

Workers' Compensation and COVID-19: Proving Work Comp Claims are Becoming Easier (with Illinois leading the way...)

Labor & Employment Law Update

By Peter Hansen on April 13, 2020

The question many employers have faced in recent weeks is whether or not COVID-19 could be covered by workers compensation. The answer is generally... “UNLIKELY — except those who are directly involved in dealing with the pandemic — i.e. health care workers.” Under workers compensation law 101, an injured or ill employee bears the burden of establishing a causal connection between the conditions under which the work is performed and the injury/illness at issue. This has been the case even for employees contracting infectious diseases such as Hepatitis-B or tuberculosis. However, there is a current movement to try and greatly expand workers compensation protections during the COVID-19 crisis.

In fact, today (April 13, 2020), the Illinois Workers' Compensation Commission issued an Emergency Rule declaring that any COVID-19 injury or incapacitation suffered by certain workers will be “rebuttably presumed to have arisen out of and in the course of employment” and to be “causally connected” to the hazards and exposures of the worker's employment.

While first responders and those working in health care are logically impacted given their continual exposure to the virus (and, always were protected by Illinois' work-comp law), the Emergency Rule notably expands its coverage to all “front line workers” — meaning all workers employed in any “essential business,” as identified in Governor J.B. Pritzker's March 20, 2020 Stay At Home Executive Order, will enjoy a rebuttal presumption that should they come down with COVID-19 it would be deemed to have been contracted in the course of and connected to their employment. The new standard removes the burden from the employee and requires the employer to present evidence disputing the cause of COVID-19. In light of its broader definition, employee-friendly Illinois has made it easier for a much broader segment of employees to successfully pursue COVID-19 related work comp claims.

By way of comparison, Indiana employees seeking coverage for COVID-19 still bear the burden of proving they contracted the illness in the course and scope of their employment. This is true even though the Indiana Worker's Compensation Board has clearly indicated that it intends to view such claims liberally. In an April 2 notice, the Board noted that it is "well accepted" that first responders, health care workers and "other employees whose jobs necessarily entail close interaction with many people in a public setting" are more likely than others to contract the virus as a result of performing their work duties and "urged" employers to presume such employees are covered by the Indiana Worker's Compensation Act if they are quarantined at the direction of the employer due to confirmed or suspected COVID-19 exposure or they are diagnosed with COVID-19 (with or without a test). However, if employers choose to dispute such claims, employees will ultimately still bear the burden of proving their case.

In Missouri, an employee bears the burden of proving that an occupational disease was contracted as a direct result of employment or that the employment subjected the worker to a hazard that is greater than that which the employee would have been subjected in non-employment life. However, in response to the COVID-19 pandemic, the Missouri Department of Labor and Industrial Relations issued its own Emergency Rule creating a presumption that first responders infected by or quarantined due to COVID-19 will be deemed to have contracted a compensable occupational disease arising out of or in the course of the performance of their employment. The Rule's definition, however, is limited to first responders and includes law enforcement officers, firefighters and EMTs.

In Wisconsin, for COVID-19 to be covered by worker's compensation, it must be established that contracting the disease was work-related. In other words, there must be evidence to prove that contracting COVID-19 arose out of the worker's employment while performing services incidental to employment. Thus, to date no policy changes have been implemented. However, legislation is pending that would presume that any injury to a "first responder" during this public health emergency is caused by the individual's employment.

Of course, as with all COVID-19 matters, readers must continue to monitor local and state developments carefully. We expect more states to broaden worker protections in the coming days and weeks.

With the above in mind, employers are encouraged to assess their injury/illness reporting processes and procedures and give particular attention to ensuring that the latest CDC guidelines concerning a safe work environment are followed closely.

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