

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

GLENN SPENCER
SENIOR VICE PRESIDENT
EMPLOYMENT POLICY DIVISION

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WASHINGTON, D.C. 20062
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May 14, 2020

The Honorable Stephen M. Sweeney
Senate President
New Jersey Senate
Trenton, NJ 08625

Dear Senator Sweeney:

The U.S. Chamber of Commerce appreciates your continued efforts to address the many policy issues surrounding the ongoing coronavirus pandemic, and in particular its impact on individuals who remain at work in industries deemed essential. The use of workers' compensation programs to compensate employees who become ill from the virus has emerged as a policy consideration, reflected in the bill you recently introduced, S2380. The Chamber respectfully offers the following observations regarding this legislation, which may have unintended consequences on affected individuals' benefits.

As currently drafted, S2380 would create a presumption that infections of the coronavirus contracted by "essential" employees, including *but not limited to*, health care workers and public safety workers, are work-related for the purpose of employment benefits provided for work-related injuries and illnesses, including workers' compensation benefits.

At the outset, it is important to note that workers who are home ill with the coronavirus are eligible for federal Pandemic Unemployment Assistance (PUA), which includes an extra \$600 per week supplement through July 31. Because the PUA program is federally funded, the compensation it provides will avoid placing unnecessary strain on the workers' compensation program, and there is no need for the state to bear the cost of providing affected employees' compensation. Moreover, for the affected employee, the U.S. Department of Labor has indicated that per existing regulations workers' compensation benefits such an employee receives would likely be considered deductible income offsetting their PUA benefits. In other words, workers' compensation and PUA benefits are mutually exclusive, so there is likely to be no advantage to utilizing the workers' compensation program as an income supplement as contemplated by S2380. In fact, it may make workers worse off.

In addition, to the extent that the language in S2380 covers "essential" employees, this coverage should be limited in its application and not necessarily cover all industries deemed essential. For example, some states have applied the presumption only to front line health care workers and first responders, or to other state employees whose work requires them to interact

with the public. The Commonwealth of Kentucky recently issued an executive order regarding workers' compensation that is a bit broader but still limits the industries to which it will apply.¹

However, should the state choose to apply the presumption that a worker has contracted the disease on the job more broadly, the duration of the presumption should not extend past the expiration of the state of emergency or other "stay at home" requirements currently in place, which S2380 would rightly do as currently drafted. When the day comes that businesses are free to resume operations and individuals are free to socialize and operate more or less as usual, the risk of exposure to the coronavirus will still be present, but it will be essentially impossible to determine whether a future exposure is truly occupational. This aspect of S2380 would correctly reflect that reality.

Finally, any presumption of work-related infection should only apply to temporary total disability provisions to the extent that the exposure is truly occupational. In the referenced executive order, the Commonwealth of Kentucky stipulates that "there must be a causal connection between the conditions under which the work is performed and COVID-19, and which can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment."² Such a policy will ensure that workers' compensation plans can maintain coverage without placing enormous stress on the entire system.

Thank you for the opportunity to provide some thoughts on the use of workers' compensation to address the impact of the unprecedented coronavirus pandemic. The Chamber recognizes the need to assist those facing employment challenges due to it, while at the same time we encourage adopting the policies best suited to do so.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn Spencer", with a long horizontal flourish extending to the right.

Glenn Spencer
Senior Vice President
Employment Policy Division

cc: New Jersey Senate

¹ Hon. Andy Beshear, Governor of Kentucky, Executive Order 2020-277. April 9, 2020.

² *Id.*