

## COVID-19 Rebuttable Presumption Business Legislative Intent Script

**For the purpose of providing clear legislative intent, I'd like to ask a few questions of the sponsor.**

**Q1:** Is it your intent, that regardless of other questions that may be asked, that these questions and answers are designed to provide the legislative intent?

**A:** Yes.

**Q2:** Does this legislation create a rebuttable presumption similar to a rebuttable presumption already in the Workers' Compensation Act?

**A:** Yes.

**Q3:** Is there a case that addressed the issue of the amount of evidence necessary to rebut a rebuttable presumption already in the Workers' Compensation Act? What "amount of evidence" did that case use to rebut the rebuttable presumption?

**A:** Yes, there is a case. The Illinois Appellate Court's 2<sup>nd</sup> District Opinion in Kevin Johnston v. Illinois Workers' Compensation Commission states the "amount of evidence that is required from an adversary to meet the presumption." Par. 39. The Appellate Court said "some evidence sufficient to support a finding that something other than the claimant's occupation ...caused his condition" is sufficient to rebut the presumption. Par.45

**Q4:** Is it your intent to create an ordinary presumption following the contraction of COVID-19 related to one's employment that follows the holding in the Johnston case?

**A:** Yes.

**Q5:** Did the Johnston case hold that the rebuttable presumption in question was an ordinary rebuttable presumption? How does an ordinary rebuttable presumption work?

**A:** Yes, the Johnston case held that the rebuttable presumption was an ordinary rebuttable presumption. The presumption creates a *prima facie* case as to the issue of the injury arising out of the course of employment. Then, to rebut the presumption, the employer must introduce some evidence that claimant's occupation was not the cause of the injury or disease in question. Once the employer introduces some evidence that the employee's occupation was not the cause of the employee's injury or disease, the presumption "ceases to operate, and the issue is determined on the basis of evidence adduced at trial as if no presumption had ever existed. The burden of proof thus does not shift but remains with the party who initially had the benefit of the presumption." Par. 36.

**Q6:** Regardless of any other response to a question, or statement given today, we need to clarify one specific issue on the intent of this legislation. Is it your intent to follow the holding in the Illinois Appellate Court's 2017 2<sup>nd</sup> District Decision in Kevin Johnston v. Ill Workers Compensation Commission.

**A:** Yes.