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## Governor Murphy Signs Presumption of Compensability for Essential Workers' Contracting COVID-19 Bill into Law

The much anticipated legislative proposal that will significantly impact the NJ Workers' Compensation statute involving essential employees who contract COVID-19 is now law.

Senate bill S2380, seeking to amend the NJ Workers' Compensation statute by creating a presumption of compensability for defined "essential employees" who contract COVID-19, passed both houses of the NJ Legislature on July 30, 2020. The bill then sat on the Governor's desk, who had until September 24, 2020, to either veto the bill, offer amendments, or let the time expire to become law. Governor Murphy chose to sign the bill into law on September 14, 2020.

This amendment to the workers' compensation action creates a rebuttable presumption that if an employee meets the definition of an "essential employee," and that individual contracts the coronavirus, the illness will be covered for benefits afforded through workers' compensation. This includes medical care, temporary disability benefits, permanent disability benefits, and dependency benefits to dependents of an essential employee whose death is caused by the coronavirus.

The legislation establishes what is referred to as a rebuttable presumption of compensability for any essential employee who contracts the coronavirus. This means that if a covered employee contracts the disease, it creates a prima facie case of compensability. At that point, the burden of proof then shifts to the employer to disprove that the illness was contracted in the course and scope of the employment by a preponderance of evidence.

The bill rather broadly defines essential employees in both the public and private sectors. It includes any public safety worker or first responders, such as fire, police, emergency personnel, and individuals who provide medical and other healthcare services, including emergency transportation, social services, and services provided in healthcare facilities, residential facilities and homes. Those in the private sector that would be covered under this legislation, in addition to those individuals in the business of healthcare, are those individuals who perform functions that involve physical proximity to the public at large and provide services that are essential to the public's health, safety and welfare. This would include transportation services, hotel and other residential services, financial services, 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. A catch-all provision is contained in the bill to include any other employees deemed essential by the public authority, during the state of emergency. One small exception to the definition of an essential employee is any individual who is an employee of the State who is offered the option of working at home but refused.

The new law takes effect retroactively to March 9, 2020, when the Governor first declared the public health emergency. The presumption will remain in effect during the declared public health emergency as extended by the Governor.

For public employees covered by this legislation, the rebuttable presumption is also in effect for the benefits covered by the ordinary and accidental disability retirement laws, and any other benefits provided by law to those suffering an injury or illness through the course of their employment. A covered essential employee who becomes ill with the disease and must remain out of work due to hospitalization or quarantine time will be considered out on "duty time" and cannot be required to use any paid leave or other contractual time off from work. This will be considered as "emergency hazard health duty" during such loss time.

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It is important to note for insurance carriers, claims paid under this legislation cannot be considered in calculating the employer's experience rating. This would provide some protection to employers against any increased premiums.

Many employers and insurance carriers have raised concerns that this new law creates an unnecessary "carve-out" to a workers' compensation statute that already provides benefits to individuals who can establish that a disease was contracted in the workplace. A good example is the line of cases that have found individuals who work out in fields and wooded areas and contracted Lyme's disease through tick bites. The standard burden of proof is that the work exposure was "more likely than not" the cause of disease or injury.

Comment: It is not new for New Jersey to take such proactive measures to protect its public safety employees. New Jersey was at the forefront in creating protection to first responders, including first-aid and rescue squad members, police, correction officers, nurses, medical technicians, and other medical personnel with the Canzanella Act's passage in July 2019. This Act created a rebuttable presumption of workers' compensation coverage for those who can establish evidence of exposures to communicable diseases in the workplace. This Act was already being applied to the COVID-19 pandemic. However, this latest presumption greatly expands the definition of "essential employees" to many individuals working in the private sector. The office of legislative services has estimated that this legislation may result in an "indeterminate increase in expenditures to the State" that is tied to a potential increase in claims for workers compensation benefits and an annual increase in cost to state and local entities due to the shift of the burden of proof.