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Weber 
Gallagher

How Does Governor Murphy's Shutdown of Non-Essential Businesses Affect Pending Workers' Compensation Claims?

As you are aware, Governor Phil Murphy issued a pair of executive orders Saturday afternoon, directing residents to stay indoors and shutting down most of the state's retail shops. Non-essential businesses had to close their doors by 8 p.m. on Saturday, and there is no end in sight.

A number of businesses are permitted to continue to operate, such as grocery stores, farmers' markets, pharmacies, medical marijuana dispensaries, hardware stores, laundromats and, of course, liquor stores. Healthcare and social services, as well as manufacturing, trucking and construction, are also permitted to stay open for business.

What does all of this mean for you and the handling of your workers' compensation cases? We have a few scenarios and a few suggested answers for you.

What do you do if you have a petitioner who is working light-duty and is now told to stay home based upon the temporary government shut down?

In this scenario, we do not believe that a resumption of temporary total disability benefits is necessary or appropriate. The petitioner is not being singled out by the insured's honoring the governor's order. Instead, all employees are being told to stay home. The loss of wages is not occasioned by his or her disability and light-duty status. The petitioner, just like his or her co-employees, can apply for unemployment compensation.

Do we owe wage loss benefits for a worker who can demonstrate that they were exposed to the virus at work but has not yet been tested for the virus?

No, we would not recommend benefits to be paid. There is no proof of disability yet associated with the exposure. Again, they should file for UEC benefits.

Do you pay temporary disability benefits to a petitioner who has been allowed to continue to work based upon his industry and can prove exposure and infection?

In these cases, if there is factual and medical evidence establishing that it is more likely than not that the virus has been contracted by the injured worker due to exposure at work, we would recommend the payment of indemnity benefits once he is deemed disabled and placed out of work for greater than seven days.

Comment: The circumstances of the current conditions are obviously fluid. There are no absolutes concerning the answers to the various scenarios. We expect the workers' compensation judges to be liberal in providing benefits in those cases where the petitioner can prove exposure to the virus at work. We are hopeful that the majority of cases will result in minimal and only temporary disability. Obviously, there will be cases that have a greater effect on the petitioner and will carry with it greater exposure. Those cases will require a thorough factual and medical investigation to confirm that the exposure and development of the virus occurred at work.

Please stay tuned for further updates and feel free to contact any of our attorneys for advice and questions.

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