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Date: May 8, 2020

**Re: S-2380 (Sweeney) Concerns Employment Benefits and Coronavirus Disease 2019 Infections Contracted by Essential Employees.**

Dear Members of the Senate Labor Committee

From: New Jersey Business Coalition

African American Chamber of Commerce of New Jersey, Inc.  
American Camp Association NY/NJ  
American Council of Engineering Companies of New Jersey  
American Physical Therapy Association of New Jersey  
Bernards Township Regional Chamber of Commerce  
BioNJ  
Burlington County Regional Chamber of Commerce  
Cape May County Chamber of Commerce  
Capital Region Minority Chamber of Commerce  
Chamber of Commerce Southern New Jersey  
Chemistry Council of New Jersey  
Commerce and Industry Association of New Jersey  
Early Childhood Education Advocates  
Employers Association of NJ  
Fuel Merchants Association of NJ  
Garden State Pharmacy Owners, Inc.  
Global Business Alliance  
Gloucester County Chamber of Commerce  
Greater Atlantic City Chamber of Commerce  
Greater Toms River Chamber of Commerce  
Greater Westfield Area Chamber of Commerce  
Health Care Association of NJ  
Hoboken Chamber of Commerce  
Home Care & Hospice Association of New Jersey  
Home Health Services Association of New Jersey  
Hudson County Chamber of Commerce  
Hunterdon County Chamber of Commerce  
Insurance Council of New Jersey  
Mahwah Regional Chamber of Commerce  
Marine Trades Association of New Jersey  
Meadowlands Chamber

Middlesex County Regional Chamber of Commerce  
Monmouth-Ocean Development Council  
NAIOP - NJ  
New Jersey Apartment Association  
New Jersey Asphalt Pavement Association  
New Jersey Association of Mental Health and Addiction Agencies  
New Jersey Association of Osteopathic Physicians and Surgeons  
New Jersey Bankers Association  
New Jersey Builders Association  
New Jersey Business & Industry Association  
New Jersey Campground Owners and Outdoor Lodging Association  
New Jersey Chamber of Commerce  
New Jersey Child Care Association  
New Jersey Civil Justice Institute  
New Jersey Coalition of Automotive Retailers  
New Jersey Concrete and Aggregate Association  
New Jersey Council of County Colleges  
New Jersey Dental Association  
New Jersey Food Council  
New Jersey Gasoline-Convenience-Automotive Association  
New Jersey Hotel and Lodging Industry Association  
New Jersey Independent Electrical Contractors Association  
New Jersey LGBT Chamber of Commerce  
New Jersey Manufacturing Extension Program, Inc.  
New Jersey Motor Truck Association  
New Jersey Pharmacists Association  
New Jersey Podiatric Medical Society  
New Jersey Restaurant & Hospitality Association  
New Jersey Retail Merchants Association  
New Jersey Self Insurers Association  
New Jersey Society of Certified Public Accountants  
New Jersey State Funeral Directors Association  
New Jersey Tech Council New Jersey Tourism Industry Association  
New Jersey Utilities Association  
New Jersey State Veterans Chamber of Commerce  
New Jersey Warehousemen & Movers and New York Shipping Association, Inc.  
Newark Regional Business Partnership  
NFIB  
North Jersey Jewish Business Alliance  
Ocean City Chamber of Commerce  
Princeton Mercer Regional Chamber of Commerce

Salem County Chamber of Commerce  
Somerset County Business Partnership  
Southern NJ Development Council  
Southern Ocean County Chamber of Commerce  
Statewide Hispanic Chamber of Commerce of New Jersey  
Sussex County Chamber of Commerce  
Union Township Chamber of Commerce

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On behalf of the Business Coalition, we write to you with concern about Senate Bill No. 2380 (Sweeney) which would create a rebuttable presumption, for workers' compensation insurance purposes, that certain essential employees contracted the virus during the scope of their employment. The business community is appreciative of the need to ensure that our front-line workers who have contracted COVID-19, and who have been negatively affected, receive the 3 benefits that they need to make them whole. We will continue to work with the Senate President on this legislation.

We have significant concerns, however, with using the workers' compensation system as the primary method to provide these benefits. Our primary concerns are that the cost of these claims can overwhelm the system, which was not designed to handle claims during a worldwide pandemic, and that the costs will be pushed back onto the business community, which is also struggling to survive. Workers' compensation benefits are, by law, an injured worker's exclusive remedy for workplace injuries. Therefore, this legislation will only serve to shift the cost of the pandemic response to New Jersey's workers' compensation system and the essential businesses paying premiums for this insurance. No new short-term financial benefits will be provided under this legislation. In fact, it may create barriers to workers needing immediate assistance.

To support our position we've attached a document that explains: a) the availability of federal Pandemic Unemployment Assistance (PUA) funding for employees who are unable to work due to COVID-19 related reasons, but who nevertheless remain employed, and b) that those PUA payments would be reduced by the amount the employee received from workers' compensation.

We have confirmed the U.S. Department of Labor's interpretation on both of these points. They are working on updating their guidance to clarify that the CARES Act provides benefits under the PUA program to employees who are not able to work for COVID-19 related reasons, even if they remain employed.

COVID-19 medical costs are also addressed by recent federal legislation. The new Health and Human Services portal is now covering any expenses for COVID-19 testing and treatment for anyone who lacks health insurance coverage. Healthcare providers treating uninsured patients can submit their expenses here to receive reimbursement. Providing the exclusive remedy of

workers' compensation would only serve to shift these costs to New Jersey employers, effectively leaving federal dollars on the table. To the extent there were gaps in health insurance coverage for front-line retail employees, the federal government has taken that on.

Because existing federal programs are already addressing the immediate needs of workers, we believe now is not the time to enact a program that would displace otherwise available federal dollars. This is especially true given the fact that Congress is currently negotiating an additional worker benefit package.

Nevertheless, if legislators choose to move a bill now, despite the availability of federal funding that may be lost, please be aware that we also have particular concerns about some specific provisions in the legislation, including but not limited to the following:

Definition of Essential Employee: An "essential employee" is not clearly defined.

Theory of exposure: A claimant should have some credible reason to believe the exposure occurred at work. Data coming out of a New York study suggests lower infection rate for some front-line workers than the public at large – perhaps due to better protective equipment and safety protocols. For the presumption of causation to make sense, there should be some basis for it. Close interaction with customers and no known exposure in any other context would suffice to establish the presumption, but the claimant should have some articulable basis.

Duration of Rebuttable Presumption: As the existing stay-at-home order is loosened by subsequent executive orders, permitting more opportunities to interact with other people outside of the home, the basis for the presumption will be significantly weaker. Already, there is emerging data revealing that the vast majority of newly hospitalized COVID-19 patients are getting the virus not from work but from being at home. Because the virus is so new, perhaps we don't yet have a complete scientific understanding of its transmission. Proof of Infection: Given the shortages in testing capabilities, employees should not have to provide a positive test for COVID-19, but a diagnosis by a licensed physician. Even the use of telemedicine is appropriate to maintain the integrity of the system.

Not to Be Used in Other Liability Contexts: Whatever the policy rationale for a rebuttable presumption to facilitate no-fault workers' compensation payments to essential employees, the same is not true for other tort actions that might be brought for COVID-19 injuries. The legislation should specify that the presumption shall not be used to establish liability in any other context.

We respectfully ask that this legislation be held to determine the appropriate way to handle such claims as a result of a global pandemic.

Please contact Chrissy Buteas, Chief Government Affairs Officer, NJBIA at [cbuteas@njbias.org](mailto:cbuteas@njbias.org) or 908-447-3466 with any questions.

