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July 28, 2020

The Honorable Craig J. Coughlin
569 Rahway Ave.
Woodbridge, NJ 07095

Dear Speaker Coughlin,

Thank you for the continued opportunity to provide input into Assembly Bill No. 3999 and Senate Bill No. 2380 and your willingness to consider our amendments. These bills provide that if an essential worker contracts COVID-19 there is a presumption they contracted it in the workplace for workers' compensation purposes.

With the bill now having had a hearing in the Assembly Appropriations Committee, we thought this was an important time to consider the testimony that was offered, the members' reactions, and the issues still remaining.

We request your consideration of two amendments:

1. Limit the presumption timeframe so that it applies only so long as the stay-at-home orders are in place and providing that the claim be based on a medical diagnosis;
2. Clarify that covered essential employees must have had an elevated risk of exposure due to contact with the public.

The presumption that an employee contracted COVID-19 at work loses its validity when there are increased opportunities for those employees to interact with other people outside of work. We understand the basis for the presumption when stay-at-home orders were in place and essential employees merely traveled from home to work and back home again. Now, these same employees are at the shore, travelling to other states, going to house parties, shopping, and otherwise being exposed to more potential sources of the virus. Maintaining a workplace contraction presumption once the stay-at-home order was lifted is not based on science or logic and goes beyond the initial intent to protect essential workers who went to work during the lockdown period and who had an elevated, unique exposure risk at work.

We request that the bill be amended so that the presumption is only in effect during the timeframe when the stay-at-home order was in place. All workers' compensation claims should be based on a medical diagnosis.

As drafted, this legislation will make New Jersey a significant outlier. Failing to tie the presumption to the timeframe of the stay-at-home order allows the presumption to last longer than it is logically indicated and fairly needed. Including the timeframe language suggested above is consistent with the actions of other states. Just last week, Governor Lamont of Connecticut issued an Executive Order creating a workers' compensation presumption for COVID-19 exposure with a timeframe limit based on likely exposure risk. Establishing a timeframe for the presumption is also consistent with a law passed in California, the first state to address this issue. Establishing a timeframe based on likely exposure is a reasonable means to address the underlying concerns of essential employees while also addressing the concerns of the business community who will be paying for this system.

We note that while this amendment was not adopted in committee, it seemed to elicit a positive reaction from many members of your caucus who understood the rationale behind the amendment. It deserves further consideration.

Also of note is the fact that the proponents of the bill testified that essential employees include only those workers who had direct contact with the public. If this was the intent, which we agree makes sense, it is not reflected in the actual language in the bill.

We request the language be clarified to limit essential employees to those who had actual contact with the public and thus had an elevated risk of exposure.

If at a later time there is a need to expand the use of the presumption or to address other workers compensation issues related to COVID-19, we would welcome that conversation. Toward that end we would encourage the Administration to collect and report data related to workplace exposures and workers compensation claims. An alternative would be to mandate such data collection in this legislation.

Once again, thank you for this deliberative process and considerations of our concerns.

If you have any questions please contact me at cbuteas@njbia.org or at 908-447-3466.

Thank You,



Chrissy Buteas, Chief Government Affairs Officer
New Jersey Business & Industry Association

cc:

Governor Murphy
N.J. Legislature