

Rules appearing under this heading are filed under the authority granted by section 536.025, RSMo. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety, or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the *Missouri* and the *United States Constitutions*; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons, and findings which support its conclusion that there is an immediate danger to the public health, safety, or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

Rules filed as emergency rules may be effective not less than ten (10) business days after filing or at such later date as may be specified in the rule and may be terminated at any time by the state agency by filing an order with the secretary of state fixing the date of such termination, which order shall be published by the secretary of state in the *Missouri Register* as soon as practicable.

All emergency rules must state the period during which they are in effect, and in no case can they be in effect more than one hundred eighty (180) calendar days or thirty (30) legislative days, whichever period is longer. Emergency rules are not renewable, although an agency may at any time adopt an identical rule under the normal rulemaking procedures.

**Title 8—DEPARTMENT OF LABOR AND
INDUSTRIAL RELATIONS
Division 50—Division of Workers' Compensation
Chapter 5—Determination of Disability**

EMERGENCY RULE

8 CSR 50-5.007 Evidence of Occupational Disease Exposure for First Responders

PURPOSE: The intent of this emergency rule is to clarify that certain evidence related to exposure of First Responders to COVID-19 will be available for review in proceedings under Chapter 287. This rule is necessary due to the expiration of a presumption of exposure as provided in 8 CSR 50-5.005. This emergency rule is also for the purpose of clarifying eligibility for workers' compensation benefits and providing protections for First Responders in the state of Missouri related to the COVID-19 public health emergency. This emergency rule implements clarifications to the Missouri Workers' Compensation Law effected by the Governor's Executive Order 20-19 (originally Executive Order 20-02) and pursuant to the Governor's emergency powers under Chapter 44, RSMo.

EMERGENCY STATEMENT: This emergency rule incorporates and implements clarifications to the Missouri Workers' Compensation Law effected by the Governor's Executive Order 20-19 (originally Executive Order 20-02) and pursuant to the Governor's emergency

powers under Chapter 44, RSMo. Section 44.100, RSMo provides that during a state of emergency the Governor is authorized to "perform and exercise such other functions, powers and duties as may be necessary to promote and secure the safety and protection of the civilian population." Emergency enactment of this rule is necessary to preserve the compelling governmental interest of protecting the health and welfare of First Responders during a time of declared state and national emergency relating to the COVID-19 pandemic.

This emergency rule directs that an affirmation from the employer of a First Responder that the First Responder's duties were such as to create an exposure to COVID-19 not typically required of the general public may be relied upon as competent and substantial evidence.

Emergency enactment of the rule will also assist the Missouri State Department of Health and Senior Services in performing their critical duties of providing for the health and welfare of Missouri citizens.

The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Missouri Division of Workers' Compensation believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed January 15, 2021, becomes effective February 1, 2021, and expires July 30, 2021.

(1) A First Responder, defined as a law enforcement officer, firefighter or an emergency medical technician (EMT), as such occupations are defined in Section 287.243, who has contracted COVID-19 may present evidence in the form of an affirmation from their employer that the First Responder's duties were such as to create an occupational exposure to COVID-19. In any proceeding under Chapter 287, such affirmation may be relied upon as sufficient competent evidence in the record for a finding that the occupational disease arose out of and in the course of such employment and that such occupational exposure was the prevailing factor in causing the resulting medical condition, disability and/or death. When such affirmation is presented, medical conditions, disability and/or death resulting from COVID-19 shall be considered to follow as an incident of an occupational disease and shall not be considered an ordinary disease of life to which the general public is exposed outside of the employment.

(2) The authorization referred to in Section (1) shall be made on the following form, the sole purpose of which is to be submitted as evidence in a proceeding under Chapter 287. As used in this section, the term "Authorized Employer Representative" shall mean a person with supervisory authority over, and with personal knowledge of the daily work-related duties of, the named First Responder.

Affirmation of Employer—Scope of Employment of First Responder Employee

By signing this form I affirm by personal knowledge or belief that the individual named below is a First Responder as defined in Section 287.243 and that such individual’s duties arising in the normal scope and course of his/her employment do require and cause in-person interactions with the public, in a manner not typically required of the general public, as to expose him/her to COVID-19 and that such individual did perform such duties during the time of a declared state of emergency.

This form shall constitute evidence that may be offered in a proceeding under Chapter 287.

First Responder Employee (Name): _____

Employer: _____

Authorized Employer Representative (Name/Title): _____

Authorized Employer Representative (Signature): _____

In Witness whereof I have hereunto subscribed my name and affixed by official seal
this _____ day of _____, 20_____.

Notary Public

My Commission Expires:

(3) Section (1) shall not apply if a subsequent medical determination establishes that the First Responder did not contract COVID-19.

(4) Notwithstanding Section (1), if the weight of sufficient competent evidence demonstrates that a First Responder contracted COVID-19 resulting from exposure that was not related to the First Responder's employment, the claim shall not be compensable.

(5) The provisions of this emergency rule shall cease to be in effect at the expiration of the state of emergency declared in Executive Order 20-19 (originally declared in Executive Order 20-02) or any successor executive order extending the state of emergency, whichever occurs later, or upon the expiration of this emergency rule as set forth in Chapter 536.

AUTHORITY: section 287.650, RSMo 2016. Emergency rule filed Jan. 15, 2021, effective Feb. 1, 2021, expires July 30, 2021.

PUBLIC COST: Due to the state of emergency caused by the COVID-19 pandemic and the difficulty of predicting the viral infection rates and the potential long-term health effects and the fatality rates of First Responders, the fiscal impact of this emergency rule is unknown. Since determinations of benefits under Chapter 287 are decided on a case-by-case basis by an administrative law judge, precise estimates are unknowable. However, based on reports of first injury and claims filed during 2020, an estimate for the impact of this rule may range from between \$0 and \$318,780.

PRIVATE COST: The overwhelming majority, if not all, of the First Responders covered by this emergency rule are employees of state or local governments. Due to the state of emergency caused by the COVID-19 pandemic and the difficulty of predicting the viral infection rates, the potential long-term health effects and the fatality rates of First Responders, the fiscal impact of this emergency rule is unknown.

**FISCAL NOTE
PUBLIC COST**

- I. Department Title: Title 8 – DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**
- Division Title: Division 50 – DIVISION OF WORKERS’ COMPENSATION**
- Chapter Title: Chapter 5 – DETERMINATION OF DISABILITY**

Rule Number and Name:	8 CSR 50-5.007 Evidence of Occupational Disease Exposure for First Responders
Type of Rulemaking:	Emergency

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Political subdivisions providing workers’ compensation for first responders as defined in the emergency rule.	Due to the state of emergency caused by the COVID-19 pandemic and the difficulty of predicting the viral infection rates and the potential long-term health effects and the fatality rates of First Responders, the fiscal impact of this emergency rule is unknown. Since determinations of benefits under Chapter 287 are decided on a case-by-case basis by an administrative law judge, precise estimates are unknowable. However, based on reports of first injury and claims filed during 2020, an estimate for the impact of this rule may range from between \$0 and \$318,780.

III. WORKSHEET

- See below.

IV. ASSUMPTIONS

- **PUBLIC COST:** Due to the state of emergency caused by the COVID-19 pandemic and the difficulty of predicting the viral infection rates and the potential long-term health effects and the fatality rates of First Responders, the fiscal impact of this emergency rule is unknown. Since determinations of benefits under Chapter 287 are decided on a case-by-case basis by an administrative law judge, precise estimates are unknowable. However, based on reports of first injury and claims filed during 2020, an estimate for the impact of this rule may range from between \$0 and \$318,780.
- **PRIVATE COST:** The overwhelming majority, if not all, of the First Responders covered by this emergency rule are employees of state or local governments. Due to the state of emergency caused by the COVID-19 pandemic and the difficulty of predicting the viral infection rates, the potential long-term health effects and the fatality rates of First Responders, the fiscal impact of this emergency rule is unknown.

**FISCAL NOTE
PRIVATE COST**

- I. Department Title: Title 8 – DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**
Division Title: Division 50 – DIVISION OF WORKERS’ COMPENSATION
Chapter Title: Chapter 5 – DETERMINATION OF DISABILITY

Rule Number and Title:	8 CSR 50-5.007 Evidence of Occupational Disease Exposure for First Responders
Type of Rulemaking:	Emergency

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
Any private entity made up of first responders as defined in the emergency rule.	Any private entity made up of first responders as defined in the emergency rule.	Due to the state of emergency caused by the COVID-19 pandemic and the difficulty of predicting the viral infection rates, the potential long-term health effects and the fatality rates of First Responders, the fiscal impact of this emergency rule is unknown.

III. WORKSHEET

- See below

IV. ASSUMPTIONS

- **The overwhelming majority, if not all, of the First Responders covered by this emergency rule are employees of state or local governments. Due to the state of emergency caused by the COVID-19 pandemic and the difficulty of predicting the viral infection rates, the potential long-term health effects and the fatality rates of First Responders, the fiscal impact of this emergency rule is unknown.**