

Memo in Opposition: Workers' Compensation Occupational Disease Presumption

A large number of private and public-sector employers, listed below, have come together to oppose any legislative or regulatory proposal that would amend New York State's Workers' Compensation Law to create an occupational disease or presumption for employees who have contracted COVID-19. We all share concern for anyone who develops COVID symptoms and especially any worker who may have legitimately contracted the disease at work. However, we believe that it is imperative to accomplish the objective of taking care of New Yorkers in the most efficient way, without forfeiting federal dollars.

The proposed legislation, S.8266 (Ramos) / A.10401 (Simotas), represents a drastic change to current state law. It would give a presumption of disability to 100 percent of New York's private and public sector employees who have contracted COVID-19, thus shifting the cost of these workers' medical care, lost wages and other benefits to the workers' compensation system. Among the many concerns with the proposed legislation and other similar bills recently introduced, we are particularly concerned that expanding workers' compensation in this way would interfere with available federal funding and other funding likely to come in future federal stimulus packages.

- Income replacement is already available for sick workers. The federal Pandemic Unemployment Assistance (PUA) provided under the CARES Act is available for employees who remain employed but are unable to work due to COVID symptoms.
- Coverage under §2102(a)(3)(A) includes as a "covered individual" one who is "not eligible for regular compensation" under state or federal law and is "unable or unavailable to work" because "the individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis." Telemedicine diagnosis is sufficient.
- Importantly, this federal funding would be offset by disqualifying income, which would include workers' compensation payments. By enacting this legislation, the Legislature would be shifting 100 percent of the costs from the federal government to New York employers. All politics aside, shifting the burden from the federal government to anyone in New York is bad policy for all New Yorkers.

Additionally, it is important to note that these proposals begin with an incorrect view of current law. Advocates are erroneous in their understanding of workers' compensation coverage for frontline workers under current law. New York's Workers' Compensation Law already addresses and provides treatment and compensation for occupational diseases, defined as an injury or illness that is associated with the nature of the occupation. Frontline workers who have gotten sick with COVID-19 at work would be covered under current Workers' Compensation Law. Statements to the contrary are simply false.

In a March 27, 2020 legislative analysis issued by the New York Compensation Insurance Rating Board of similar but somewhat narrower legislative language, the Rating Board projected the cost impact on the state's workers compensation system to be as high as \$31 billion, compared to current annual losses in the state's workers' compensation system, including both the insured market and self-insureds, of approximately \$8.7 billion. With data on the virus changing daily, any analysis of cost would be imperfect. However, it is obvious that the effect of such legislation will be the bankrupting of commercial workers' compensation carriers, self-insured employers, and the State Insurance Fund, which is financially secured by taxpayers.

This legislation would severely disrupt any attempt to control the costs of New York's workers compensation system as well as the treatment of New Yorkers sickened by COVID-19, and would result in enormous increases in workers' compensation costs for all private and public sector

employers. It also represents a troubling departure from both the common law and statutory concept of causation of injury, which will have implications throughout the workers' compensation system and other areas of law.

These legislative proposals would shift billions of dollars of financial burden from the federal government to the taxpayers of the State of New York, funding the state and its citizens desperately need. These proposals are badly flawed and should be rejected by the state legislature.

