumption. In other words, it is presumed, without the need for proof, that she contracted the virus from her assigned duties in the COVID-19 patient unit.

The reference to an “assistive employee” would cover all employees in health care even if they do not have a medical license or certification of some kind. That would cover all in-home and group home employees. However, even those employees do not receive the presumption if they are not assigned to a COVID-19 patient unit.

The Bill was signed by Governor Walz on April 7, 2020. The law became effective April 8, 2020. The law applies to any covered employee who contracts the COVID-19 VIRUS after April 7, 2020. The law will automatically be repealed (law will sunset) May 1, 2021.

Let us know if you have any additional questions or concerns regarding this opinion. There definitely are some different ways this could be parsed out. Our opinion is a good faith interpretation of the statutory language, but I would anticipate the plaintiff’s bar (and possibly the bench) would try to stretch this presumption as far as it could go. To wit, they will likely argue that any employee working in health care, home care, or long-term care settings who had direct COVID-19 patient care, regardless of the physical environment, is presumed covered.

Sincerely,

A handwritten signature in black ink that reads "Larry J. Peterson". The signature is written in a cursive style with a large initial "L".

Larry J. Peterson  
[LJP@plklaw.net](mailto:LJP@plklaw.net)  
Direct: (651) 964-1367

LJP