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Testimony of Daniel E. Udoff

HB 1199 – Workers’ Compensation – Occupational Disease Presumptions - COVID-19
Economic Matter Committee
March 2, 2021
Support

Legal presumptions shift the burden of proof from the employee to the employer/insurer in workers’ compensating claims. Presumptive legislation is well established. Examples include certain law enforcement personnel who develop hypertension, and firefighters who are afflicted with specific forms of cancer. Without presumptions, innumerable employees would be denied the vital benefits intended by our laws to protect injured workers. **The right presumptions relating to COVID must be established now. This bill uses the right standards to create presumptions for the right employees: those on the frontlines.**

Workers’ compensation claims involving occupational diseases require the claimant to bear the burden of proof relative to a diagnosis and date of disablement. A causal relation opinion, provided within a reasonable degree of medical certainty, must be introduced. The opinion must assert that the inherent nature of the employment was at least a contributing factor to the development of the affliction.

The General Assembly periodically levels the evidentiary playing field for certain occupational disease claims. A disability may become a known risk from certain occupations – even when common in the general population. These are the situations – the ones in which establishment of causation with absolute certainty may not be possible - which require the factoring of morality, justice, and common sense into the legal analysis. These claimants are afforded presumptions to ensure fair protection against the inherent, unavoidable risks which often arise from their essential duties.

The COVID-19 pandemic, as it relates to employees specified in HB1199, incontrovertibly requires the enactment of the proposed legislation. The essential duties inherent to their employment inarguably increase their risks of contracting the virus. **The transmissible nature of COVID-19, while a relevant consideration, should not be wielded as the controlling evidence in these cases.** The bill does not place undue burdens on the employer/insurer. The bill in no way purports to establish a strict liability standard, and presumptions shall remain rightfully rebuttable. Shifting the burden of proof will not alleviate the claimant’s evidentiary obligation to introduce the requisite medical documentation and causal relation opinions necessary to establish a meritorious claim.

I have been representing injured workers for more than two decades. This bill is not only fair, but needed to protect those who our society and economy rely on the most.