

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

GLENN SPENCER
SENIOR VICE PRESIDENT
EMPLOYMENT POLICY DIVISION

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August 3, 2020

The Honorable Philip D. Murphy
Governor of New Jersey
225 West State Street
Trenton, NJ 08625

Re: S2380, “Concerns employment benefits and coronavirus disease 2019 infections contracted by essential employees”

Dear Governor Murphy:

The U.S. Chamber of Commerce appreciates your continued efforts to address the ongoing coronavirus pandemic and its impact on individuals who work in industries deemed essential. The use of workers’ compensation programs to compensate essential employees who become ill from the virus has emerged as a policy consideration, reflected in S2380, a bill that the New Jersey legislature passed on July 30. The Chamber respectfully requests that you exercise your right to conditionally veto S2380 because of its sweeping nature and potential massive costs for employers.

As passed, S2380 would make New Jersey an outlier among other states that have contemplated the use of workers’ compensation to cover potentially work-related coronavirus infections. For example, the governor of Connecticut recently issued an executive order creating a similar rebuttable presumption, but that order limits the period in which a coronavirus “injury” would be covered to just over two months (March 10 to May 20, 2020). Moreover, the order will remain in effect for no longer than six months.¹

If enacted as passed by the legislature, S2380 creates a rebuttable presumption that workers in industries deemed essential who contract the coronavirus did so in the course of employment. The presumption applies retroactively to March 9, the date of Executive Order Number 103 declaring a public health emergency, and continues for the duration of the emergency, which still remains in force. It is important to note that the data do not appear to support the presumption that essential employees are contracting the coronavirus at work.² Indeed, as you have noted

¹ Governor Ned Lamont, State of Connecticut, Executive Order No. 7JJJ; July 24, 2020.

² NBC New York. “Who Are the New COVID-19 Hospitalizations in New York? The Breakdown Is Worrisome.” NBCNewYork.com; May 7, 2020. Available at <https://www.nbcnewyork.com/news/coronavirus/who-is-getting-hospitalized-for-covid-19-in-new-york-here-is-the-breakdown/2405077/>.

publicly, the most recent increase in coronavirus infections is attributable to a rise in indoor house parties and other events where people fail to follow mask or social distance rules.³

Given these facts, there is even less validity to the presumption created by S2380 since New Jersey's stay-at-home order was lifted on June 9, and covered employees could contract the coronavirus literally anywhere with no way of definitively knowing how they did so. Moreover, with a variety of "non-essential" businesses now opening alongside those identified as "essential," it becomes more difficult to see why an employee currently working at a pharmacy should have a different presumption of workplace infection than one at the retail shop next door.

Should it become law, S2380 as written would harm New Jersey businesses considerably when they already face severe headwinds due to the coronavirus pandemic and the nearly complete economic shut-down it caused. The New Jersey Compensation Rating & Inspection Bureau reportedly has estimated the bill may cost businesses between \$400 million and \$18 billion.⁴ Even if one were to assume the lower end of that range, it represents a significant potential liability for New Jersey's employers.

As the Chamber has communicated previously on this issue, S2380 would transform workers' compensation in such a way that it no longer would require a *causal* connection between the conditions under which work is performed and a coronavirus infection, which would place enormous stress on the entire system at a time when most employers are only just beginning to recover from the nationwide shut-down of our economy and, in many cases, just trying to survive.

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. With that in mind, we urge you to veto S2380 with the proviso that it be amended to limit its scope and duration. Thank you for the opportunity to provide some thoughts on the use of workers' compensation to address the impact of the unprecedented coronavirus pandemic.

Sincerely,



Glenn Spencer
Senior Vice President
Employment Policy Division

³ Arco, Matt. "N.J. reports 11 new coronavirus deaths, 393 new cases as rate of transmission rises again." NJ.com; August 1, 2020. Available at <https://www.nj.com/coronavirus/2020/08/nj-reports-11-new-coronavirus-deaths-393-new-cases-as-rate-of-transmission-rises-again.html>

⁴ Bergeron, Tom. "Workers' comp bill: 'The business community was let down today.'" RO-NJ.com; July 31, 2020. Available at <https://www.roi-nj.com/2020/07/31/opinion/workers-comp-bill-the-business-community-was-let-down-today/>.