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NJ Workers’ Compensation: Senate Bill 2476

On March 1, 2021, both houses of the New Jersey state legislature voted to approve Senate Bill 2476, which provides supplemental Workers' Compensation dependency benefits for dependents of essential employees who die from the contraction of COVID-19 in the course of their employment. This legislation is important for insurance carriers, third-party administrators, and self-insured employers held responsible for paying dependency benefits as a result of a death caused by COVID-19.

While this bill has not been signed into law yet, it is expected that Governor Murphy will approve this legislation. The bill provides a cost-of-living adjustment (COLA) to dependents of essential workers who died because of contracting the coronavirus in the course of employment. Once enacted, any affected dependent will receive a COLA up to the maximum benefit determined each year pursuant to the workers’ compensation statute. Each year the maximum rate is computed from the state average weekly wage. It is important to note that any COLA is not paid by the workers' compensation carrier, but rather by the Second Injury Fund (SIF) if the SIF has been put on notice of the dependent’s eligibility.

It is most important to note that any carrier or self-insured employer held responsible for paying dependency benefits to dependents of these essential workers has an obligation to notify the Division of Workers' Compensation the dependent’s entitlement to such supplemental benefit payments. This notice must be given within 60 days after it is determined that the dependent is entitled to the supplemental benefit or COLA. Failure to notify the Division of Workers' Compensation will result in the insurance carrier or self-insured employer being held responsible for all future COLA payments. As such, any claim where a dependent of an essential worker is receiving dependency benefits should be closely monitored to ensure that this reporting requirement is met.

Since the COLA is paid by the SIF, this legislation will not increase the cost of providing applicable dependency benefits of the workers’ compensation carrier. However, fiscal analysis cannot predict the extent that this will increase SIF disbursements, and thus trigger the need for SIF revenue increases. Any increase in the need for SIF revenues will ultimately be made up by assessments against workers’ compensation insurance premiums.

This legislation mirrors a recent amendment to the Workers' Compensation Act that provided COLA benefits to dependents of public safety workers killed in the line of duty that was enacted before the coronavirus pandemic. What this legislation represents is an expansion of the application of this COLA concept to not only public safety workers, but to all workers who are “essential employee" as defined by the law. In dealing with the coronavirus pandemic, the Workers' Compensation Act was recently amended to include a presumption of compensability to essential workers who contract the virus. Under this new presumption law, the definition of an essential employee was expanded to include any worker whose job involves the physical proximity to members of the public and performs functions that are essential to the public’s health, safety, and welfare. This broad definition as it applies to the presumption law is only in effect during the declared state of a health emergency. Senate Bill 2476 uses the same definition of who is considered an “essential employee” as in the presumption law; however, it does not contain the same limitation as the presumption law in that it does not restrict it to the time frame of the health emergency declaration.

While this bill has noble intentions in support of those dependents who are impacted by the current pandemic and state of emergency, it will likely result in significant litigation on such issues as to whether the contraction of the coronavirus is a “compensable” exposure, the coronavirus was the actual cause of death, and whether the deceased falls under the definition of an essential employee. It may also be deemed as unfair to other recipients of dependency benefits who are already receiving payments, or to those who become eligible for dependency benefits in the future, because of even more tragic circumstances than the contraction of the coronavirus.