



Testimony of Chesapeake Employers’ Insurance Company and Injured Workers’ Insurance Fund in Opposition to Senate Bill 10

SB 10 proposes to add an occupational disease presumption for COVID-19 for the following first responder or public safety employment types: a career or volunteer member of a fire department; a law enforcement officer, a correctional officer, a member of the Maryland National Guard, a sworn member of the State Fire Marshal’s office, and health care workers (individuals employed in health care, home care, or long-term care settings). The bill is retroactive to March 1, 2020 and applies to any individuals listed above that worked within 14 days of their COVID-19 positive test or diagnosis. Additionally, the bill includes a rebuttable presumption with “substantial evidence”.

The chart below details the COVID claims for Chesapeake Employers’ Insurance Company and the Injured Workers Insurance Fund related to First Reports of Injury (FROIs) and Employee Claim Forms filed with the Workers’ Compensation Commission as of December 31, 2021. A large amount of these claims are from the first responder or public safety employment types as listed above.

Total First Reports of Injury (FROIs) for COVID Related Claims:	1043
Total Number of Employee Claim Forms filed with the WCC:	152

Breakdown of Employee Claim Forms Filed (152 Total)	
Claims Accepted:	111
Claim Contested and Awaiting Judicial Review:	12
Claims Withdrawn by Claimant:	12
Claims Still Being Investigated:	7
Claims Denied by WCC:	10

Breakdown of Claims by Business Type (152 Total)	
State:	107
Local Government Claims:	28
Private Industry Claims:	17

Additionally, of the 152 Employee Claim Forms mentioned above, payment to those claims is as follows:

Breakdown of Payment (152 Total)	
Paid to date:	\$721,713.64
Reserved to date:	\$2,823,745.00
Total Incurred:	\$3,545,458.64
Average Cost per Claim:	\$23,325.39

Given the average cost per claim currently filed with the Workers’ Compensation Commission, we can calculate an estimate for fiscal impact using current First Reports of Injury filed (which we believe is a low figure of first reports for various reasons).

Estimate for Current First Reports of Injury (1043):	\$24,328,377.38
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Given the above data, the presumption as proposed could be of great fiscal impact for retroactivity alone. Additionally, the retroactivity of the bill could also create constitutional questions regarding validity of the bill. Of concern currently is the new Omicron variant. Given the new data of how Omicron spreads, contact tracing will be more difficult and cases will increase (and we have already experienced this in the last two months with newly filed cases). The next variant is expected to spread faster and easier as well. Therefore, the contact tracing methods as established will alter, and this general presumption would cover community spread disease as there would be no way to rebut the presumption. Moreover, the bill does not contemplate vaccination status.

The existence of variants, such as Omicron, have, most importantly, transformed what may have once been considered an occupational hazard, a condition of life generally. This expansion has largely undermined any relation COVID-19 has to the workplace. This was succinctly stated by the United States Supreme Court in *National Federation of Independent Business v Dept. of Labor* (142 S. Ct. 661 (2022)) in regards to OSHA imposed vaccine mandates for certain employers. The Court first pointed out that: “It is the text of the agency’s [OSHA] Organic Act that repeatedly makes clear that OSHA is charged with regulating “occupational” hazards and the safety and health of “employees.”” *Id.* The court goes on to explain that: “Although COVID-19 is a risk that occurs in many workplaces, it is not an *occupational* hazard in most. COVID-19 can and does spread at home, in schools, during sporting events, and everywhere else that people gather. That kind of universal risk is no different from the day-to-day dangers that all face from crime, air pollution, or any number of communicable diseases. Permitting OSHA to regulate the hazards of daily life—simply because most Americans have jobs and face those same risks while on the clock—would significantly expand OSHA’s regulatory authority without clear congressional authorization.” *Id.* The Court does explain that exceptions to OSHA’s authority as mentioned above may exist, for instance, researchers who work with the COVID-19 virus. *Id.*

Given the statements from the United States Supreme Court as well as the Maryland Workers’ Compensation Commission’s allowing COVID-19 claims in the accidental injury context, both provide

support for COVID-19 not being an occupational disease and, as such, a statutory presumption would be misplaced in that these presumptions only apply to occupational disease claims.

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