Hon. JB Pritzker

Governor, State of Illinois

2017 State Capitol

Springfield, IL 62706

Subject: Veto Request of SB 1596

Dear Gov. Pritzker:

One of the key, business issues you spoke about during the campaign last year was the need for workers’ compensation reform and indicated that any changes should be part of a process were business and labor negotiated such changes.

**We urge you to veto SB 1596, as business interests were provided no opportunity to negotiate the provisions of SB 1596 and its provisions will have a profound impact on the workers’ compensation system as we outline below. We also urge you, following a veto, to bring the workers’ compensation stakeholders together to negotiate a more reasonable approach to addressing the Folta v. Ferro Engineering Illinois Supreme Court decision. A more reasonable approach would be to confine the issue to the WC/OD Acts.**

The fundamental tenet of the WC/OD Acts are to establish an equitable system of compensating employees with certain benefits and swift remedy by forgoing their common-law rights and in exchange, the employers are subject to a strict liability system with known parameters. As such, Illinois employers enjoy the protections of exclusive remedy meaning a workplace injury or disease must be adjudicated under the WC/OD Acts. As part of the WC/OD Acts’ creation of certainty for employers, limitation periods to bring action against the employer have been established as part of the law. These time periods, 25 years for filing a claim and the three years statute of limitations under the Occupational Diseases Act, are finite periods and act as a complete bar to such action.

In 2015, the Illinois Supreme Court, in Folta v. Ferro Engineering, agreed with the employer community that the Acts bar an employee’s cause of action against an employer to recover damages for a disease resulting from asbestos exposure which arose out of and in the course of employment even though no compensation is available under those Acts due to the applicable statute of repose. In its 5-2 Folta decision, the Court noted: “The Acts do not prevent an employee from seeking a remedy against other third parties for an injury or disease. Rather, in this case, the acts restrict the class of potential defendants from whom Folta could seek a remedy, limiting Folta’s recourse for wrongful death claims to third parties other than the employer. In this case, Folta named 14 defendant manufacturers of asbestos-related products. Folta was not left without any remedy.”

**Why we oppose SB 1596:**

**Exclusive remedy protection for Illinois employers is eviscerated creating significant, new exposures to liability, including punitive damages, that far exceed the benefits provided by the WC or OD Acts …**Instead of the protections provided by the WC/OD Acts, employers will now face civil actions with unlimited awards, including punitive damages, from cases where the action has been previously barred. SB 1596 provides that the restriction in prosecution of a claim against an employer under both the WC and OD Acts “do not apply to any injury or death sustained by an employee as to which the recovery of compensation benefits under this Act would be precluded due to the operation of any period of repose or repose provision.”

**Employer risk costs will increase due to the uncertainty…**employers may be responsible for claims previously closed. Employers may be uninsured as business liability policies exclude workers’ compensation claims and workers’ compensation policies exclude civil claims against the employer. Lack of insurance coverage could jeopardize the financial viability of the employer and result in little to no award actually being received by the employee. By expanding the repose limit, an employee could continue to enjoy the strict liability placed on an employer and be relatively certain that benefits will be paid.

**Settlements may be adversely impacted…**the legislation provides that there is a “nonwaivable right to bring such an action against any employer or employers.” It is unclear as tohow this change will impact future settlements under the WC/OD Acts.

We appreciate your consideration and are available should you or your staff have any questions.

Sincerely,

Todd Maisch

President, CEO