LITCHFIELD CAVO LLP
ATTORNEYS AT LAW

Jonathan E. Barrish, Partner
D 312.781.6603 | BarrishJ@LitchfieldCavo.com
Allyson C. Byrd, Attorney
D 985.869.8702 | Byrd@LitchfieldCavo.com

Illinois' Workers' Compensation COVID-19 Presumption Explained

September 2020

On June 5, 2020, **Illinois Governor J.B. Pritzker** signed into law **HB2455** that amends both the Illinois **Workers' Compensation Act** and the Illinois **Workers' Occupational Diseases Act**.

Under the terms of the legislation, a COVID-19 Presumption applies to any first responder or frontline worker who is diagnosed with the novel coronavirus between March 9 and December 31, 2020. When applied, it is presumed that the employee's diagnosis, or related injury, arose out of and occurred in the course of their employment. It is further presumed that any injury, medical care, or time off is "causally connected" to the occupation of a first responder or front line worker, as defined in Gov. Pritzker's **Executive Order 2020-10**, dated March 20, 2020.

The COVID-19 Presumption created by the legislation, applies to first responders or frontline workers as defined in Gov. Pritzker's **Executive Order 2020-10**, dated March 20, 2020, who are exposed to and contract the coronavirus between March 9, 2020, and December 31, 2020. For COVID-19 diagnoses occurring on or after June 15, 2020, the infected employee must provide a confirmed medical diagnosis by a licensed medical practitioner or a positive laboratory test for COVID-19 or COVID-19 antibodies. For a COVID-19 diagnosis after June 15, 2020, the infected employee must provide a laboratory test for COVID-19 or for COVID-19 antibodies. The Presumption does not apply to the employees of essential businesses and operations as defined in **Executive Order 2020-10**, dated March 20, 2020, who neither encounter members of the general public nor work in employment locations of more than 15 employees.

Without the Presumption in place, an employee making a workers' compensation claim has the burden to prove that the claimed injury resulted from their employment. This requires proving that the accident arose out of, occurred in the course of, and was causally connected to the employment. When it applies, the COVID-19 Presumption eliminates the infected employee's requirement to prove these elements. Per **HB2455**, if an employee contracts COVID-19 between March 9 and December 31, 2020, it is presumed that he or she was infected as a result of their employment.

The Presumption created by HB 2455 is "rebuttable", meaning it can be invalidated. The Illinois legislation suggests the Presumption may be rebutted by the following:

1. Demonstrating that the employee making the claim was working from their home or alternative remote site, on leave from their employment, or combination of such arrangements for a period of 14 or more consecutive days immediately prior to the employee's alleged COVID-19 related exposure or injury; or,
2. Demonstrating that the COVID-19 safety practices and **guidance**, as issued by the **Centers for Disease Control and Prevention** or the **Illinois Department of Public Health**, were followed stringently for at least 14 days prior to the employee's coronavirus diagnosis; or,
3. Proving that the identified employee was exposed to COVID-19 from an alternate source.

Despite the legislation providing an opportunity for employers to invalidate the COVID-19 Presumption, doing so does not secure a "win." Instead, once the Presumption is rebutted, the

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burden shifts to the employee to prove their work was "a causative factor" in contracting COVID-19. Due to the highly contagious nature of the coronavirus this will be a simple and routine burden to overcome. As such, it is essential if you intend to deny one of these claims that you have very strong evidence to support a finding that the employee did not contract the virus at work. For example, evidence that the impacted employee attended a large gathering at which others who were proven to be infected with COVID-19 were in attendance, or that the employee lives with a large family whose member(s) are known to have contracted COVID-19, or that the employee regularly attended classes at a school or a gym that had a severe outbreak of COVID-19. Alternatively, proof that the employee was not at the workplace during the period the employee likely contracted COVID-19 would present a sound basis to deny the compensability of a COVID-19 claim.

Remember, the infected employee does not need to prove that their work exposure was the major or primary cause, only "a causative factor." Thus, the Illinois COVID-19 Presumption does not change what facts an employer must prove or disprove to successfully defend a coronavirus claim. Because an employee only has to prove that their work was "a causative factor" in contracting COVID-19, identifying evidence to dispute such a claim can be daunting and may ultimately prove unproductive. While every workers' compensation claim, and particularly those involving an alleged exposure to COVID-19, has to be evaluated on its own set of facts, there is an inherent difficulty defending a COVID-19 case where the virus is known to be highly contagious. Therefore, the best approach in many cases may be to simply accept the claim, ensure the employee gets appropriate medical care and entitled benefits, and then settle the case at the earliest opportunity. This approach is likely to be less disruptive to business operations and more cost-effective than developing evidence that is ultimately insufficient to win the case.

For more information or guidance about Illinois' Covid-19 Presumption please contact Jonathan Barrish at 312.781.6603 or BarrishJ@LitchfieldCavo.com. Jonathan has extensive experience before the Illinois Workers' Compensation Commission, the Illinois Circuit Court and the Illinois Appellate Court. He is a frequent lecturer for carriers, third-party administrators and attendees of national conferences on topics concerning workers' compensation.

Allyson Byrd focuses her defense practice in the areas of workers' compensation, premises liability and general liability. She regularly presents to third-party administrators and carriers on workers' compensation and premises liability law. Ally is a licensed attorney and a contributor to this Litchfield Alert. To read more about her practice, please click here.