

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

**GLENN SPENCER**  
SENIOR VICE PRESIDENT  
EMPLOYMENT POLICY DIVISION

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May 1, 2020

The Honorable J.B. Pritzker  
Governor of the State of Illinois  
207 State House  
Springfield, IL 62706

Dear Governor Pritzker:

The U.S. Chamber of Commerce appreciates your efforts to address the many policy issues surrounding the ongoing coronavirus pandemic, and in particular its effect on individuals who remain at work in industries deemed essential. Among these issues, the use of workers' compensation programs to compensate employees who become ill from the virus has emerged as a consideration in some states, including Illinois, which recently has taken steps toward that end.

If there are any medical costs or disability due to COVID-19 and caused by the workplace, whether temporary or permanent, the current law allows an injured employee to pursue a claim for benefits that will be adjudicated by the Illinois Workers' Compensation Commission. Even without expanding the presumption, data from the workers' compensation rating bureaus in California and New York indicate that COVID-19 claims could increase the cost of Illinois workers' compensation to Illinois employers by billions of dollars.

The Illinois Workers' Compensation Commission issued Emergency Commission Rule 9030.70 (effective April 16, 2020) that expanded coverage of workers' compensation for individuals impacted by the ongoing pandemic. The Emergency Rule went beyond law-enforcement and health-care workers providing primary care by also covering corrections officers, grocery-store clerks, and others deemed essential workers presumed to have contracted the coronavirus at work. That Emergency Rule subsequently was repealed on April 27, 2020, and a Committee was formed to examine other possible actions that the Commission may take. Before any further legislation, regulations, or guidance is crafted to create a presumption that a worker has contracted the disease on the job, the U.S. Chamber respectfully offers the following suggestions to assist in your state's deliberation.

Congress passed the Families First Coronavirus Response Act (FFCRA) to provide federal funding for emergency paid sick leave at businesses with less than 500 employees. The law allows individuals who are sick up to 80 hours of paid leave at their regular rate of pay up to a maximum of \$511 per day. Illinois has its own additional requirements with respect to how sick leave may be used, while Cook County and the City of Chicago have explicit paid leave requirements. To the extent that the state is still considering applying workers' compensation coverage for coronavirus-related reasons, whatever coverage may apply should be offset by the paid leave provided under the FFCRA or applicable state or local law.

In addition, a presumption under workers' compensation should be limited in its application and not 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.<sup>1</sup>

However, should the state choose to apply the presumption 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. 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.

Workers who are home ill with the coronavirus are also eligible for federal Pandemic Unemployment Assistance, which includes an extra \$600 per week supplement through July 31. This is likely to be a far superior option for workers than taking a claim into the workers' compensation system.

Finally, we strongly recommend that any federal paid leave benefits or unemployment insurance benefits paid to the injured worker for COVID-19 be credited to the employer for any workers' compensation temporary total benefits to be paid to the injured worker. Kentucky's Department of Workers' Claims Guidance to their Governor's Executive order clarifies this for Kentucky employers.<sup>2</sup>

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 U.S. 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,



Glenn Spencer  
Senior Vice President  
Employment Policy Division

cc: Michael J. Brennan  
Chairman, Illinois Workers'  
Compensation Commission

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

<sup>2</sup> Kentucky Department of Claims Guidance to Executive Order 2020-277, April 15, 2020.