

April 24, 2020

Illinois Workers' Compensation Commission Adopts "Rebuttable Presumption" Rule of Evidence

Human Resources & Employment

UPDATE: A challenge to the Illinois Workers' Compensation Commission's emergency amendment, described below, has resulted in a temporary hold on the rule. On April 22, 2020, the Illinois Manufacturers' Association (IMA) and the Illinois Retail Merchants Association (IRMA) filed a complaint in Sangamon County against the IWCC and its Commissioner, Michael J. Brennan, seeking an injunction prohibiting the IWCC from enforcing the April 16, 2020 emergency amendment and a finding that the amendment is void.

The complaint argues that the Commission does not have statutory authority to enact rules that change the law. Additionally, the complaint argues that the amendment violates the Illinois Administrative Procedure Act by unlawfully removing the burden of proof from a claimant to establish that he or she contracted COVID-19 as a result of their employment. An amicus brief was also filed in support of the challenge, which included participants such as the National Association of Mutual Insurance Companies, the American Property Casualty Insurance Association, the Illinois Chamber of Commerce, Independent Insurance Agents of Illinois, and DRI.

Following a telephonic hearing on April 23, 2020, the court issued a temporary restraining order in favor of the IMA and IRMA. The IWCC has until April 30, 2020 to respond to the temporary restraining order. Until further notice, the rule is on hold.

The Illinois Workers Compensation Commission (IWCC) on April 13, 2020, adopted an emergency amendment to its rules of evidence. The new rule provides that in any IWCC proceeding where the petitioner is a "COVID-19 First Responder or Front-Line Worker," the petitioner's injury or period of incapacity will be rebuttably presumed to have arisen out of and in the course of the petitioner's employment and to be causally connected to the hazards or exposures of the petitioner's employment.

The rule's definition of "COVID-19 First Responder or Front Line Worker" is broad, including any individuals employed as police, fire personnel, emergency medical technicians or paramedics, and all individuals employed and considered as first responders, healthcare providers engaged in patient care and correction officers. Significantly, it also includes the employees of all "Essential Businesses and Operations," as defined in Section 12 of Illinois Gov. J.B. Pritzker's [Executive Order 2020-10](#).

While some question has been raised as to IWCC's ability to implement such a rule, for now the emergency rule is effective and will expire in 150 days. While the rule did not address recording and reporting of COVID-19 illnesses under Illinois law, employers should consider their obligation to do so in light of this new rule of evidence.