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LEGAL ALERT**Governor Pritzker Signed into Law HB 2455**

On June 5, 2020, Governor Pritzker signed into law HB 2455, which creates a rebuttable presumption of workers' compensation coverage for first responders and front-line workers who are exposed to and contract COVID-19. The new law accomplishes through legislation what the state had previously tried to accomplish through an emergency rule change at the Workers' Compensation Commission. Recognizing that it is usually impossible to determine whether any particular employee who contracts COVID-19 did so at work or somewhere else, the Illinois Workers' Compensation Commission initially promulgated an emergency rule in April 2020 to address the COVID-19 pandemic. The emergency rule lowered the evidentiary burden that first responders, health care providers, and other front line workers would face in proving their entitlement to workers' compensation by providing that such workers would be presumed to have contracted the virus as a result of their employment. However, the emergency rule was quickly challenged in court, and the Workers' Compensation Commission withdrew it on April 27, 2020.

In enacting this legislation, Illinois becomes the latest state to create a presumption of workers' compensation coverage specific to COVID-19 and joins Alaska, Arkansas California, Kentucky, Michigan, Minnesota, Missouri, New Hampshire, North Dakota, Utah, Washington and Wisconsin, all of which have created a presumption of coverage extending to varying sectors of employment.

Unlike some states which have presumptions of coverage limited to healthcare workers and/or law enforcement, the Illinois legislation extends to all employees who are COVID-19 first responders or frontline workers. The term "COVID-19 first responder or front-line worker" means healthcare workers and/or law enforcement, as well as any individuals employed by essential businesses and operations as defined in Executive Order 2020-10 dated March 20, 2020, which includes, among other things, individuals employed by grocery stores, pharmacies, convenience stores, food banks, media outlets, gas stations, banks, hardware stores, educational institutions, transportation providers, manufacturing facilities and restaurants, as long as individuals employed by essential businesses and operations are required by their employment to encounter members of the general public or to work in employment locations

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of more than 15 employees. The rebuttable presumption applies to all cases in which a diagnosis of COVID-19 was made on or after March 9, 2020 and on or before December 31, 2020. The amendment clarifies that the rebuttable presumption will only come into effect after a worker obtains evidence that they had contracted COVID-19 through either:

1. A confirmed positive laboratory test for COVID-19 or COVID-19 antibodies, or
2. A confirmed diagnosis of COVID-19 from a licensed medical professional.

The amendment further extends this rebuttable presumption for ordinary death benefits and certain annuities related to death in the line of duty as a result of COVID-19 for firefighters and police officers.

Employers will have an opportunity to present evidence that establishes that the COVID-19 related illness was caused by a non-work related exposure. This opportunity is more clearly established in the present legislation than in the previous emergency rule change that was withdrawn by the Commission. In defense of the claim, an employer may produce evidence that the employee was working from home or on leave for a period of 14 or more consecutive days immediately prior to incapacity resulting from COVID-19; evidence showing that the employer was following current public health guidelines for two weeks prior to when the employee claims they contracted COVID-19; or evidence that the employee was exposed to COVID-19 by an alternate source.

This will be a difficult proposition for the employer. Locating and preserving evidence of non-work related exposure will be critical in order to prevail on such a claim. This legislation will undoubtedly have an effect on the number of workers' compensation claims experienced by municipalities, including those that maintain public safety departments. In addition, the language cited in the legislation with regard to the illness occurring within the scope of employment may affect any potential disability pension matters that are filed if a first responder's COVID-19 related illness causes a career-ending injury or death. As such, we are prepared to assist in the defense of these claims, and can discuss protocols on their initial investigation and handling.

We are following the implementation of this legislation, and are ready to address any COVID-19 related workers' compensation and disability pension claims as they arise. Do not hesitate to contact our office for guidance on these emerging issues.

For the full text of this legislation, please visit: <https://www.ilga.gov/legislation/publicacts/101/PDF/101-0633.pdf>