

# **SB 860 - Workers' Compensation – COVID-19 Occupati**

Uploaded by: Ardis, Angie

Position: FAV



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*Improving the Quality of Teaching and Learning. It's Union Work!*

## **Testimony in SUPPORT of SB 860**

### **Workers' Compensation – COVID–19 Occupational Disease Presumption 3 – Public School Employees**

#### **Senate Finance Committee**

**March 9, 2021**

My name is Christopher Lloyd. I have the privilege of serving as the President of the Montgomery County Education Association and I am writing today in support of SB 860.

MCEA represents 14,000 educators teaching the more than 160,000 young scholars in Montgomery County Public Schools, the largest school district in the state. MCEA is the largest affiliate of the 75,000-member Maryland State Education Association and is affiliated with the 3-million-member National Education Association.

SB 860 would ensure that Maryland's educators, who are being forced back into buildings, would have access to workers compensation benefits.

This week, our educators began to reenter school buildings for the first time since March of last year. Over the last year, MCEA members have shown remarkable resiliency and demonstrated how truly adaptable they are willing to be. We have seen the struggles of our students in this virtual education space and are aware of how this trauma has transformed them. Educators want to be with their students; they are why we teach.

Our membership also wants to feel safe as they reenter school buildings. MCEA has serious concerns about air quality, access to vaccines, and areas where the school district is ignoring CDC guidelines, such as lack of cohorting on the secondary level. We are being asked to enter workplaces with conditions that contradict the health and safety recommendations outlined by health professionals over the last year.

It is my belief that passage of SB 860 could be a catalyst to school districts in Maryland to increase safety protocols within the school buildings. We are told by MCPS that we will be provided adequate personal protective equipment, that safety protocols will be adhered to, and that educators will not be put in unnecessary danger.

The MCEA educators who are in their first week of in-person teaching, as well as those who will begin in person teaching on March 15, have reported that they are being expected to go into as many as 20 classrooms in a week to provide coverage. The danger to both the educator and the students increases dramatically with this kind of movement. Air quality results are not being shared, and we have been met with resistance when attempting to follow the CDC school checklist. Passage of SB 860 could push districts to rethink such dangerous practices to avoid payment of workers compensation benefits.

The safety of not only the 14,000 MCEA members, but also the 160,000 students in Montgomery County public schools is why MCEA stands in strong support of SB 860.

**2021 SB 0860.pdf**

Uploaded by: McLaughlin, Linda

Position: FAV



**Testimony in SUPPORT SB860 with Amendments  
Workers' Compensation – Occupational Disease Presumptions – COVID-19**

On behalf of the 2,150 teachers and administrators who work in Charles County, Maryland the Education Association of Charles County urges support of SB860, Occupational Disease Presumptions-Covid-19. As a local president and a full-time field staff who hear the stories everyday of members who have suffered from Covid-19 and experienced financial, physical, and medical impacts of this virus.

Educators are on the frontlines providing essential educational services to the children and families in our community. Young educators, educators with young children, senior educators, and those with serious pre-existing health conditions are all at greater risk for experiencing serious illness if they contract Covid-19. Schools are the hubs of our communities and as we transition to bringing more children back for face-to-face instruction as CDC recommendations advise, we will also encounter children who are not able to wear masks due to age, disability, or their own serious medical conditions. Our profession is one that is dominated by females who often are balancing the needs of their family and have limited access to sick leave due to childbirth and caring for young children who become ill.

The retroactive nature of this bill is critical. Recently a member shared a story with us who is in her tenth year of teaching and exhausted her sick leave last year as she welcomed a new baby to her family. Her period of illness from a COVID 19 diagnosis earlier this year drained her of the leave that she was allocated in the new school year. Now she is faced with the possibility of having days of unpaid leave if her children need to quarantine due to exposure or if they become sick the remainder of this school year. Having multiple days of unpaid leave could put her employment in jeopardy, since she no longer has any other paid leave options to exercise.

Frontline educators are counting on their elected leaders to provide much needed relief so that they can effectively continue to support both their students and the communities they serve, all the while not putting their own livelihood at risk because of contracting the Coronavirus. As representatives of the educators in Charles County we implore you to give a favorable report on SB860.

Linda McLaughlin and Dawn Pipkin

Education Association of Charles County President and EACC/MSEA UniServ Director

# **SB 860 Workers' Compensation Testimony.pdf**

Uploaded by: Zucker, Senator Craig

Position: FAV

CRAIG J. ZUCKER  
Legislative District 14  
Montgomery County

Budget and Taxation Committee

*Subcommittees*

Vice Chair, Capital Budget

Chair, Education, Business and  
Administration

Chair, Senate Democratic Caucus



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THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

**Testimony of Senator Craig J. Zucker**  
**Senate Bill 860- Workers' Compensation - COVID -19 Occupational Disease Presumption -**  
**Public School Employees**  
**Senate Finance Committee**  
**March 9th, 2021**  
**1:00pm**  
**Position: SUPPORT**

Good afternoon Chairman Kelley, Vice Chairman Feldman, and distinguished members of the committee. It is my pleasure to testify today in **support of Senate Bill 860 - Workers' Compensation - COVID -19 Occupational Disease Presumption - Public School Employees.**

Senate Bill 860 is an emergency bill that would establish the presumption that educators and other public school employees who contract COVID -19 after reporting to the workplace are deemed to have suffered an occupational disease in the line of duty. This emergency legislation would add COVID-19 to the established list of compensable occupational diseases for public school employees filing workers compensation claims from March 1, 2020 through July 31, 2022.

This legislation would include paid public school employees, including teachers, support staff, and administrators. Applicable employees would be eligible for this workers' compensation presumption if they reported to a school building (or assigned workplace) and were diagnosed with COVID-19 within 14 days of reporting. Said diagnosis would have to be verified by a positive test result from an authorized healthcare professional.

As long as the employee is temporarily totally disabled, and cannot work, then they would be eligible for workers' compensation. The period of time off is as unpredictable as the virus itself. That is no different than with any other accidental injury or occupational disease. Under the law, the first 3 days are not paid until the employee is out for 14 days at which point the first 3 days would be paid. That said, most collective bargaining agreements for school employees include workers' compensation leave that provides employees with paid leave beginning on day 1 (assuming that it is determined to be a compensable claim). In addition, this bill adds another layer of accountability to ensure that local education agencies properly implement these policies appropriately to avoid unnecessary exposure to COVID-19.

As a result of the COVID- 19 pandemic, our public school employees, including educators, have and continue to face unprecedented workplace health challenges. While these educators have

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*Legislative District 14*  
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Budget and Taxation Committee

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**THE SENATE OF MARYLAND**  
**ANNAPOLIS, MARYLAND 21401**

been told they would be provided adequate personal protective equipment (PPE) and that schools would have thorough health and safety procedures, unfortunately there is still a likelihood that people will contract COVID-19. In the face of these dangers, this bill would provide a very deserved protection for these individuals who have encountered so many new and complex difficulties during this unprecedented time.

For these reasons, I urge a favorable report on Senate Bill 860 to help improve and protect the safety of Maryland school personnel. Thank you for your kind consideration.



# **SB 860 - Workers' Compensation – COVID-19 Occupati**

Uploaded by: Zwerling, Samantha

Position: FAV

**Testimony in SUPPORT of Senate Bill 860  
Workers' Compensation – COVID-19 Occupational Disease Presumption – Public School  
Employees**

**Senate Finance Committee  
March 9, 2021**

**Samantha Zwerling  
Government Relations**

The Maryland State Education Association strongly supports Senate Bill 860, which presumes that educators and other public school employees who contract COVID-19 after reporting to the job site to have suffered an occupational disease in the line of duty.

MSEA represents 75,000 educators and school employees who work in Maryland's public schools, teaching and preparing our 896,837 students for careers and jobs of the future. MSEA also represents 39 local affiliates in every county across the state of Maryland, and our parent affiliate is the 3 million-member National Education Association (NEA).

MSEA strongly supports this bill that would help to ensure that educators who are forced back into school buildings are able to access workers compensation benefits.

As MSEA's President wrote to Dr. Salmon, "No one wants to get back to school safely and sustainably more than educators. We, the educators working daily with students and families, are painfully aware of the effects of this year's challenges and trauma upon our students and their families. We are frustrated by the lackadaisical implementation of, and resources for, safety measures in our schools. We are frustrated by the lack of availability of vaccines after being told how important it is for us to get vaccinated. We want to be back in our schools, safely and sustainably, for our students."

Passage of this bill would provide an incentive for school systems and other employers to implement re-opening health and safety protocols with fidelity. While educators have been told they would be provided with adequate personal protective equipment and that schools would have thorough health and safety procedures, that is not what our educators are seeing on the ground. This bill adds another layer of accountability to ensure that local education agencies are actually implementing these policies appropriately to avoid unnecessary exposure to COVID-19.

Workers compensation benefits include not only medical treatment and missed wage replacement, but also additional leave benefits under the collective bargaining agreement for affected employees. Significantly,



those leave benefits are separate from sick leave. This is especially important in a female driven profession such as education, where employees often have little leave left due to childcare and birth.

This bill importantly is retroactive back to March 5<sup>th</sup>, the date of the Governor's State of Emergency declaration. Many of our members never left or returned to the school buildings during the shutdown. The staff included custodial staff, technology assistants, food and nutrition workers, to name a few. Unfortunately, some of these frontline heroes contracted COVID-19 during that time. They should not be excluded from protections and benefits that occupational disease presumption would provide while at the same time limiting the school system's potential exposure to costly litigation.

**MSEA respectfully urges a Favorable Report on Senate Bill 860.**

**SB 756 812 813 860 Chesapeake-IWIF Bill - COVID pr**

Uploaded by: D'Alessandro, Carmine

Position: UNF



Senate Finance Committee  
March 9, 2021

Testimony of Chesapeake Employers' Insurance Company and  
Injured Workers' Insurance Fund in Opposition to  
Senate Bills 725, 756, 812, 813, 860

Senate Bills 725, 756, 812, 813 and 860 seek to provide a presumption of compensability under the Workers' Compensation Act for certain employees diagnosed with severe acute respiratory syndrome Coronavirus (COVID-19). For the following reasons, Chesapeake Employers' Insurance Company and Injured Workers' Insurance Fund respectfully oppose Senate Bills 725, 756, 812, 813 and 860.

Under current law, any employee contracting COVID-19 is permitted to file a workers' compensation claim alleging the condition arose out of and in the course of his or her employment. In fact, numerous individuals have filed such claims and been awarded or received benefits. Chesapeake and IWIF have received 785 First Reports of Injury as of this writing, with only 69 of those reports being "denied." No presumption has been needed to assist with an injured worker's evidentiary burden as, unlike conditions such as lung cancer or asbestosis, COVID-19 can often be contact traced to its source. The ability to trace the cause of the condition obviates the need for a presumption.

Senate Bills 725, 756, 812, 813 and 860 seek to first classify COVID-19 as an occupational disease under Maryland Law; per current law, however, COVID-19 is not an occupational disease as that term is defined. Under current law, an occupational disease must (a) be an inherent hazard of a specific employment and (b) be slow and insidious in its approach (Asbestosis, for example). COVID-19 does not meet either criteria; it is not a hazard inherent in any employment and contracting the condition is not a slow or insidious process. COVID-19,

under current workers' compensation law, would be treated as an accident as there is one specific source of exposure for COVID-19. This is significant in that presumptions do not attach to accidents. As such, Senate Bills 725, 756, 812, 813 and 860 run afoul of current law.

Additionally, Senate Bills 725, 756, 812, 813 and 860 seek to create a permanent statutory framework for a condition that has not been deemed to be permanent in nature. In the limited number of states addressing this issue, sunset provisions have become common place. Not all referenced bills contain such a provision.

Senate Bills 725, 756, 812, 813 and 860 also confer a presumption on classes of employees never before included in presumption legislation which, under years of settled law, are the exclusive province of public safety employees.

Lastly, the bills, as drafted, present differing evidentiary standards depending on the condition: heart and lung cases would differ from COVID-19 cases, causing uncertainty in the presentation of evidence.

Chesapeake and IWIF are obviously mindful of the effects COVID-19 has had on Maryland society. We contend, however, that as for workers' compensation, the system is working as presently constructed and no legislation is needed in this area. Current law adequately protects those contracting COVID-19 in the workplace.

For those reasons, Chesapeake and IWIF respectfully oppose Senate Bills 725, 756, 812, 813 and 860 and request an unfavorable report.

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**SB 860 Oppose 03092021 - FINAL.pdf**

Uploaded by: Egan, Nancy

Position: UNF

Testimony of

American Property Casualty Insurance Association (APCIA)

Senate Finance Committee

SB 860 Workers' Compensation - COVID-19 Occupational Disease Presumptions – Public School Employees

March 9, 2021

### **Oppose**

The American Property Casualty Insurance Association (APCIA) is a national trade organization representing nearly 60 percent of the U.S. property casualty insurance market. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCIA members represent all sizes, structures, and regions, which protect families, communities, and businesses in the U.S. and across the globe. APCIA members write 86% of the workers' compensation insurance in Maryland. APCIA appreciates the opportunity to provide written comments about concerns with Senate Bill 860.

APCIA appreciate the magnitude of the current national emergency and greatly respect all those on the front lines. APCIA and the rest of the workers' compensation industry stand ready to do our part to support both Maryland employers and employees in resolving problems arising from the current crisis. Senate Bill 860 would create a presumption of coverage of COVID-19 as an occupational disease for public school employees. In view of the drastic nature of presumptions of coverage, which are rarely enacted because they dispense with the fundamental and reasonable requirement that a worker prove that an injury or illness is work-related, we believe that this universe of workers is far too broad and would impose unsupportable costs on Maryland's workers' compensation system. The bill also misses the mark in several other important respects, including insufficient proof of disease, and the duration of the presumption provisions.

### **COVID-19 Presumption and Basic Principles of Workers' Compensation**

Workers' compensation is a no-fault system that guarantees injured workers prompt indemnity benefits and unlimited medical care, without any deductibles or co-payments, even in the absence of any fault by the employer. This no-fault system benefits both Maryland employers and Maryland employees. Prior to enactment of workers' compensation in 1913, an injured worker was without remedy for workplace injury or illness unless he or she successfully proved negligence on the part of the employer, and similarly, was without remedy if the employer could prove the employee's own negligence contributed to the injury. In return for no-fault compensation, the employer was free from the threat of civil litigation. Essential to maintaining this no-fault workers' compensation system, however, *is proof that the covered injury or disease arose out of and in the course of employment.* Requiring Maryland employers to cover injuries on an absence of fault basis without proof that the



injury or disease arose out of and in the course of employment violates basic core principles underlying the workers' compensation system.

Senate Bill 860 provides that for purposes of adjudicating workers' compensation claims, a paid public-school employee who has been diagnosed with COVID-19 shall be presumed to have a compensable occupational disease. The presumption that anyone who contracts COVID-19 must have contracted it at the workplace, however, lacks scientific and medical proof. COVID-19 represents a global pandemic, now with over 112 million cases worldwide and almost 2.5 million deaths, precisely because it is not an occupational disease but instead is a disease of ordinary life transmitted between persons who are in close contact with an infected person. Simply put, presumptions create a fiction that all COVID-19 disease for certain categories of workers somehow arise only out of the workplace even though people are interacting with family and friends, going to restaurants, attending social events or religious meetings, etc.

### **Individuals Eligible for Presumption**

Notwithstanding these strong public policy reasons weighing against presumptions of workers' compensation coverage, APCIA is willing to accept extending a presumption to certain limited categories of workers, guided by the principle that the only reasonable justification for granting a presumption for an "ordinary disease of life" that the general public is broadly exposed to is that those workers are at a significantly higher risk of being exposed to the disease than workers in other industries. For instance, APCIA would accept extending a presumption of coverage to the first responders and public safety officials whose duties require them to have direct contact with the public, since the nature of many such duties makes social distancing and other safety measures impractical if not impossible. APCIA would also accept extending a presumption to certain health care workers who have both regular and direct contact with patients known or suspected to have COVID-19. However, APCIA does not support extending these presumptions to public school employees. Unlike front-line health care workers, education workers do not have regular or direct – and unavoidable – exposure to individuals known or suspected to have COVID-19. If there are known or suspected COVID-19 cases in a school, the school will be closed – something that cannot occur with a hospital.

### **Proof of Disease**

The standards in SB 860 for proving that an individual has COVID-19 to the point of warranting a presumption of coverage are severely inadequate, since they call for an employee testing positive or diagnosed with COVID-19 and the test was performed or diagnosed by a licensed health care practitioner. "Diagnosis" should be defined as a positive PCR test for COVID-19, an incubation period consistent with COVID-19, and symptoms and signs of COVID-19 that require medical treatment.

The most reliable laboratory test for determining whether a person has COVID-19 is a nucleic acid detection test, such as a positive polymerase chain reaction ("PCR") test. Both the Council of State and Territorial Epidemiologists (CSTE) and the Infectious Diseases Society of America (IDSA) have concluded that the most appropriate test to determine whether an individual currently has COVID-19 is the PCR test. These tests are readily available in the United States.

Unlike PCR tests, antibody tests do not tell whether a person has COVID-19 at the time of the test, but only whether an individual may have been exposed to the virus associated with COVID-19 such that the body developed antibodies. A person can test positive for COVID-19 under an antibody test without having the disease and without having any symptoms. Antibody tests have a high prevalence of false positive and false negatives, and medically are not indicated for use in patient management

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or medical treatment. Medically, the results of an antibody test do not impact decisions in treatment of a workplace injury or disease. Similarly, subjective diagnosis based on mere symptoms, without a PCR test, is not an accurate method of determining whether a person has COVID-19.

### **Ability to Rebut Presumption**

SB 860 currently provides that a presumption of coverage is rebuttable with “substantial evidence to the contrary that demonstrates that the employee tested positive for or was diagnosed with COVID–19 for reasons not arising out of and in the course of employment.” While this language is an improvement from similar pending bills that provide more limited (or even no) ability to rebut a claim, we believe it is still too narrow. If a claim can be brought without any proof, there should not be artificial constraints placed on an employer’s ability to rebut the claim. The presumption should be rebuttable by (among other things but not limited to) evidence that the employee was at least equally likely to have been exposed to COVID-19 outside the course and scope of employment.

### **Retroactive Application**

SB 860 would be retroactive to claims filed on or after March 1, 2020. Retroactive application of any legislation – much less a bill that fundamentally changes the nature of coverage for workers’ compensation claims – is fundamentally unfair. Neither employers nor insurers ever calculated that an ordinary disease of life would be presumed to be covered workers’ compensation claims absent any proof that it was contracted in the course and scope of employment. Furthermore, issues of proof and rebuttal, which present challenges even on prospective claims due to the fact that COVID-19 can be contracted anywhere outside of the workplace and has symptoms that resemble other illnesses, would be unfairly and unreasonably exacerbated by making any presumption retroactive.

### **Duration of Presumption**

While it is critical that there be a specific, defined end date to any presumption of coverage, SB 860 is completely lacking in this regard. As the state continues to re-open, there are more opportunities for individuals to move around and interact with others, thus making it more difficult to pinpoint where those infected by COVID-19 had contracted the virus and more illogical and unfair to simply presume that the disease was contracted at the workplace. Accordingly, any presumption law should sunset six months after enactment or upon the expiration of the last consecutive emergency order, whichever occurs sooner.

For these reasons, APCIA urges the Committee to provide an unfavorable report on Senate Bill 860.

Respectfully submitted,

Nancy J. Egan, VP, State Government Relations Counsel, DE, MD, VA, WV

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**2021-03-05 Memorandum to Senate Finance Committee w**

Uploaded by: Erlandson, Robert

Position: UNF

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## MEMORANDUM

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**TO:** MEMBERS OF THE SENATE FINANCE COMMITTEE

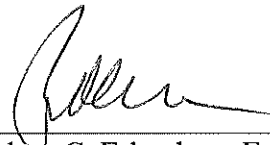
**RE:** SENATE BILL 0725, SENATE BILL 0756, SENATE BILL 0812, SENATE BILL 0813, AND SENATE BILL 0860

**DATE:** MARCH 5, 2021

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I am writing on behalf of myself and the Maryland Self-Insurers and Employers Compensation Association, and requesting an unfavorable report on the above referenced Bills. Attached is written testimony presented to the House Economic Matters Committee on similar bills pending in the House of Delegates. In addition to those arguments, I wish to point out that several of the bills are retroactive, and any retroactivity has questionable constitutionality under both the Federal and State Constitutions. Further, retroactivity plays havoc on existing reserves for Self-Insured Employers, including public employers, as well as the premium basis for insurance companies who have already charged premiums to private employers.

Very truly yours,



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# Erlandson, Vernon & Daney, LLC

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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

RCE/sml

# **SB 860 WC Covid presumption schools only - PSSAM**

Uploaded by: Fannon, Mary Pat

Position: UNF



Mary Pat Fannon, Executive Director  
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Bill: SB 860  
Title: Workers' Compensation – Occupational Disease Presumptions – COVID-19 –  
Public School Employees  
Date: March 9, 2021  
Position: Oppose  
Committee: Senate Education, Health and Environmental Affairs Committee  
Contact: Mary Pat Fannon, Executive Director, PSSAM

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This emergency bill establishes that, under certain circumstances, certain public school employees are presumed to have an occupational disease that is compensable under workers' compensation law after a certain positive test or diagnosis for COVID-19; provides that a certain presumption may be rebutted with certain evidence; makes this presumption retroactive to March, 2020 and terminates this Act in 2022.

The Public Schools Superintendents' Association of Maryland (PSSAM), **opposes** SB 860.

Seventeen of Maryland's twenty-four school districts participate in the MABE Worker's Compensation Group Self-Insurance Fund "Fund," while the rest of the districts are self-insured. Regardless of how districts provide workers' compensation, the effect of this legislation would be the same – increased claims that are difficult to rebut, and a significant increase in the number of workers' compensation cases leading to increased costs for the school systems.

Public schools are not closed environments and with this worldwide pandemic, it is extremely difficult to pinpoint where an individual may have contracted COVID-19. This proposed presumption would be extremely detrimental to school systems, and in the most extreme of scenarios, could deter the re-opening of schools to limit potential risks and claims. This is clearly not in the public interest, but either is creating a nearly impossible refutable claim that an employee contracted COVID-19 in a school setting.

Unlike other occupational hazards associated with jobs identified in existing State law, COVID-19 is not unique to public school employees. Maryland law already provides provisions to cover compensable occupational disease and accidental injuries, and a school employee could make a claim under these existing provisions. This is a much more appropriate remedy for employees and school systems as opposed to the potential of paying for lifetime presumptive workers' compensation medical and indemnity benefits. Presumptive claims for COVID-19 through workers' compensation could lead to significant payments for hospitalization, medical treatment, prescriptions, temporary total disability, death, lifetime medical payments and permanency. For school systems, this could result in significant local budget increases for workers' compensation coverage for decades. For the funds themselves, the increase in high dollar claims would impact their ability to purchase reinsurance protection from catastrophic claims on the insurance marketplace. Lastly, this new inclusion could



lead to the depletion of reserves due to high claims costs and/or the inability to purchase reinsurance would impact the financial sustainability of workers' compensation funds.

Maryland superintendents and their local boards of education are working feverishly to provide for a safe and healthy return to schools for students and staff. Each school system follows strict federal, state and local health and safety guidelines. For employees who contract COVID-19, there are processes in place to assist those employees and their families. Additionally, schools take part in contact tracing and quarantining to help contain the spread within schools and communities.

We are all looking forward to a COVID-19-free future, and we know it will take us years to fully recover from the educational, emotional, and physical side effects from this pandemic. Including presumption claims for COVID-19 creates a lifetime, unaffordable option for schools and will shift funding from the classrooms to the courtrooms.

For the reasons noted above, PSSAM **opposes** Senate Bill 860 and requests an **unfavorable** committee report.

**SB0860 Howard Co BOE Testimony 030921 for FIN - Wo**

Uploaded by: Howard County, BOE

Position: UNF



**Board of Education of Howard County  
Testimony Submitted to the Maryland Senate,  
Finance Committee  
March 9, 2021**

**Board of Education  
of Howard County**

Chao Wu, Ph.D.  
*Chair*

Jennifer Swickard Mallo  
*Vice Chair*

Vicky Cutroneo

Christina Delmont-Small

Yun Lu, Ph.D.

Jolene Mosley

Antonia Watts

Zachary F. Koung  
*Student Member*

Michael J. Martirano, Ed.D.  
*Superintendent  
Secretary/Treasurer*

**SB0860: UNFAVORABLE  
Workers' Compensation - COVID-19 Occupational Disease Presumption -  
Public School Employees**

The Board of Education of Howard County (the Board) opposes **SB0860 Workers' Compensation - COVID-19 Occupational Disease Presumption - Public School Employees** as an unfunded mandate that will severely impact school system resources.

SB0860 provides specific occupational disease workers' compensation coverage for paid public school employees, including teachers, administrators and support staff. While the Board supports the existing provision of benefits for employees who have suffered harm arising out of and in the course of employment, this bill goes beyond that threshold to provide a presumption that those who fall ill are suffering from an occupational disease contracted in the course of employment if they test positive for or are diagnosed with COVID-19 with 14 days after they performed work at the school or other assigned work location outside their home. The bill has a retroactive application for such circumstances since March 1, 2020, and makes the presumption only "rebuttable with substantial evidence to the contrary that demonstrates that the employee tested positive for or was diagnosed with COVID-19 for reasons not arising out of and in the course of employment."

Similar to the Board's opposition of SB0813 also being heard by this Committee, which adds a presumption for COVID-19 illness to an existing section of law related to first responders, SB0860 would stress school system finances with increased workers' compensation claims. Moreover, the burden will fall to the Howard County Public School System to pay to investigate the origins of each employee COVID-19 illness, meaning countless hours of resources dedicated to these cases going back nearly a year.

For these reasons, we urge an UNFAVORABLE report of SB0860 from this Committee.

**SB0860-FIN\_MACo\_OPP.pdf**

Uploaded by: Jabin, Drew

Position: UNF



## **Senate Bill 860**

### *Workers' Compensation - COVID-19 Occupational Disease Presumption - Public School Employees*

MACo Position: **OPPOSE**

To: Finance Committee

Date: March 9, 2021

From: Drew Jabin

The Maryland Association of Counties (MACo) **OPPOSES** SB 860. This bill would expand the scope of presumption for workers' compensation claims for public school employees, therefore placing significant costs on school systems and county governments.

SB 860 would add COVID-19 as a compensable occupational disease for workers' compensation for paid public school employees, creating a nearly irrebuttable presumption that any affected employee should be compensated by the employer. Under state law, counties have no choice but to support these additional costs for county boards of education—competing for limited local funds against school construction, public safety, roadway maintenance, and other essential public services.

The bill's changes also essentially mean there would be no statute of limitations that would apply to these claims, creating the potential for exorbitant county costs and financial burden. This is because instead of the statute of limitations running two years from the date of being off from work, the statute runs two years from when the employee had actual knowledge that contraction of COVID-19 was due to their employment. Actual knowledge could extend the limitations by decades and has done so in many county cases under the heart-lung presumption and other occupational diseases.

The only way to rebut the presumption under this bill is to show "substantial evidence" that the employment was not a contributing cause. As a result, even if the claimant were out grocery shopping, attending parties, eating in restaurants, or engaging in any risky behavior (e.g., not wearing masks, not social distancing, travelling, etc.), the school system would still be responsible. It does not even matter if the employee can trace the diagnosis to a family member. These practical effects ultimately make the employer responsible and applies strict liability to the school system.

This legislation would create new, unbalanced laws to manage workplace COVID claims for education workers and would have potentially significant effects on county government finances, especially due to the retroactivity of the bill. Accordingly, MACo **OPPOSES** SB 860 and requests an **UNFAVORABLE** report.

**AACPS SB860 Workers' Comp OPP 3.9.21.pdf**

Uploaded by: Ortiz, Jeanette

Position: UNF



**SB860 WORKERS' COMPENSATION - COVID-19 OCCUPATIONAL DISEASE PRESUMPTION -  
PUBLIC SCHOOL EMPLOYEES**

March 9, 2021

FINANCE COMMITTEE

**OPPOSE**

Jeanette Ortiz, Esq., Legislative & Policy Counsel (410.703.5352)

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Anne Arundel County Public Schools (AACPS) opposes **SB860 Workers' Compensation - COVID-19 Occupational Disease Presumption - Public School Employees**. This bill establishes that, under certain circumstances, public elementary and secondary school employees in the State are presumed to have an occupational disease that is compensable under workers' compensation law after a certain positive test or diagnosis for COVID-19. It also provides that the presumption may be rebutted with certain evidence. The Act terminates after July 31, 2022.

While well intentioned, this legislation is problematic in a couple of ways. First, the bill does not specify how a public elementary and secondary school employee is to prove that the employee contracted COVID-19 while on the job. Unlike occupational hazards specifically associated with other jobs and identified in existing State law, COVID-19 is not unique to public school employees. In fact, as the growing number of cases in the United States indicate, COVID-19 can be contracted anywhere and at any point in time. Because the legislation presumes that a public school employee has an occupational disease, COVID-19, that is compensable under current law, the employee is not required to prove that the employee contracted COVID-19 while at work. The presumption is that the employee did, in fact, contract the virus at work. AACPS would then be forced to somehow prove, with substantial evidence, to the contrary that demonstrates that the employee tested positive for or was diagnosed with COVID-19 for reasons not arising out of and in the course of employment. This would be difficult to prove at best.

AACPS takes the health and safety of students and employees seriously. The school system has a comprehensive process in place to assist employees who have contracted COVID-19 or have been in contact with someone with COVID-19. For example, if an employee must quarantine due to exposure to someone in the workplace with COVID-19, that employee is able to quarantine without the need to use leave. AACPS has a team of education professionals that assists families, employees, schools, satellite offices, and central office with the rapid and efficient collection of information regarding positive COVID-19 cases in school system buildings. AACPS will continue to work with employees as we all navigate through these unprecedented times.

Finally, this legislation creates an unfunded mandate on school systems. AACPS opposes unfunded mandates. It is difficult, at this time, to project what the fiscal impact would be on AACPS but we believe that the fiscal impact would be significant.

Accordingly, AACPS respectfully requests an **UNFAVORABLE** committee report on SB860.