



THE IMPORTANCE OF PPE – NEW WORKERS COMPENSATION LAW

The Illinois legislature has recently passed a new amendment to the Illinois Workers Compensation Act to provide a rebuttable presumption for essential employees who contract COVID-19. The law is expected to be signed by the Governor any day and will go into effect retroactively to any employee who tested positive for COVID-19, or was diagnosed with it, on or after March 9, 2020.

The most important provision of the law relates to employer practices regarding workplace sanitation, social distancing and PPE. Employers can rebut the presumption by showing that they were “engaging in and applying to the fullest extent possible or enforcing to the best of its ability industry-specific workplace sanitation, social distancing and health and safety practices based on updated guidance issued by the CDC and IDPH.” The law defines PPE as “items such as face coverings, gloves, safety glasses, safety face shields, barriers, shoes, earplugs or muffs, hard hats, respirators, coveralls, vests and full body suits.” There are guidelines that are industry specific that should be followed in order to rebut the presumption.

IRMA continues to strongly encourage all members to require appropriate PPE, not only for risk prevention purposes, but also to preserve our ability to rebut the presumption. As our adjusters investigate claims, we will be asking members to provide information about PPE, including written policies. When there is a known exposure, we will be asking about PPE at the call or incident.

The new law creates a rebuttable presumption for employees who are first responders or front-line workers, which includes police, fire personnel and paramedics and all individuals employed by essential businesses and operations who are required to encounter members of the general public or to work in employment locations of more than 15 employees. It provides a rebuttable presumption that any COVID-19 diagnosis or positive test for these employees is presumed to be work related. This presumption can be rebutted by evidence that: 1. The employee was working from home, or on leave from employment, for 14 consecutive days prior to the diagnosis; 2. The employer was enforcing industry specific sanitation, social distancing and PPE; 3. The employee was exposed by an alternative source.

The new law applies to all cases where the diagnosis was made on or after March 9, 2020 until December 31, 2020. It also provides that employers

New Rebuttable Presumption Law

are entitled to a credit against any liability for TTD (temporary total disability) for any sick leave benefits or other benefit time. As such, if an employee uses sick time during a quarantine period before a positive test or diagnosis, the employer is entitled to a credit for that benefit time.

Finally, the law also states that COVID-19 cases shall not increase or affect any employer's workers compensation insurance experience rating or modification. Therefore, COVID-19 claim costs will not be included in any IRMA member experience modifier.