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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**55th Legislature, 1st Session, 2021**

<b>Bill Number</b>	<u>*HB268/aHLVMC</u> <u>/aHFI#1</u>	<b>Sponsor</b>	<u>Hochman-Vigil/Chandler</u>
<b>Tracking Number</b>	<u>.218812.3</u>	<b>Committee Referrals</b>	<u>HLVMC/HSEIC</u>
<b>Short Title</b>	<u>Coronavirus &amp; Workers' Comp</u>		
<b>Analyst</b>	<u>Canada</u>	<b>Original Date</b>	<u>02/15/2021</u>
		<b>Last Updated</b>	<u>03/09/2021</u>

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**BILL SUMMARY**

Synopsis of HFI Amendment #1

The House Floor Amendment #1 to \*HB268 (\*HB268/aHLVMC/aHFI#1) changes when the contraction of Covid-19 needs to take place to be tied to employment from January 31, 2023 to the end of the public health emergency as declared by the governor. \*HB268/aHLVMC/aHFI#1 also changes the definition of “essential employee” to first responders, medical personnel, teachers, construction trade workers, and other employees who work at care centers caring for those diagnosed with Covid-19.

Synopsis of HLVMC Amendment

The House Labor, Veterans’ and Military Affairs Committee Amendment to HB268 (\*HB268/aHLVMC) clarifies that the contraction of the coronavirus disease is presumed to be an "injury by accident arising out of and in the course of employment" if the employee establishes the employer did not strictly comply with the related public health orders and the employer fails to rebut the presumption. \*HB268/aHLVMC further clarifies that the public health orders related to Covid-19 employers must comply with must be in place any time during the fourteen days prior to the diagnosis from an employee. \*HB268/aHLVMC omits the requirements that evidence must be presented in a court of competent jurisdiction by an employer to refute the presumption. The bill also expands the definition of “essential employee” to include employees of a business that have been permitted to operate with limitations pursuant a public health order of the governor or the secretary of health.

Synopsis of the Original Bill

House Bill 268 (\*HB268) amends Section 52-1-19 NMSA 1978, the Workers’ Compensation Act, to add a rebuttable presumption determining when a case of Covid-19 contracted by an essential worker is work-related and can be eligible for worker compensation. This is a temporary provision that would be allowable until January 31, 2023.

The bill has an emergency clause.

This analysis is only specific to the impact to public schools.

## **FISCAL IMPACT**

The bill does not include an appropriation.

Expanding workers compensation eligibility related to Covid-19 contraction has the potential to increase the number of claims filed. Number and severity of claims can affect risk insurance premiums. Albuquerque Public School district is self-insured for workers compensation and the Public School Insurance Authority (NMPSIA) provides worker compensation coverage for the other 88 school districts, including 96 charter schools. NMPSIA advised the Public Education Department (PED) to request an increase of \$5.5 million for FY22 for risk programs, which includes worker compensation. The House Appropriations and Finance Committee Substitute for House Bill 2 and 3 (HB2/HAFCS) includes an appropriation for risk programs in the state equalization guarantee flat with the FY21 appropriation for this purpose. According to NMPSIA, over the past several years, worker compensation claim frequency has been steadily decreasing while claim severity has been steadily increasing. Schools pay premiums for risk coverage based on their own claims. The potential cost increase cannot be determined at this time because it depends on the number of claims filed and severity of claims related to Covid-19.

HB2/HAFCS also requires school district and charter schools to offer their employees working in a school, office, or other in-person settings the same paid sick leave or expanded family and medical leave related to Covid-19 under the federal Families First Coronavirus Response Act that expired in December of 2020. The provisions note that a school district or charter school may be able to use federal funding for this purpose.

## **SUBSTANTIVE ISSUES**

\*HB268/aHLVMC/aHFI#1 specifies an essential employee, which includes teachers, can file a worker compensation claim if the employee is diagnosed with Covid-19 and the employee has established the employer did not strictly comply with public health orders that were in place 14 days prior to the employee's Covid-19 diagnosis. If both conditions are met, the diagnosis is seen as an accidental injury during employment, an incident caused by employment, and a disability that is a direct result of the accident. \*HB268/aHLVMC/aHFI#1 specifies if the employer can rebut the presumption with evidence that the employee engaged in conduct or activities outside of employment that violated the public health orders related to Covid-19, the employee does not qualify to receive workers compensation. New Mexico state law specifies a process for workers compensation proceedings.

The Workers' Compensation Administration notes workers compensation casual presumptions remove the requirement of the burden of proof from the employee in other jurisdictions. The presumption established in \*HB268/aHLVMC/aHFI#1 requires the employee to first prove substantial noncompliance by the employer before they qualify for a workers compensation claim under these provisions.

***Covid-19 Safety Precautions in Public Schools.*** \*HB268/aHLVMC/aHFI#1 establishes the employee must prove the employer did not strictly comply with existing public health orders for an employee to be eligible to submit a claim under this new provision. Since the start of the Covid-19 pandemic, public schools have not been fully open and must meet specific health and safety related requirements to allow in-person learning, making this type of employer potentially less susceptible to these types of claims.

March 2021 marks a year since the beginning of school closures in response to the Covid-19 public health emergency. After an initial pause for all in-person learning during spring 2020, schools have fallen in and out of eligibility to open based on Covid-19-related metrics, school preparedness, and other school-specific characteristics. School closures during this time were driven by a combination of school board decisions and PED guidance.

At the beginning of March 2021, PED announced that all schools should be fully open by April 5 to make full days of in-person learning available to all students seeking to return to in-person. According to PED, the decision to expand in-person learning was the result of collaboration between the Governor’s Office, PED, the Department of Health, school and school district leaders, unions, educators, and school staff to establish safety precautions in preparation for more in-person learning. This coalition of leaders and stakeholders worked to collect Covid-19 data, implement Covid-19 safe practices, conduct surveillance testing, improve air quality, distribute personal protective equipment, monitor the rapid response watch list, and prioritize educators for the vaccine. PED also recently announced that 15 thousand educators, which may include early childhood and higher education employees, have received at least one shot of the vaccine so far; the state plans to ensure all educators will get at least one shot by the end of March. PED shared there are currently 50,864 kindergarten through 12<sup>th</sup> grade staff members.

In the fall, PED created an anonymous reporting portal to allow anyone to report concerns that a school or school district is not meeting the safety protocols outlined by the department. The department reports this tool will continue to be used to monitor compliance with the safety protocols PED required for reopening to in-person learning.

***Covid-19 and School Employees.*** Mirroring international and national studies, data from rapid responses show schools have been able to avoid school-based outbreaks in New Mexico. Additionally, PED reports no New Mexico school has reached the level that would qualify for a closure; schools that qualify for closure would have to have four instances where the Department of Health responded to a workplace because one or more employees tested positive in a 14-day period. Since schools began reentry in September, the overall positivity rate of school state surveillance testing is 1 percent. The positivity rate since expanding to in-person learning in early February is 0.3 percent.

## **RELATED BILLS**

Relates to HB38, Paid Family and Medical Leave, which establishes a statewide paid sick leave program.

Relates to \*HB37, Paid Sick Leave Act, which establishes a statewide paid sick leave program.

Relates to HB20, Health Workplaces Act, which requires employers to provide paid sick leave to employees.

## **SOURCES OF INFORMATION**

- LESC Files
- Workers’ Comp Administration

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