

LEGAL ALERT

**Illinois Workers' Compensation Commission Enacts
Emergency Rule Regarding COVID-19 Rebuttable
Presumption**

On April 13, 2020, Illinois Workers' Compensation Commission met for an emergency meeting, during which it enacted an emergency rule related to the causation and compensability of COVID-19 illness suffered by first responders and front-line workers. This emergency rule is similar to the current rule that designates certain first responders suffering from specific conditions to have presumed to have acquired those illnesses as a result of their job duties. The emergency rule is much more broad than the current rule, as described below.

In 2008, the legislature amended the Illinois Workers' Compensation Act to the benefit of firefighters, EMT and paramedics. Specifically, the Section 6(f) of the Illinois Workers' Compensation Act provides that any condition or impairment of health of a firefighter, emergency medical technician, or paramedic that results directly or indirectly from the following conditions is presumed to arise out of and in the course of their employment. This presumption however, only applies to firefighters, EMT's and paramedics who have been on the job for five or more years:

- blood-borne pathogens
- lung or respiratory disease or condition
- heart or vascular disease or condition
- hypertension
- tuberculosis
- cancer
- hearing loss
- hernia

The emergency rule is much more broad, and covers many more workers than fire department personnel. In summary, it states that if the petitioner's injury or period of incapacity resulted from exposure to the COVID-19 virus during a COVID-19 related state of

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emergency, the exposure will be rebuttably presumed to have arisen out of and in the course of the petitioner's employment and, further, will be rebuttably presumed to be causally connected to the hazards or exposures of the petitioner's employment.

The presumption under the emergency rule is applied to "COVID-19 First Responders" or "Front-Line Workers" which are defined in the rule as:

Police personnel

- Fire personnel
- Emergency medical technicians or paramedics
- All individuals employed and considered as first responders
- Health care providers engaged in patient care
- Correction officers
- Crucial personnel identified under the following headings in Section 1 Part 12 of Executive Order 2020-10 dated March 20, 2020:
 - Stores that sell groceries and medicine
 - Food, beverage, and cannabis production and agriculture
 - Organizations that provide charitable and social services
 - Gas stations and businesses needed for transportation
 - Financial institutions
 - Hardware and supplies stores
 - Critical trades
 - Mail, post, shipping, logistics, delivery, and pick-up services
 - Educational institutions
 - Laundry services
 - Restaurants for consumption off-premises
 - Supplies to work from home
 - Supplies for Essential Businesses and Operations
 - Transportation
 - Home-based care and services
 - Residential facilities and shelters
 - Professional services
 - Day care centers for employees exempted by Executive Order 2020-10
 - Manufacture, distribution, and supply chain for critical products and industries
 - Critical labor union functions

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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 will be a difficult proposition. Locating and preserving evidence of non-work related exposure will be critical in order to prevail on such a claim. This emergency rule will undoubtedly have an effect on the number of workers' compensation claims filed by employers, including municipalities that maintain public safety departments. In addition, the language cited in the rule 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.

The Illinois Workers' Compensation Commission has scheduled an additional meeting on Wednesday, April 15, 2020 at 4:00 p.m. to further discuss amendments to the rules governing practice before the Commission. A such, changes to this emergency rule could occur. We are following the implementation of this emergency rule, 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 emergency rule, please visit: <https://bit.ly/3bKHSDZ>