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NJ Senate Committee Approves COVID-19 Bill

Legislation creating the rebuttable presumption of compensability in workers' compensation for essential workers who contract COVID-19 seems to be on a fast track with the Senate Labor Committee. They approved S2380 by a vote of 3-1-1 on May 12, 2020. The full Senate is expected to consider this bill on Friday, May 15, 2020. [Click here](#) to view our previous alert about this much anticipated legislative proposal.

Senate bill S2380, authored by Senators Stephen M. Sweeney, Robert Singer and Linda Greenstein, originally introduced on May 4, 2020, sought to amend the NJ Workers' Compensation statute by creating a presumption of compensability for essential employees who contract COVID-19.

The presumption is defined as a "prima facie presumption," meaning that if the employee meets the criteria of being an "essential employee," and that individual contracts COVID-19, the illness would then presumptively be considered as a compensable work-related illness. The individual would then be entitled to all the benefits of workers' compensation, that is, medical care, temporary disability benefits, and potentially permanent disability benefits. The legislation does allow the employer to rebut the presumption of compensability by the legal standard known as a "preponderance of the evidence," establishing that the worker was not exposed to the disease in the workplace or contracted the virus outside of the workplace.

The bill first introduced on May 4 was subsequently amended just before the start of the Labor Committee hearing. They expanded the definition of essential employees, in both the public and private sectors, with duties and responsibilities considered as "essential to the public's health, safety and welfare, to include; public safety workers or first responders of police, fire or other emergency responders, as well as those providing medical services, emergency transportation, social services, and other services provided in health care and residential facilities, and homes. Also, anyone who performs functions involving physical proximity to members of the public and are essential to the public's health, safety and welfare, including transportation services, hotel and other residential services, financial services, and the production, preparation, storage, sale, and distribution of essential goods, such as food, beverages, medicine, fuel and supplies for conducting essential business and work at home would be included in the definition of an essential employee.

The legislation, as drafted, only applies to those covered employees who contract the disease during the public health emergency, Executive Order 103, as extended by subsequent executive orders that deal with the current COVID-19 outbreak. This limited application of the law means this presumption will not apply to any other communicable diseases, and be limited by the scope of time the executive order is in effect.

Insurance carriers and employers should also note the amended version of the bill stipulates that any claims paid as a result of the rebuttable presumption will not be considered in calculating an employer's modifier rate, or otherwise, affect an employer's insurance premium rate for the workers' compensation insurance policy.

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In a press release related to the Labor Committee's vote, one of the bill sponsors noted they are still "hammering out the details" of the bill, and it remains a "work in progress." As such, there may be additional provisions offered when the full Senate considers the bill. The Assembly version of this bill has not been taken up by the committee as of May 13, 2020.

It appears the legislature is looking at similar legislation the State of California enacted, which created a similar rebuttable presumption with a stipulated time frame of applicability. The California law states that the presumption applies to those testing positive for COVID-19, or diagnosed with the disease and confirmed by positive testing within 14 days of performing services at a place of work after the stay-at-home order was issued, and stays in place for 60 days after issuance of the executive order.

The New Jersey legislation, if enacted as currently drafted, would take effect immediately and shall be retroactive to March 9, 2020, the date of Executive Order 103.

Weber Gallagher's workers' compensation team will continue to keep you updated on any legislative channels as this bill goes to vote in the Senate. Should you have any questions, please reach out to one of the attorneys listed below.

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