



Illinois Significantly Alters Employers' Burden Of Proof In COVID-19 Workers' Compensation Claims

Insights

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Illinois has made it easier for certain workers who contract COVID-19 to be covered by the state workers' compensation system. In an emergency amendment to the Rules of Evidence applicable to matters before the Illinois Workers' Compensation Commission, many employers will now face a significant change in the applicable burden of proof that will make it much more challenging to defend such claims. Employers across the country will want to take note of this change because it is likely that other states will soon follow suit. What should Illinois employers do as a result of the change?

What Does The Emergency Amendment Change?

Under normal workers' compensation procedures, the burden is on the employee to establish that their injury or illness was directly caused by their duties. However, the Illinois emergency amendment creates a rebuttable presumption that a "First Responder" or "Front-Line Worker" who contracts COVID-19 contracted the virus at work.

Specifically, the amendment provides that "the exposure will be rebuttably presumed to have arisen out of and in the course of the petitioner's...employment and further, will be rebuttably presumed to be causally connected to the hazards or exposures" of the employee's employment.

The burden is then placed on the employer to rebut the presumption and provide evidence that the worker **did not** contract the virus at work. Given that COVID-19 is widespread in Illinois, this places a significant and difficult burden on employers to prove that the employee contracted the virus outside of work.

Who Does The Emergency Amendment Apply To?

The emergency amendment applies to individuals employed as "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...." Further, the amendment applies to "crucial personnel" including employees who work in the following areas:

- Stores that sell groceries and medicine;
- Food, beverage, and cannabis production and agriculture;
- Organizations that provide charitable and social services;

- Gas stations and businesses needed for transportation;
- Financial institutions;
- Hardware and supplies stores;
- Critical trades;
- Mail, post, shipping, logistics, delivery, and pick-up services;
- Educational institutions;
- Laundry services;
- Restaurants for consumption off-premises;
- Supplies to work from home;
- Supplies for Essential Businesses and Operations;
- Transportation;
- Home-based care and services;
- Residential facilities and shelters;
- Professional services;
- Day care centers for employees exempted by executive order;
- Manufacture, distribution, and supply chain for critical products and industries;
- Critical labor union functions;
- Hotels and motels; and
- Funeral services.

What Should Employers Do?

This emergency amendment is a significant departure from the recent guidance issued by the United States' Department of Labor's Occupational Safety and Health Administration (OSHA) which provides a recordkeeping enforcement exemption because of the difficulty in determining whether COVID-19 was contracted while on the job.

Employers in Illinois that are affected by this emergency amendment should maintain detailed records of sanitation efforts in the workplace and implement rules and procedures for ensuring that potentially infected employees are excluded from the workplace. These steps will be crucial in overcoming the presumption that an employee contracted the virus at work.

Conclusion

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to Fisher Phillips' Alert System to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, or any member of our COVID-19 Taskforce. You can also review our nationwide Comprehensive and

Updated FAQs for Employers on the COVID-19 Coronavirus and our FP Resource Center For Employers, maintained by our Taskforce.

This Legal Alert provides an overview of a developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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