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Coronavirus and Workers' Compensation

By David Leng, CPCU, Executive Vice President, Duncan Financial Group

Governors and state legislatures grappling with how best to protect employees, while balancing the interests of business, continue to look to emergency adjustments to the workers' compensation system to deal with COVID-19. The dominant issue is providing presumption of coverage for COVID-19 so that first responders and health care workers and, in some cases, other essential workers have unimpeded access to these benefits.

Legislation is pending or has passed in several states, but the laws vary significantly. In some states, the presumption is conclusive, scrapping workers' comp's basic tenet that employees must prove they were exposed to the coronavirus during the course of their employment.

In others, the presumption is rebuttable. The trend, which dramatically alters the workers' comp landscape, is so prevalent that the National Council on Compensation Insurance has been tracking this information.

More than a dozen states, including PA, are implementing changes. For example, PA HB 2396 provides for work-related hazardous duty.

Compensation Changes Nationwide

Not surprisingly, the action with the broadest implications came from California. On May 6, Gov. Gavin Newsom issued an executive order making it easier for employees to prove they contracted COVID-19 at work and get workers' compensation benefits.

While the presumption can be disputed if there is evidence the disease was contracted outside of work, the order effectively makes workers' comp coverage available to all employees who worked outside their homes from March 19 to July 5 and contracted COVID-19 within two weeks of performing on-the-job duties. It is expected to cost between \$600 million on the low end and \$2 billion if higher estimates come to fruition, according to the Workers' Compensation Insurance Rating Bureau.

In Illinois, a significant court challenge compelled the Workers' Compensation Commission to withdraw a sweeping emergency amendment that would have created a rebuttable presumption that when medical personnel, first responders, and essential employees contracted COVID-19, it was work related. Both houses

of the General Assembly have passed a more limited bill that was a compromise measure that both businesses and workers' advocates could live with.

It provides death benefits for first responders who were presumably infected with COVID-19 on duty between March 9 and Dec. 31; gives workers' compensation benefits for essential workers under certain conditions; and provides businesses a path to rebuttal.

The term "COVID-19 first responder or front-line worker" is defined in the bill as "all individuals employed as police, fire personnel, emergency medical technicians, or paramedics; all individuals employed and considered as first responders; all workers for health care providers, including nursing homes and rehabilitation facilities and home care workers, correction officers, and any individuals employed by essential businesses and operations," as defined in a March executive order. It also made clear that an employee's home or a residence was not a place of employment, except for home-care workers. Further, COVID-19 claims would not count against employers' experience modification and premiums.

Employers can rebut claims under certain conditions if they can demonstrate the workplace was following current public health guidelines for two weeks before the employee claimed to have contracted the virus; can provide proof that the employee was exposed by another source outside of the workplace; or the employee was working from home for at least 14 days before the injury claim. Documentation will be critical to support rebuttals. The bill was expected to be signed by the Illinois governor.

Increasing Costs

Employers and insurers are concerned that these presumption policies will increase insurance costs for employers at a time when businesses are already facing significant financial challenges.

The Minnesota Senate passed a bill that created a coronavirus relief fund with stipulations that the funds would help local government organizations cover workers' compensation costs related to COVID-19, among other needs generated by the pandemic.

While few states have extended presumption beyond health care workers and first responders, some have issued warnings about the handling of COVID-19 claims.

Recently, the Industrial Commission of Arizona issued

a policy statement noting "claim denials related to COVID-19, like any claim denial, must be 'well-grounded in fact' and 'warranted by existing law'" or based upon a good faith argument for the extension, modification, or reversal of existing law.

PA Underwriting Rule Changes

In early May, the Pennsylvania Comp Rating Bureau posted the rules relating to COVID-19, effective March 1 to Dec. 31.

These changes allow for:

- Temporary reclassification to 953 (clerical) for non-clerical employees who are now doing clerical work at home during the crisis.
- Exclusion of payroll for wages paid to employees who are performing no services to the employer. (This payroll will be assigned to Code 1212.)
- Exclusion of COVID-19 claims from experience modifier rating.



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Keystone formed in 1983 when four independent insurance agencies teamed up to pool their experience and expertise. Today, Keystone has grown to almost 300 independent agency partners. In Pennsylvania, Keystone has 57 partners agencies with more than 80 locations in or around borough communities in PA.

Keystone provides its agents with a community of like-minded agencies, industry expertise, and access to specialized products for their clients. Keystone is ranked number three on Insurance Journal's 2019 list of Top 20 Agency Partnerships.

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