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SB 812

March 9, 2021

TO: Members of the Senate Finance Committee

FROM: Natasha Mehu, Director of Government Relations

RE: Senate Bill 812 – Workers Compensation-Occupational Disease Presumptions-COVID19

POSITION: OPPOSE

Chair Kelley, Vice Chair Feldman, and Members of the Committee, please be advised that the Baltimore City Administration (BCA) **opposes** Senate Bill (SB) 812.

SB 812 establishes an occupational disease presumption for employees with specified public safety and first responder occupations (such as paid and volunteer firefighters and police officers) that are suffering from the effects of severe acute respiratory syndrome coronavirus (which is the virus that causes COVID-19) and meet other specified requirements.

Workers' compensation law establishes a presumption of compensable occupational disease for certain public safety employees who are exposed to unusual hazards in the course of their employment. It is assumed that these injuries or diseases are due to the employees' work and, therefore, require no additional evidence in the filing of a claim for workers' compensation.

Presumptions by their very nature are not favorable for local governments given that the presumptions are generally interpreted favorably for the Claimant and thus these claims are very difficult to win. Such claims are practically irrebuttable with little ability to show flaws in the Claimant's case.

SB 812 is one of several bills proposing COVID 19 related presumptions. All of the proposed bills list the COVID-19 presumption under the section that specifically applies to public safety employees i.e. police, fire, EMTs, etc. and which creates a presumption for an "occupational disease". An occupational disease (OD) is a disease or condition that develops over time. Exposure to COVID-19 more properly falls under the definition of an "accidental injury" which involves a "one time" or sudden event.

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This difference in definition is important regarding how the claim can be defended and what type of offset may likely apply once a claim is found compensable and a Claimant is awarded a service or disability pension. Further, in this bill, the inclusion of non-public safety employees under this section could lead to arguments that the other workers referenced in this bill would be entitled to what is known as “second tier” benefits for minor claims which are presently specifically reserved for public safety employees.

In addition, the wording of these bills appears to entirely discount the exposure workers’ may have outside of their employment. This disease a threat to the entire public and yet those outside exposures are not considered when determining if the exposure occurred while on the job. Such claims would be compensable regardless of whether the worker went to parties, dined in restaurants, traveled, failed to follow distancing requirements in public, failed to obey masking requirements or otherwise engaged in risky behavior outside of employment.

Lastly, the terms providing the requirements for finding workers’ compensation coverage are vague and not well defined. We like the fact that the bills appear to provide coverage only for the most serious claims but these terms are ambiguous. What is meant by “severe acute respiratory syndrome”? How does one quantify “severe”? Does the worker have to test positive, have severe symptoms or just have a “diagnosis” of COVID-19 with no positive tests? If there is no positive test but a doctor provides an opinion stating that the worker had contracted COVID-19 several weeks or months prior as reflected by symptoms, will the presumption apply?

Any legislative presumption allowing for COVID-19 claims to be found compensable should be very detailed with specifically defined requirements. It should specifically apply to only the most serious claims (and specifically state so). It should be set apart from the presumption statute that exists for public safety employees and should stand on its own if it is to include all employees dealing with the public. Finally, it should specifically state that ALL exposures should be considered by the Commission before a finding of compensability is made with the presumption being specifically rebuttable by evidence of exposure outside of the workplace.

We respectfully request an **unfavorable** report on Senate Bill 812.