
Erlandson, Vernon & Daney, LLC

February 26, 2021

Delegate Kriselda Valderrama

Re: House Bill 765, House Bill 1199, House Bill 1247
Hearing Date : House Economic Matters Committee March 2, 2021 at 1:30 p.m.

Dear Delegate Valderrama:

The above referenced bills are scheduled for hearings before the House Economic Matters Committee on Tuesday, March 2, 2021 at 1:30 p.m. All three bills attempt to provide presumptions for occupational diseases under the Workers' Compensation Statute for various classes of employees as a result of COVID-19. I wish to express opposition on behalf of myself and the Maryland Self-Insurers and Employers Compensation Association to the three bills and request an unfavorable report, for the reasons stated below.

There is little question that COVID-19 has had a significant and harmful effect upon society as a whole. Hundreds of thousands of individuals have died as a result of the disease, and families and businesses have been devastated by its collateral effects.

It should be noted, however, that the Federal Government and the Workers' Compensation system have responded to the results of the pandemic. Federal statutes have provided temporary relief for those who have contracted the disease or have been required to be quarantined as a result of family members or co-workers becoming infected.

According to recent statistics, approximately 1,200 COVID-19 workers' compensation claims have been filed with the Maryland Workers' Compensation Commission. That is a very small number in relation to the number of people who have been infected by COVID-19, and it reflects the dubious basis for contending that COVID-19 is an occupational disease or a disease stemming from employment. It should also be noted that a large majority of the deaths resulting from COVID-19 have occurred among individuals who are of retirement age.

Under current workers' compensation law, COVID-19 cases have been treated as "accidental injuries", i.e. an injury that arises out of and has occurred in the course of employment. The reason for this that individuals obtain the disease from a usually limited time frame exposure. An occupational disease, however, is a disease that occurs over a long period of time and is slow and insidious in its nature, the exact opposite of an accidental injury. Claims are either accepted or disallowed based upon the merits of the individual case. Individuals who have no proof of

exposure at work have their claims rightfully denied, and individuals who establish exposure to the disease as a result of their work have their claims accepted. That is the way the system works, and that is the way it should be.

The Bills in question, however, create a presumption that certain classes of individuals are entitled to workers' compensation benefits if they have a positive test for COVID-19. For example, House Bill 765 provides a presumption in favor of those individuals already entitled to presumption for other diseases and to an individual who is "...suffering from the effects of severe acute respiratory syndrome Coronavirus II...". Most occupational diseases require a "date of disablement", i.e. an inability to perform duties for which they were previously qualified. This statute, however, determines a "date of injury" to be the first date in which the employee is unable to work due to the diagnosis of COVID-19 or "due to symptoms that were later diagnosed as COVID-19", which ever occurred first. This opens the door to considerable litigation over when and where any compensable exposure occurred. Most importantly, this disease is presumed to be compensable and may be rebutted "...only if the Employer or Insurer shows the employment was not a direct cause of the disease".

This shifting of a burden on the Employer is to essentially prove a negative. Past experience establishes that, once a workers' compensation presumption is created, defeating such a claim is nearly impossible. The costs can be prohibitive, particularly for those public employers who are already struggling to deal with the effects of COVID-19. House Bill 1199 is even more onerous to Employers because the presumption may only be rebutted by the Employer or the Insurer if the employment "...was not a contributing cause of the disease." This term is undefined, and the standard of proof is vague and subject to multiple, inconsistent interpretations.

The scientific basis for establishing such a presumption in House Bill 765 and the other Bills is questionable at best. The disease has only been prevalent for approximately one year, and even the most knowledgeable and distinguished scientists and medical researchers, many of whom are employed right there in Maryland, will indicate that there is much to be learned about the disease and its long term effects. To place such a burden on Employers in this State is unnecessary and unreasonable.

For the above stated reasons, I respectfully request an unfavorable report on the three Bills in question.

Very truly yours,

Robert C. Erlandson

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RCE/sml
