



ILLINOIS WORKERS' COMPENSATION COMMISSION EXPANDS COVID-19 PROTECTION TO MOST FRONTLINE WORKERS

WHAT WE LEARNED: On April 13, 2020, the Illinois Workers' Compensation Commission issued an amendment changing the standard of proof for COVID-19 claimants alleging a work-related exposure, inserting a rebuttable presumption of work-related infection for the many workers still employed in the "essential jobs" being performed throughout the State. **The amendment states that when a first responder or front-line worker is incapacitated by COVID-19 during a state of emergency, it is presumed that the exposure arose out of and in the course of the worker's employment and is causally connected to the hazards of the worker's employment unless proved otherwise.**

WHO ARE ESSENTIAL WORKERS? Front-line workers covered under this amendment include those in the following industries: police, fire personnel, emergency medical technicians, or paramedics and all individuals employed and considered as first responders, health care providers engaged in patient care, correction officers, grocery and pharmacy; food, beverage and cannabis production; charitable and social service organizations; gas stations and businesses needed for transportation; financial institutions; hardware and supply stores; critical trades; mail, post, shipping, logistics, delivery and pick-up services; educational institutions; laundry services; restaurants for consumption off-premises; essential business and work-from-home suppliers; home-based care and services; residential facilities and shelters; professional services; day-care centers for children of essential workers; manufacture, distribution and supply chain for critical products and industries; critical labor union functions; hotels and motels; and funeral services.

AS AN EMPLOYER, WHAT SHOULD I KNOW? Based on reports, most cases of COVID-19 result in a full recovery. The new rule passed by the Commission, will allow an employee with COVID-19 to more easily prove the contraction of the virus was a work-related exposure. While this presumption of exposure is rebuttable, and employers are afforded the ability to dispute the claim, any such denial may be difficult to maintain where arbitrators are to presume exposure occurred at work. Folks rarely know where they caught a common cold or flu each year, and such is true with the highly contagious COVID-19 virus. It will be equally, if not more difficult for employers to prove a non-work-related exposure when trying to challenge claims. **If an employee tests positive for COVID-19, contact Corkill Insurance immediately, to develop a risk mitigation plan.** Each additional case of COVID-19 among your workforce will be significantly more difficult to defend.

CASE FACTS MATTER: While the rule makes a defense for employers more challenging, gather as many details up front when submitting a claim to a carrier. For example, was the employee working with the general public? What were the job site conditions and was the employee maintaining six feet between each coworker? Does the employee live with anyone else that is an essential worker and what is the cohabitant's occupation?

KEY POINT: Currently, the emergency rule is in place for 150 days and subject to an extension. This ruling was created with good intention, yet extremely impactful. Legal analysis has predicted appeals to challenge the IL rule change. We are unaware of a formal appeal process but are hopeful to see one surface.

WILL COVID-19 CLAIMS IMPACT MY EXPERIENCE MODIFIER? In addition to above ruling by the IWCC, we have seen two western states already commit that an employers' Experience Modifier will not be affected by any COVID-19 workers compensation claim. To be clear, these two states are not members of the NCCI (National Council on Compensation Insurance). NCCI has 38 member states, including Illinois. Although nothing has been decided, due to the rapidity of the ever-changing Coronavirus landscape, there will likely be some directive in the next few weeks. This concept only makes sense in that an employer should not be penalized for something that is almost assuredly beyond their control and that of their employees. Please understand, nothing has yet to be proposed, but we're confident that somehow this concept will be adopted in many member states.