

Shift of Presumption for Workers Compensation

Overall concern: We share the concern for essential workers who develop COVID symptoms and want to help them in the **most efficient** way, **without forfeiting federal dollars**.

Expanding workers' compensation would interfere or preempt other available federal funding:

- Income replacement is already available for sick workers. We have confirmed with USDOL that Pandemic Unemployment Assistance (PUA) provided under CARES Act is available for employees who remain employed but are *unable to work* due to COVID symptoms.
- §2102(a)(3)(A) of the CARES Act includes as a “covered individual” one who is “not eligible for regular compensation” under State or Federal Law and is “unable or unavailable to work” because “the individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis.” Telemedicine diagnosis is sufficient.
- But federal funding would be offset by disqualifying income, which would include workers' compensation payments. So instead of federal government picking up 100% of cost, primary burden would fall on NJ employers.

Are there any gaps?

- Medical coverage: Full-time employees have health benefits, and part-time employees likely do, either on parent's plan if under 26 or as an option offered by employer. [HHS has also established a program](#) to reimburse providers for costs of uninsured COVID patients. Because workers' compensation is the “exclusive remedy” for an injured worker, the bill provides duplicative, and not additional, benefits that would simply displace federal funds and medical benefits already provided.
- Permanent partial/permanent total/disability/death: Prospect of federal fund to address - discussions regarding federal funding for “hazard pay” for front-line workers contemplating creating a fund for employees who suffer long-term consequences from COVID. Shifting workers to compensation now could jeopardize eligibility for that prospective funding.

Concerns about details of bill:

- **Duration of presumption:** As economy reopens, many more interactions outside of job, presumption becomes far less valid. In fact, recent data analyzing current hospitalizations and utilization suggest that this presumption already may be less accurate of the virus' reality.
- **Scope of presumption:** Scope of “essential” might be conflated with “likely safe to resume work” as economy opens up and additional workers can resume work.
- **Cost of presumption:** The costs of any gaps in benefits after all federal programs have been established and paid out, should not be borne by comp system and the essential businesses supplying food and medicine during the pandemic. The use of state temporary disability or the use of federal funds is more equitable in that the entire burden doesn't fall on workers' compensation premium payers who operate essential businesses.

Federal PUA Funding for Employees with COVID-19 Symptoms

Income replacement is available for sick employees

- [§2102\(a\)\(3\)\(A\)](#) of the CARES Act includes as a “covered individual” one who is “not eligible for regular compensation” under State or Federal Law and is “unable or unavailable to work” because “the individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis.”
- We have also confirmed with DOL that Pandemic Unemployment Assistance provided under CARES Act is available for employees who still have a job but are unable to work due to COVID symptoms.

Federal funding offset by Workers’ Compensation

- USDOL [Guidance No. 16-20](#) from April 5 provides the State must treat any “paid leave received by a claimant in accordance with the income restrictions set out in Disaster Unemployment Assistance (DUA) at 20 C.F.R. 625.13.”
- [20 C.F.R. 625.13](#) provides that the amount payable “shall be reduced by the amount of any of the following that an individual has received for the week or would receive for the week if the individual filed a claim or application therefor and took all procedural steps necessary...to receive such payment.”
- One of the following sources that require reduction in amount payable is: “Any benefits or insurance proceed from any source *not* defined as “*compensation*” under [§ 625.2\(d\)](#) for loss of wages due to illness or disability.” Note: the double negative means something *not* defined as compensation *will* require reduction in amount payable under PUA.
- At [§ 625.2\(d\)\(5\)](#), “**compensation**” expressly excludes Workers’ Compensation, meaning Workers’ Compensation is in the category of sources that require reduction in amount payable.
 - “cash disability payments made pursuant to a governmental program as a substitute for cash unemployment payments to an individual who is ineligible for such payments solely because of the disability, **except for payments made under workmen's compensation acts for personal injuries or sickness.**”
- Because workers’ compensation benefits would be the exclusive remedy of an injured worker this legislation places the cost burden on the worker comp system while leaving federal relief dollars on the table. PUA benefits will be reduced by the amount an individual receives from Workers’ Compensation, the compensation payments will provide no incremental value to the employee and will simply result in forfeiture of otherwise available federal funds.