

# Workers' Compensation and COVID-19

Lessons from the First Two Years  
and Questions for the Future

Michael S. Dworsky  
July 15, 2022

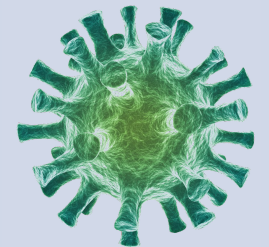
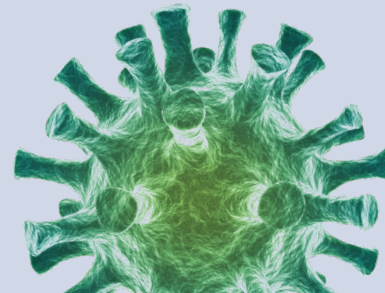


Institute for Civil Justice



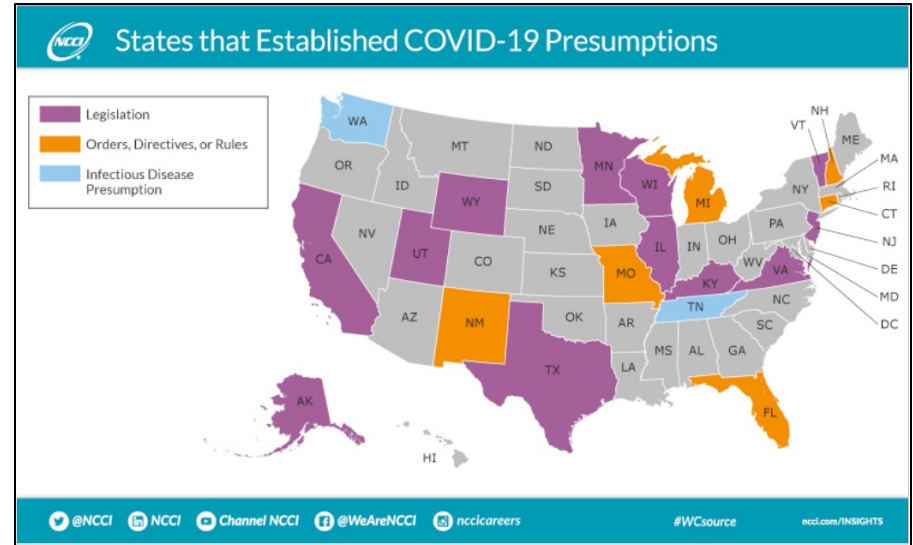
# Today's Talk

- COVID-19 presumptions in California and other states
- Findings from RAND's study of COVID-19 in California
  - Which occupations had high COVID-19 claim volumes?
  - How did WC fit into broader context of pandemic response?
- What remains unknown about COVID-19 in WC?
- Possible objectives for COVID-19 presumptions



# 20 States Established COVID-19 Presumptions For At Least Some Workers

- Presumption widely used for cancer, PTSD, other diseases
- COVID-19 is different
  - Infectious disease
  - High community spread
  - Extensive coverage of private-sector workers
- Coverage, requirements for presumption vary widely

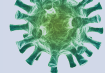
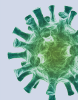
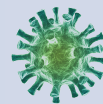
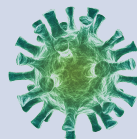
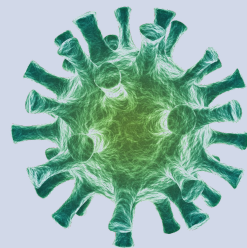
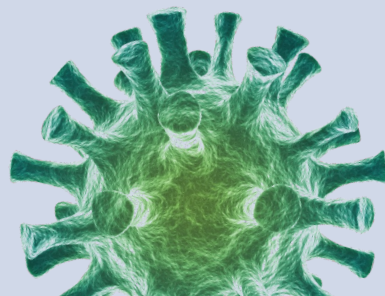


# California Adopted Separate COVID-19 Presumptions for Different Groups of Workers

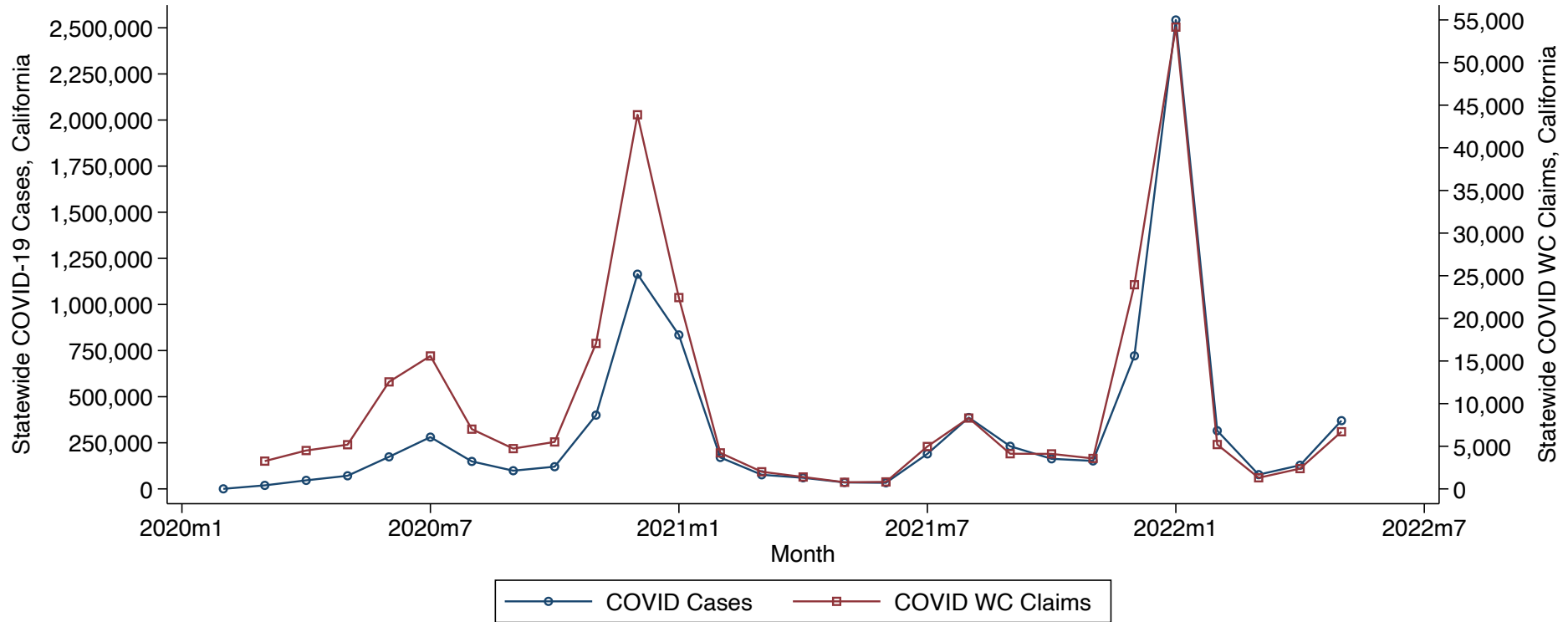
Year of Injury	2020												2021												2022												2023							
Month of Injury	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	...	
Public Safety Workers	None	Temporary Presumption:	<p style="text-align: center;"><b>Frontline Workers Presumption</b></p> <p style="text-align: center;">+ Work in covered occupation/industry (public safety or health care facilities)</p> <p style="text-align: center;">+ Positive PCR test</p>																																				No Presumption					
Health Care Facility or Home Health Workers																																												
All Other Workers	None	All workers outside home with diagnosed COVID-19	<p style="text-align: center;"><b>Outbreak Presumption</b></p> <p style="text-align: center;">+ Positive PCR test AND</p> <p style="text-align: center;">+ Outbreak period at job site</p> <p style="text-align: center;">Outbreak period = rolling 14-day window with:</p> <ul style="list-style-type: none"> <li>- 4 cases (smaller employers) or</li> <li>- 4% of workers (larger employers) at job site</li> </ul>																																									

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# COVID-19 Case Surges Led to Unprecedented Volatility in Claim Volumes



# We Studied Claim Volumes and Outcomes by Occupation, Industry, and Presumption

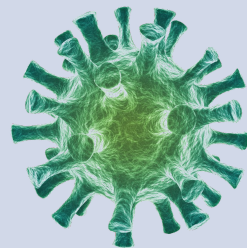
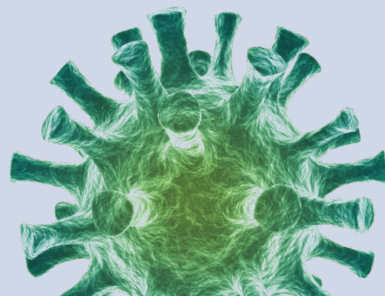
- We grouped workers who filed claims with date of injury through June 2021:
  - *Frontline workers* (Approximately 5% of state workforce)
    - Firefighters
    - Peace officers
    - Health care workers in facilities (hospital or SNF) or home health
    - Other workers in health care facilities
  - *Outbreak workers* (Other 95% of state workforce)
    - All other occupations and industries
- Limitation: no data on test results, outbreak status
- Not all claims in study actually covered by presumptions

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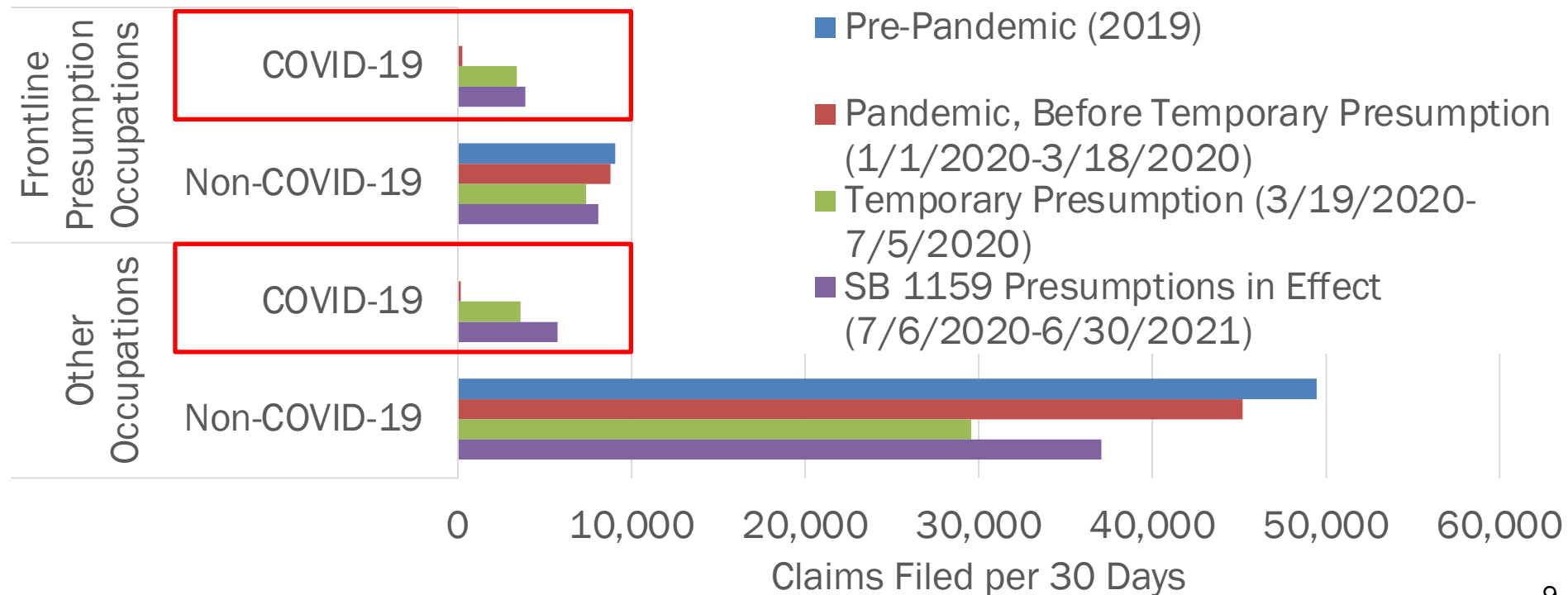
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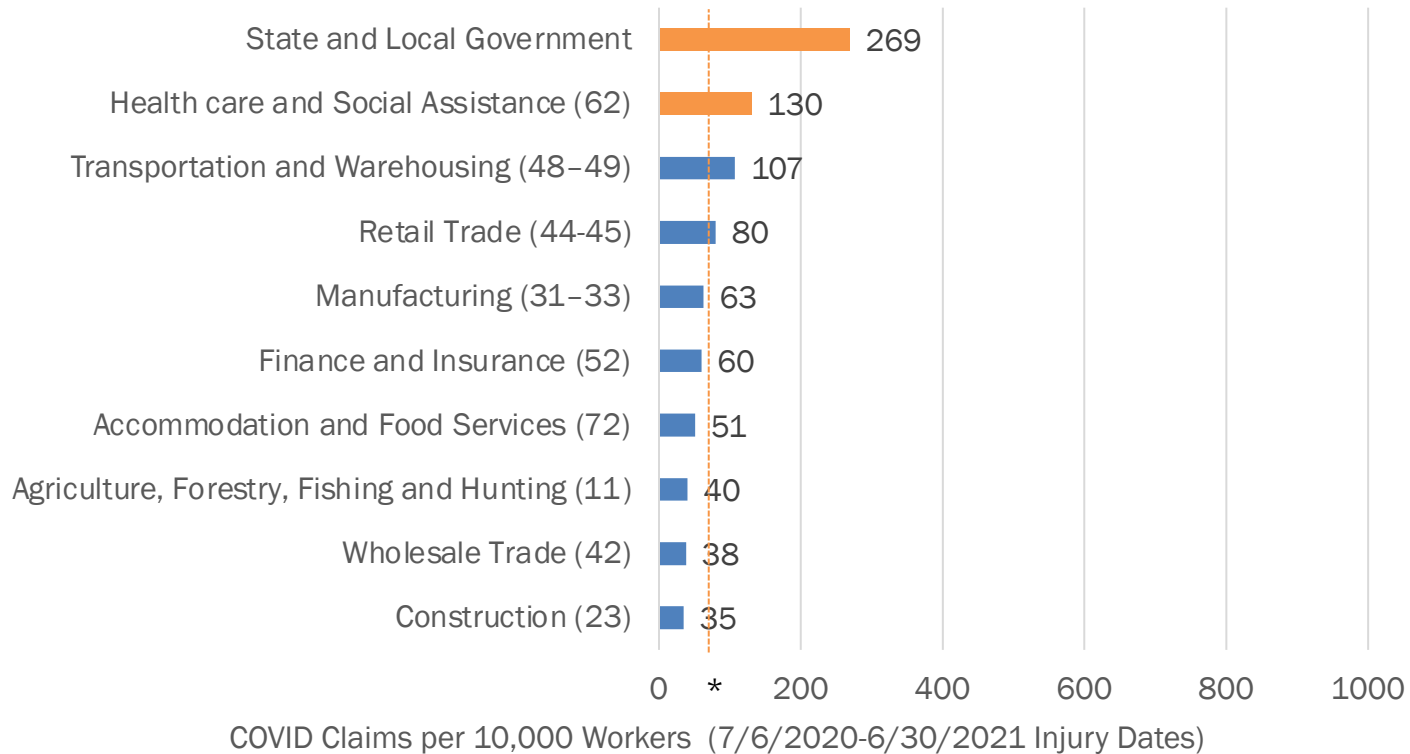




# Frontline Presumption Workers Filed 42% of COVID Claims Through July 2021



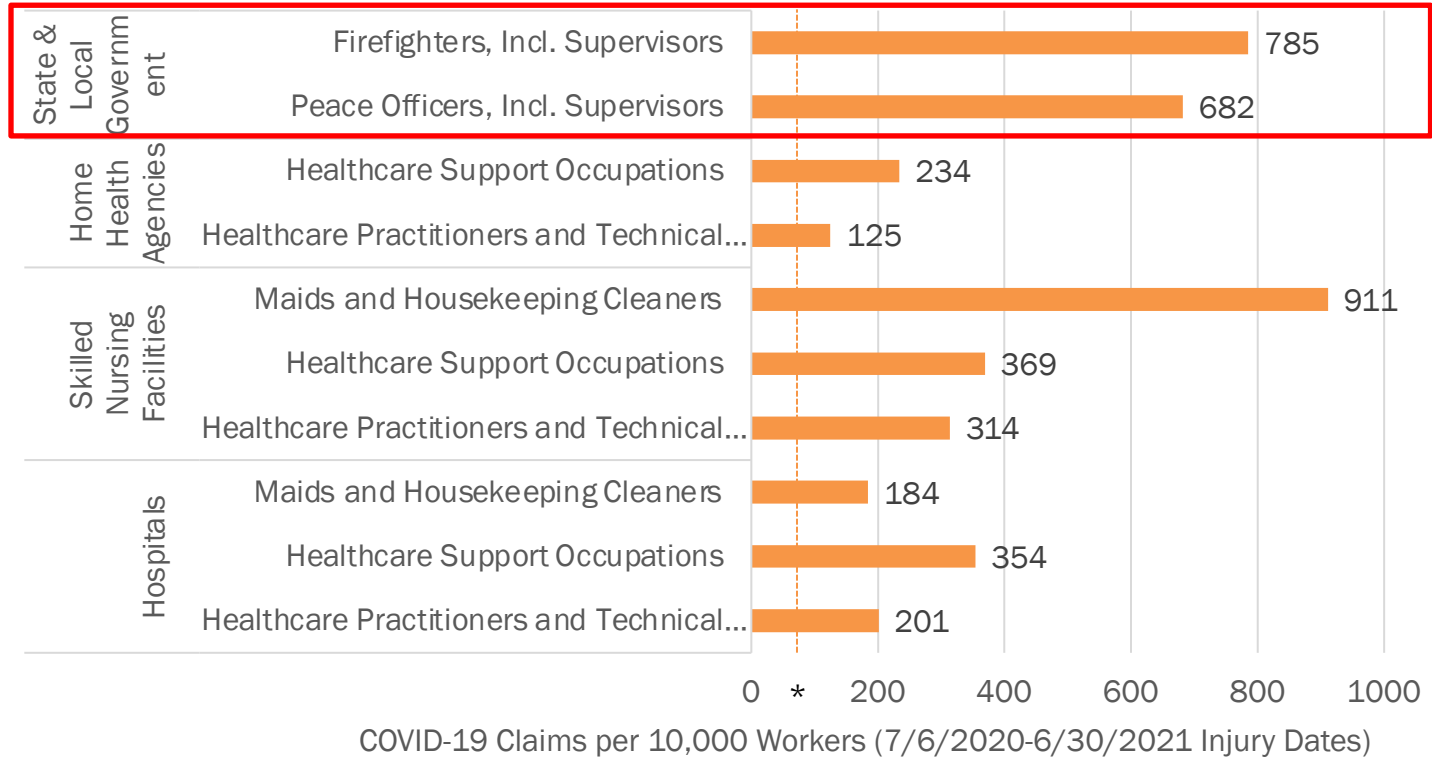
# Claim Rates Highest in Sectors Containing Workers Covered by Frontline Presumption



COVID Claims per 10,000 Workers (7/6/2020-6/30/2021 Injury Dates)

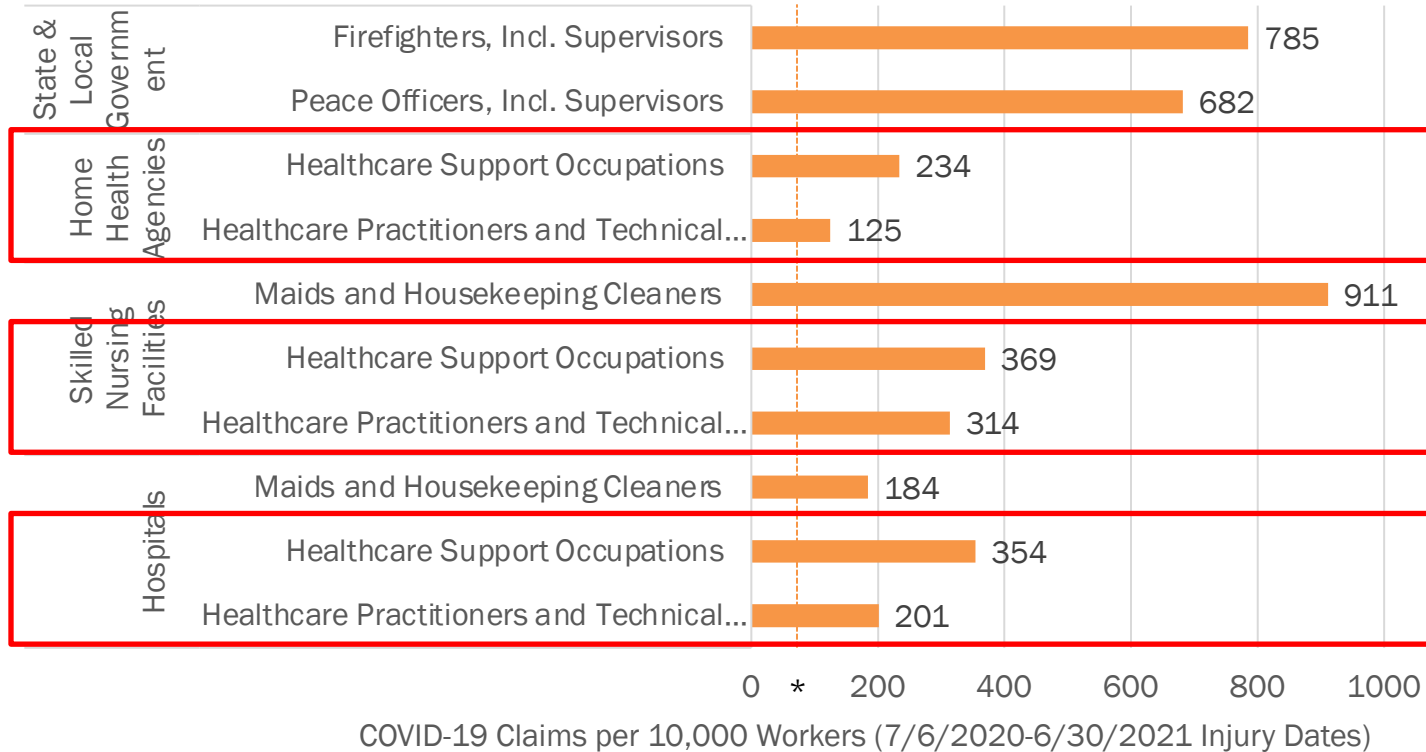
\* Statewide average = 70 COVID-19 claims per 10,000 workers

# COVID-19 Claim Rates Higher in Public Safety Than in Health Care



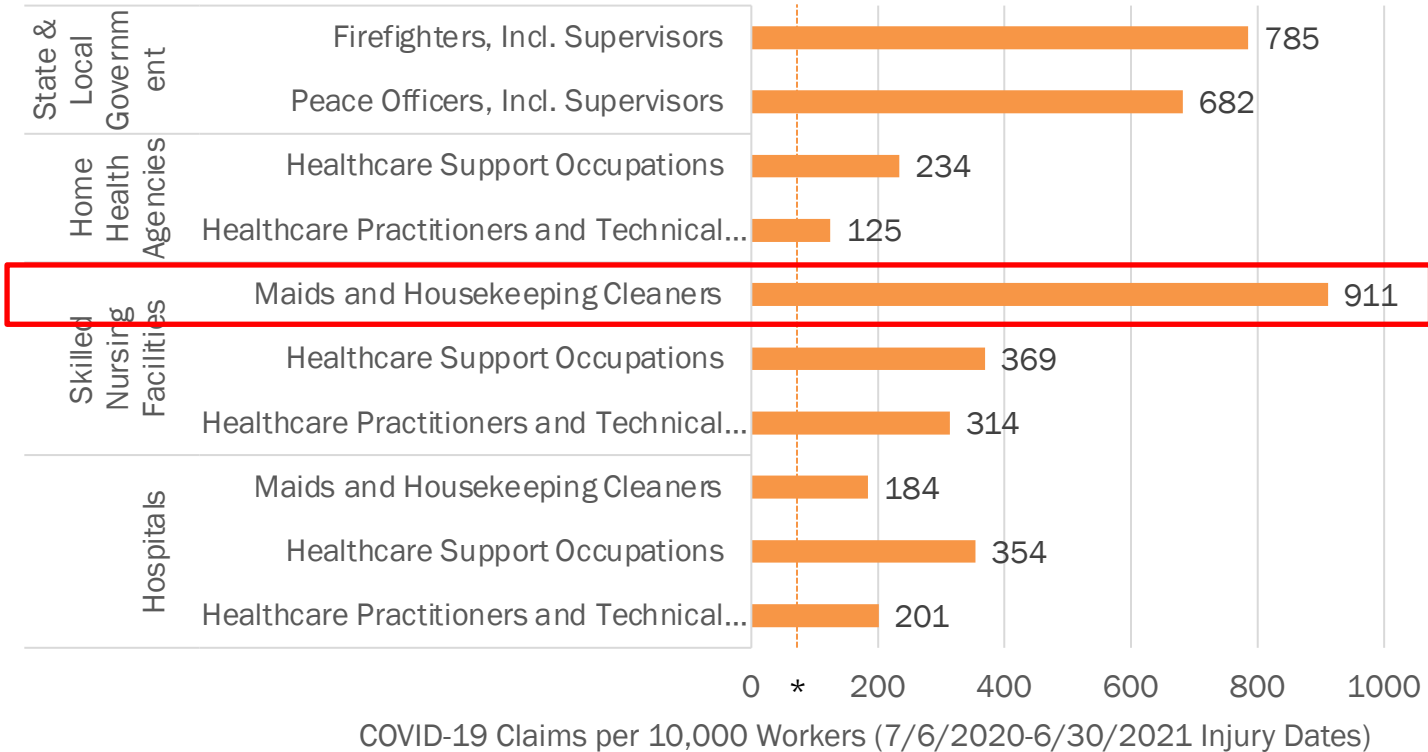
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# Health Care Support (e.g., Aides) Had More Claims than Practitioners (e.g., Nurses)



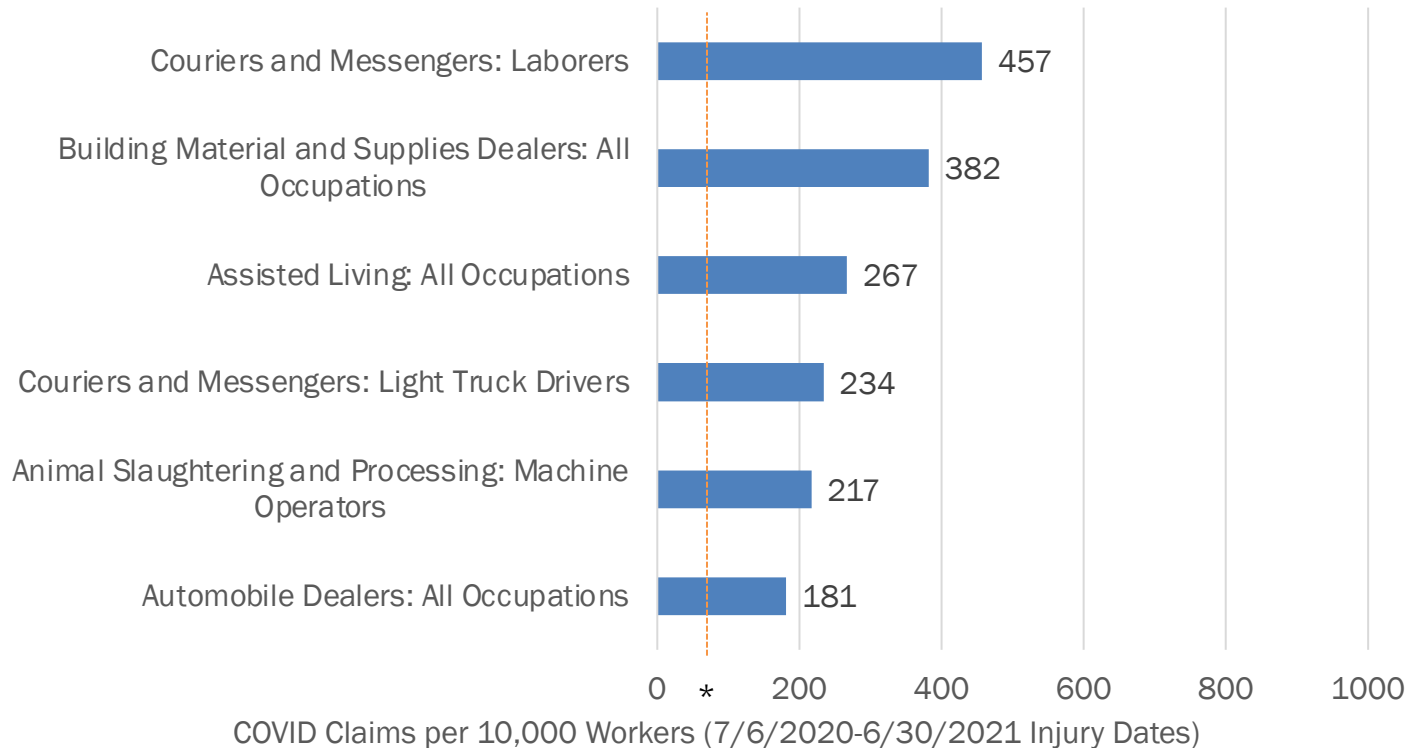
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# Highest Claim Rates in Health Care Facilities Were Among Maids, Cleaners in SNFs



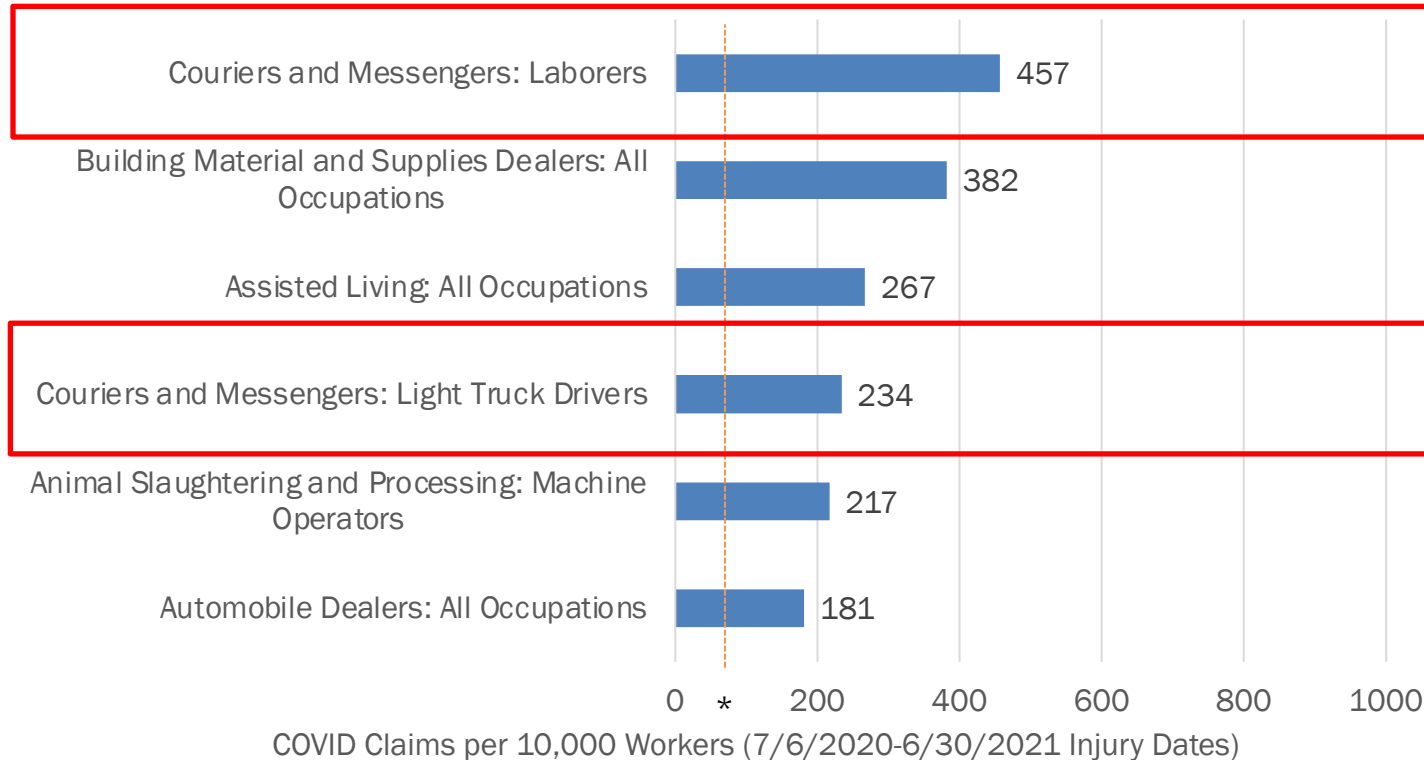
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# Some Jobs Covered by Outbreak Presumption Also Had High Claim Rates, Including ...



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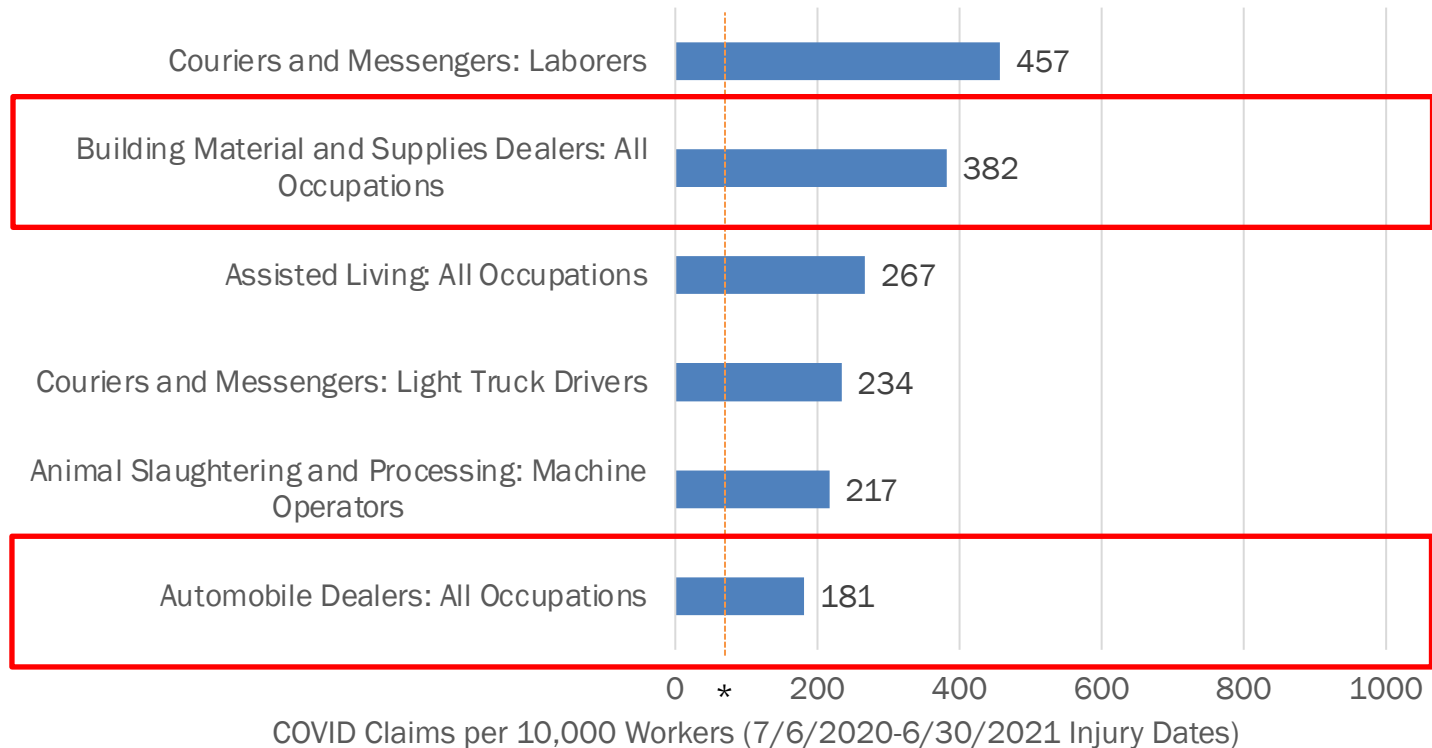
# Laborers and Truck Drivers for Couriers and Messengers (Shipping/Local Delivery)



COVID Claims per 10,000 Workers (7/6/2020-6/30/2021 Injury Dates)

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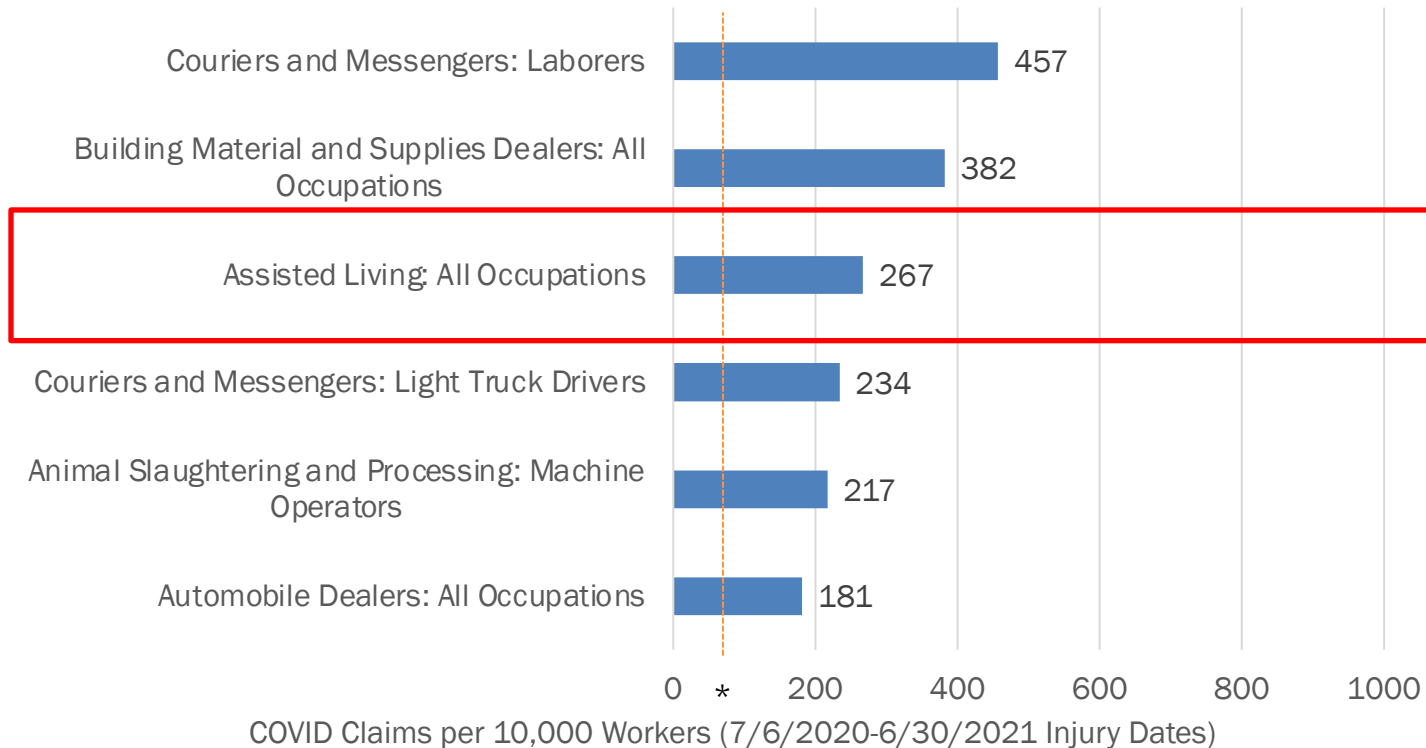
# Retail Workers in Hardware Stores and Auto Dealerships



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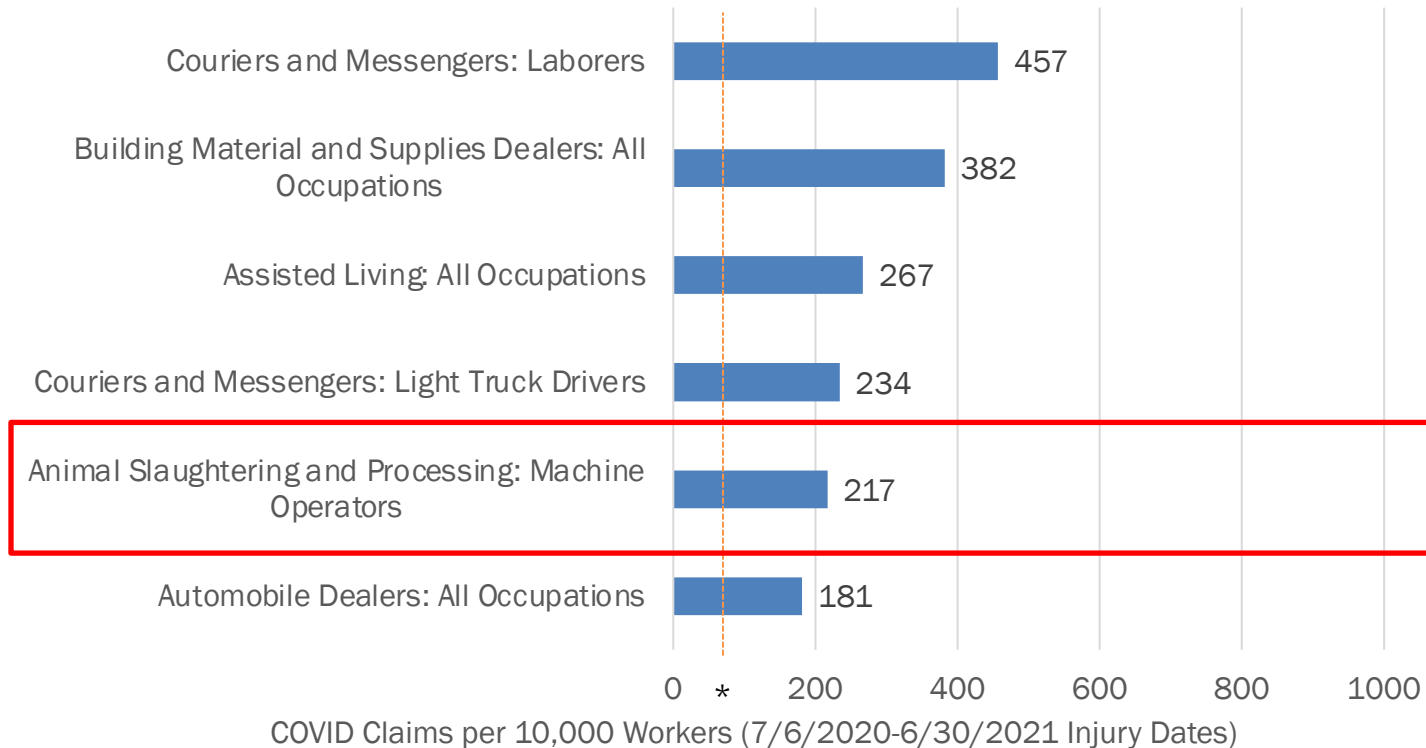


# Assisted Living Facilities Were Not Under Frontline Presumption, But Had Many Claims



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# Manufacturing Claims Were Below Average, but Slaughterhouses Had High Claim Rates



COVID Claims per 10,000 Workers (7/6/2020-6/30/2021 Injury Dates)

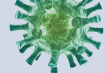
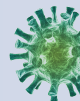
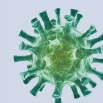
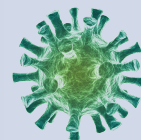
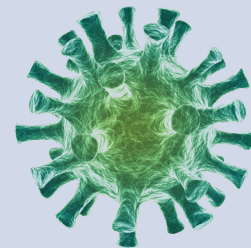
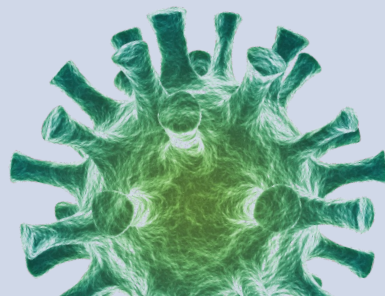
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- Health care payers also much more generous toward COVID-19
- Many of these policies have expired, others were unique to California
- WC may be more valuable to workers today than suggested by our study

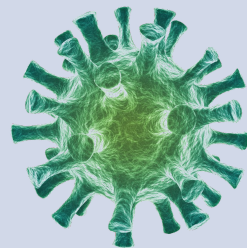
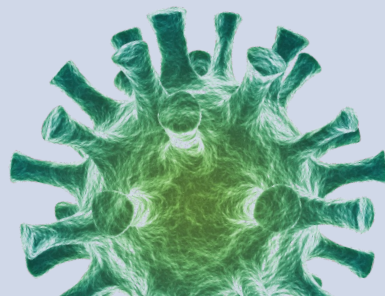


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# Many Questions about the California Experience Will Need To Be Revisited

- Settlements widely used in California WC system, but rarely observed on COVID-19 claims at time of study
- Study also conducted too soon to examine permanent disability ratings or benefits for COVID-19
- Did the presumptions actually reduce disputes and frictional costs?
- Could outbreak tracking (for WC) be done more effectively by coordinating with public health departments?

# Other Questions about COVID-19 in WC

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- Should COVID-19 claims be included in experience rating?
- Did retaliation, information barriers, or job insecurity prevent vulnerable workers from filing COVID-19 claims?
- Are other policies better suited than presumptions at promoting some of the objectives of WC?



# What Does Long COVID Mean for Workers, Employers, and WC Systems?

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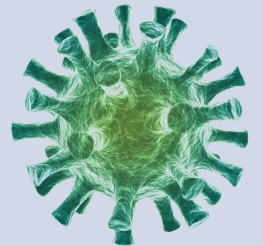
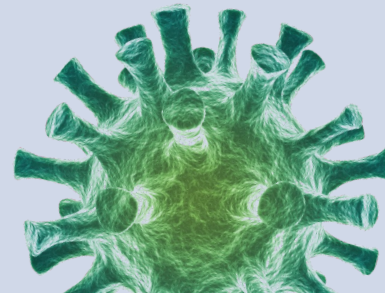
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- Will WC involvement affect quality of care for workers with long COVID?

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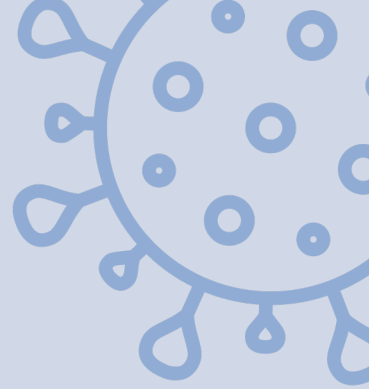
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- Guarantee access to medical care
- Reduce disputes and frictional costs
- Prevent mass tort/liability catastrophe

# Findings from California Suggest Some Goals Better Addressed by Other State, Federal Policies

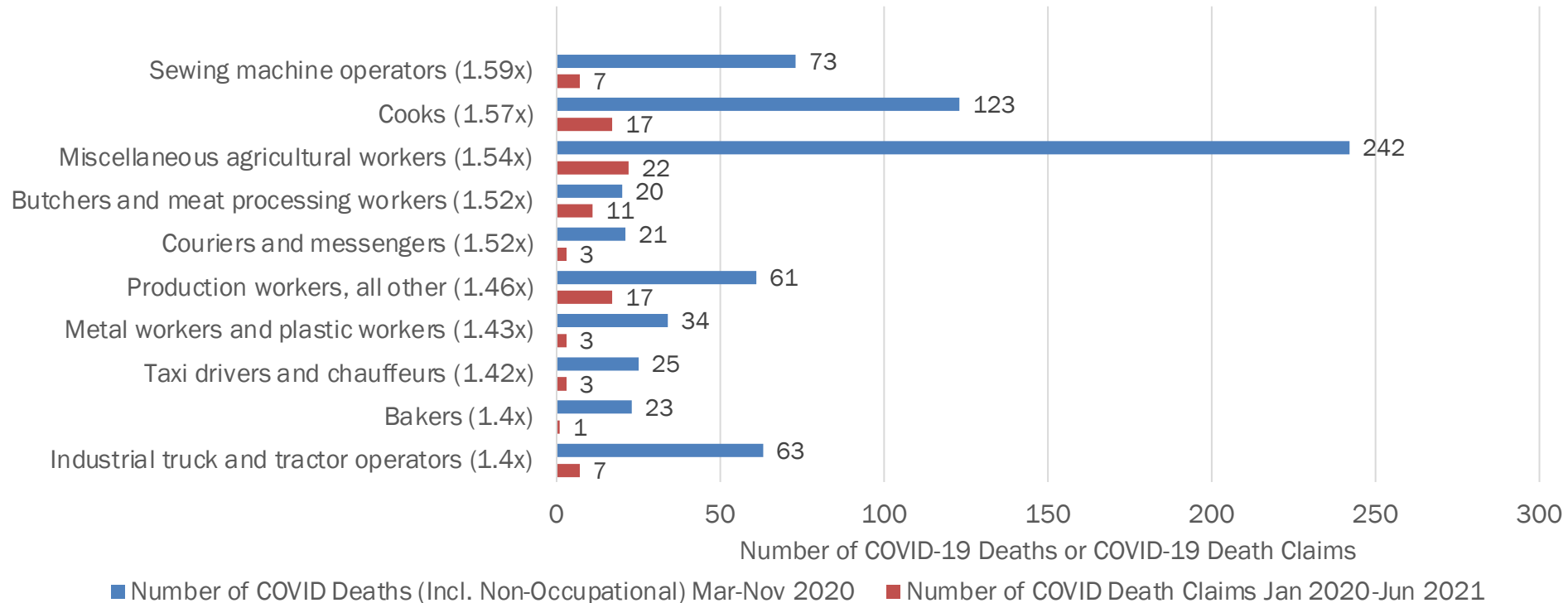
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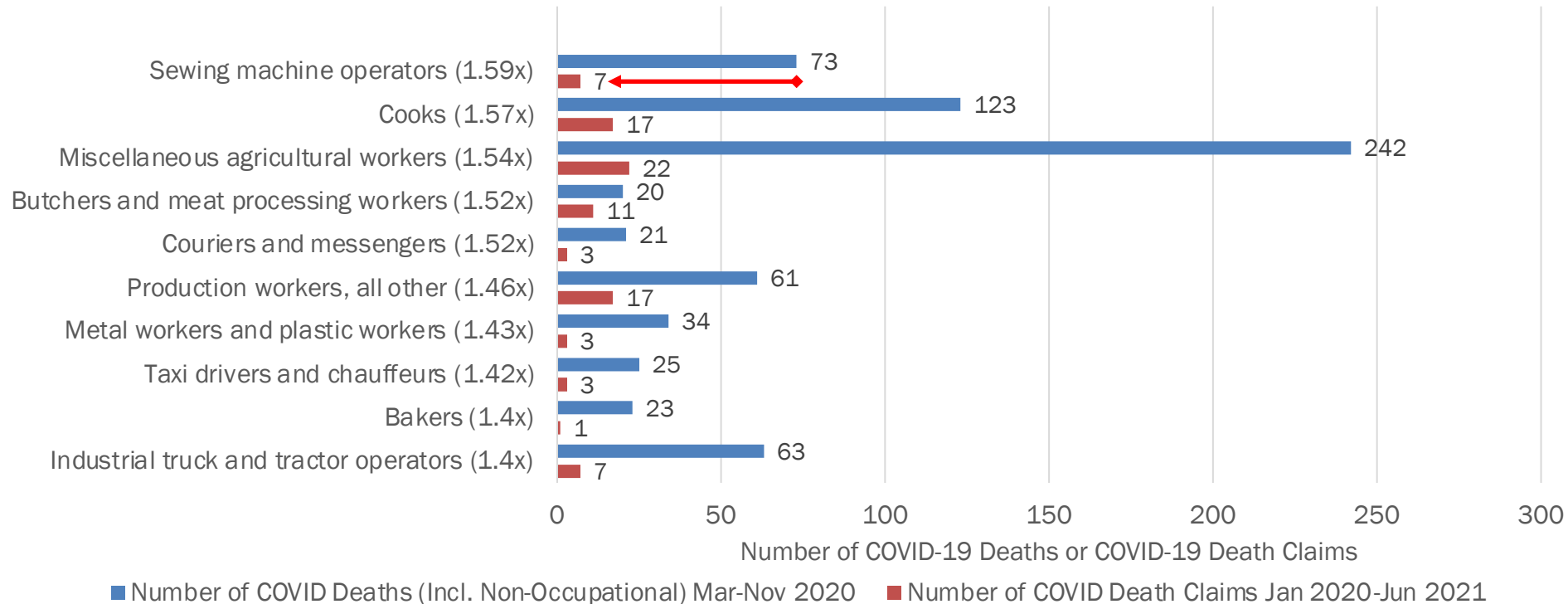


# Did Occupations with High COVID-19 Mortality Access WC Death Benefits?



Top 10 occupations by excess mortality from Mar-Nov 2020. Relative excess mortality for occupation in parentheses. COVID deaths aged 18-65 by occupation estimated by Chen et al. (2021) in analysis of statewide death records through November 2020.

# Few Death Claims So Far in Comparison to Early Estimates of Occupation-Specific Mortality



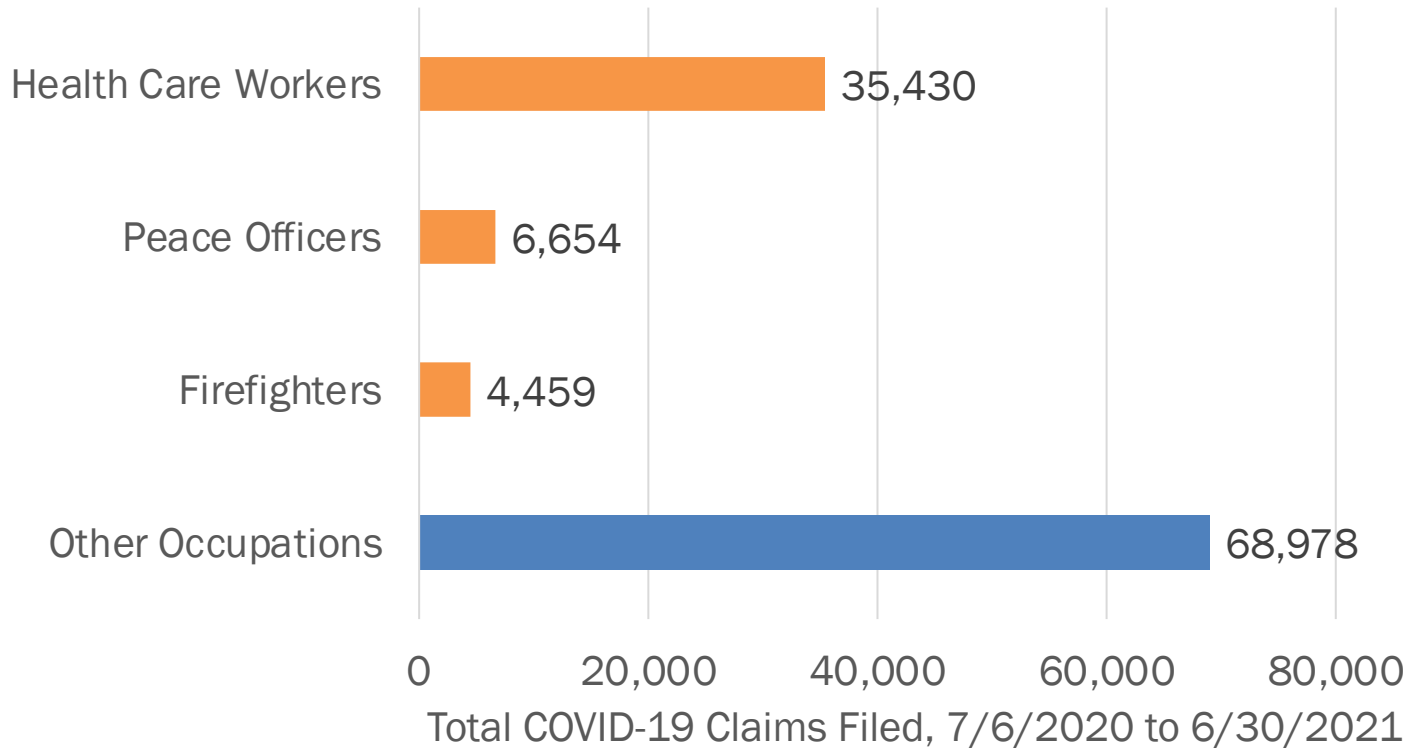
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# Other Key Findings from California

- Paid benefit patterns resemble COVID-19 in other states
  - Many indemnity-only claims (no paid medical)
  - High frequency of hospitalization, ICU care on claims with medical bills
  - Low costs paid to date, due in part to high denial rates
- Denial rates higher than on non-COVID claims
- Shortened investigation period (90 days to 45 or 30 days) led to faster denials, but insurers reported some challenges
- Fatality claims low compared to deaths among workers

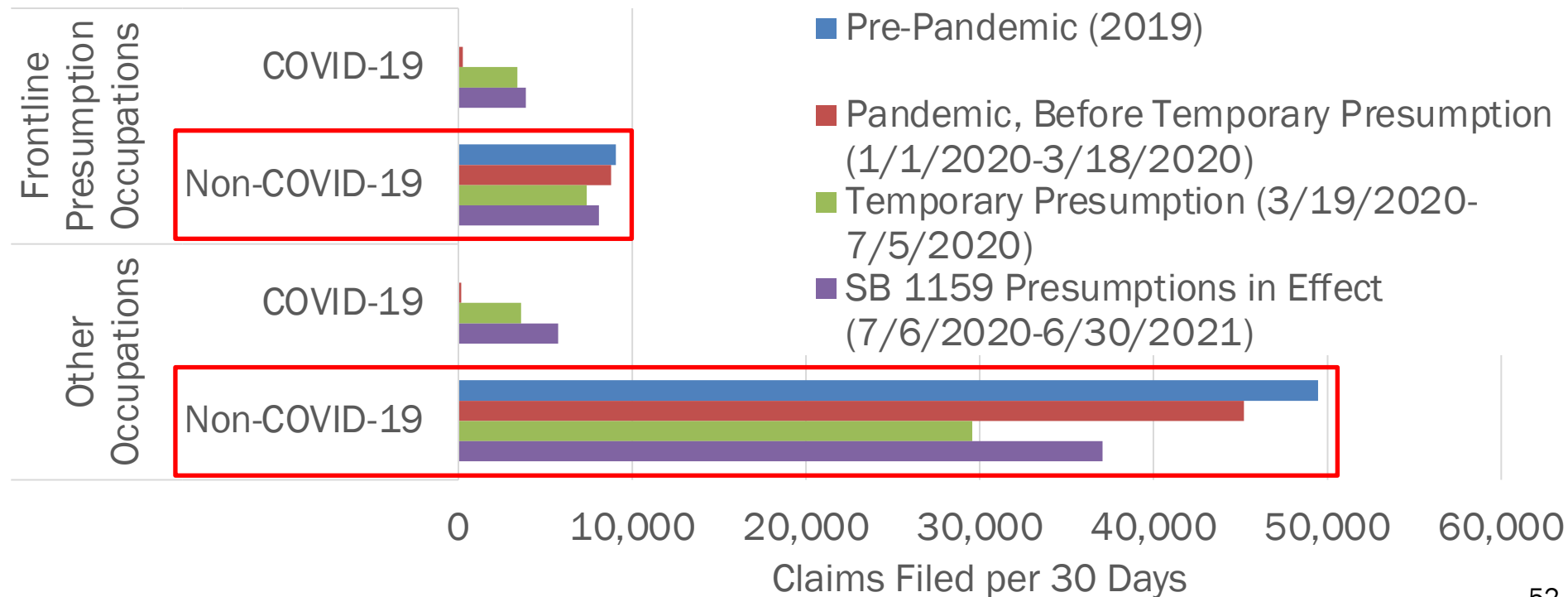
# Most Frontline Presumption COVID-19 Claims Filed by Health Care Workers



# COVID-19 Presumptions Vary in Scope, Evidentiary Requirements

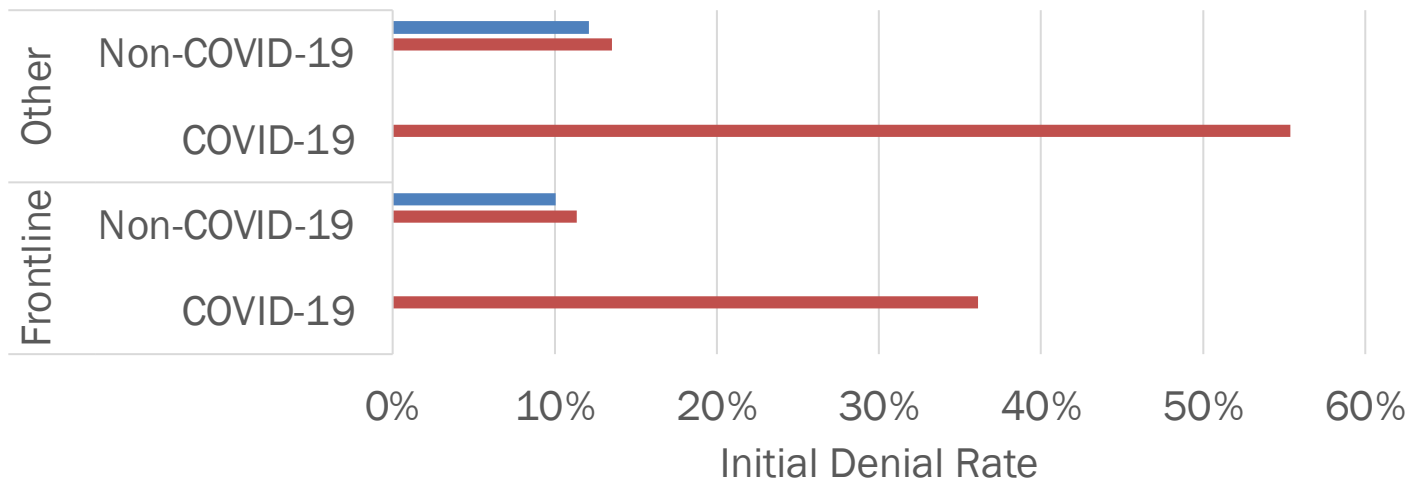
Which workers are specifically identified?	What counts as COVID?
Firefighters (IL, TX, KY, WI, NJ, TN)	Exposure (KY)
Peace Officers (TX, KY, MN)	Diagnosis by provider? (WI)
Correctional Officers (IL, KY, NJ, WA, MN)	Antibody test? (IL)
EMT (IL, TX, NJ)	Positive PCR test (CA)
Health care (IL, NJ, VA, TN, WA, MN)	
Food production or grocery (KY, IL, NJ, WA)	

# Non-COVID-19 Claim Volumes Dropped Sharply for Workers in Other Occupations



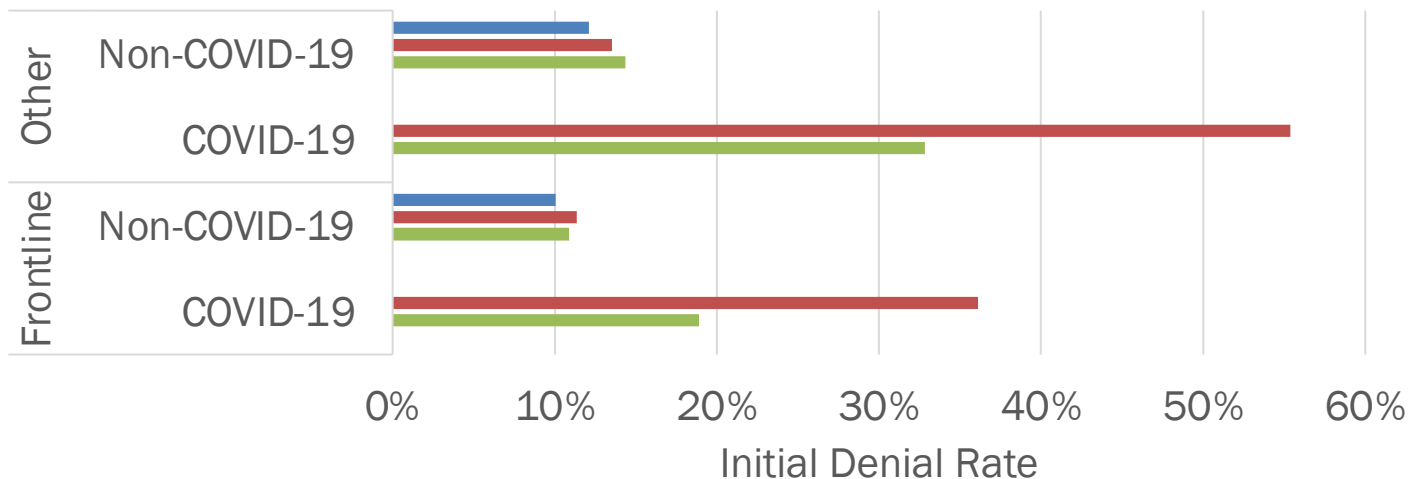
# Initial Denial Rates for COVID Claims

## Very High Before Presumptions



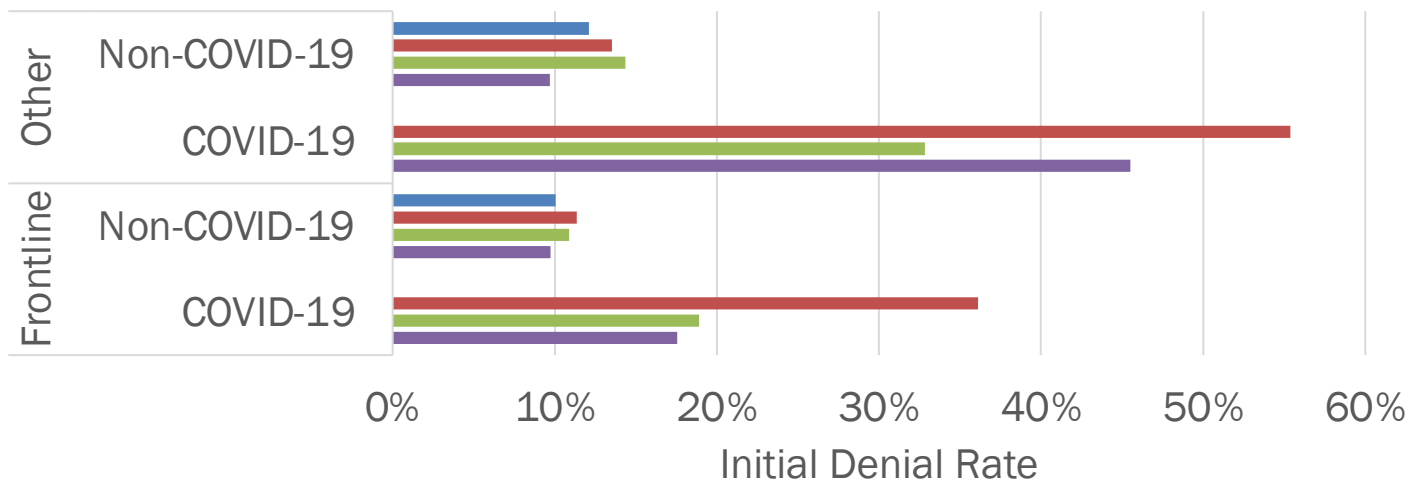
- Pre-Pandemic (2019)
- Pandemic, Before Temporary Presumption (1/1/2020-3/18/2020)
- Temporary Presumption (3/19/2020-7/5/2020)
- SB 1159 Presumptions in Effect (7/6/2020-6/30/2021)

# Temporary (Executive Order) Presumption Lowered Denial Rates for All Workers



- Pre-Pandemic (2019)
- Pandemic, Before Temporary Presumption (1/1/2020-3/18/2020)
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# Denial Rates for Other Occupations Rebounded Under Outbreak Presumption



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