

PA's Potential for a Presumption of Work-Related COVID-19 Injuries

By: Sandra L. Niemotka
Workers' Compensation Alert
6.9.20

In Pennsylvania, a work-related COVID-19 injury can be regarded as a traumatic event or as an occupational disease.[1] There is currently a Pennsylvania House bill (the Bill) that provides a third category for COVID-19 injuries, granting a presumption to certain employees. If passed, the law would be effective immediately.

The Bill, like similar bills in other states, may lead to some confusion about who it covers. The Bill does not use the typical "essential employee" language. Instead, the covered employee is "an individual employed by a life-sustaining business or occupation who is required to work during the declaration of an epidemic or a public health emergency".

The employees covered are not only this broad but there are many enumerated examples, including first responders and healthcare workers, but also "retail workers," "food and agriculture workers" and "warehouse workers." Additionally, there is a definition section that defers to the Governor of Pennsylvania, Tom Wolf, and whatever "list of businesses or occupations, as designated" by him as "vital" to public health and safety, as well as "economic and homeland security."

For these employees, any time there is hospitalization or isolation due to real or potential exposure to COVID-19, the instance is considered "work-related hazardous duty." They are entitled to workers' compensation medical benefits, but not workers' compensation wage-loss benefits. This is extremely unusual, as the Workers' Compensation Act (the Act) has never been just partially applicable to any circumstance. Instead of wage-loss benefits, the employees are qualified for unemployment benefits and cannot be required to use existing personal time off.

The presumption in the bill is not defined. It will need to be tested in court to know how the presumption can be overcome by the employer.

Overall, it looks like the current language of the Bill will not make it to final legislation for Governor Wolf's signature without some revisions. There is awkward language from the very beginning (*i.e.*, subject and verb incoherence) and the number of applicable employees is overwhelming. Moreover, the need for a law with a new presumption for first responders and healthcare workers is redundant in light of the existing occupational disease provisions in the Act.

If you have any questions about workers' compensation issues as it relates to COVID-19, please contact Sandy Niemotka (niemotkas@whiteandwilliams.com; 215.864.6338) or another member of the Workers' Compensation Group.

As we continue to monitor the novel coronavirus (COVID-19), White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. Read all of the updates [here](#).

[1] See, "Coronavirus (COVID-19) in the Course and Scope of PA Employment" (March 19, 2020)

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only and you are urged to consult a lawyer concerning your own situation and legal

questions.