

DRAFT

April 17, 2020

Vicki Thomas
Executive Director
Joint Committee on Administrative Rules
700 Stratton Building
Springfield, IL 62706

Dear Ms. Thomas:

Earlier this week, the Illinois Workers' Compensation Commission (IWCC) held emergency meetings to approve an emergency rule to add new provisions to its Rules of Evidence (Section 9030.70).

The undersigned organizations request that the members of JCAR object to and suspend the Emergency Rule of April 16, 2020 that adds subparagraphs 1 & 2 of subsection 1 of Section 9030.70 regarding workers' compensation benefit coverage for certain workers exposed to the COVID-19 virus.

Every signatory organization agrees that given the facts of an employee's claim for workers' compensation or occupational diseases benefits, their claim may be compensable under current law. However, the IWCC's rule is problematic for the following reasons:

IWCC Exceeds Its Authority with the implementation of the April 16, 2020 Emergency Rule in Violation of The Illinois Administrative Procedure Act (APA) as the Emergency Rule Is not Consistent with Statute: The IWCC exceeds its authority by expanding the scope of the rebuttable presumption provided under the Illinois Workers' Compensation Act and Occupational Diseases Act to workers who are not able to access the right to a rebuttable presumption under the statute.

Illinois current law provides a rebuttable presumption for first responders. Subsection (f) of Section 6 of the Workers' Compensation Act (820 ILCS 305/6) provides a rebuttable presumption to firefighters, emergency medical technicians, emergency medical technician-intermediates, advanced emergency medical technicians, or paramedics for any bloodborne pathogen, lung or respiratory disease or condition, heart or vascular disease or condition, hypertension, tuberculosis, or cancer resulting in any disability (temporary, permanent, total, or partial).

In addition, the current statutorily provided presumption does not apply to any employee who has been employed as a firefighter, EMT, or paramedic for less than 5 years at the time he or she files a claim.

Similar provisions are provided in the Occupational Diseases Act (820 ILCS 310/1).

Subparagraph 2 of Section 1 of Section 9030.70 identifies a broad swath of employers that are subject to the Emergency Rule, by including items 7-12 from the Governor's Executive Order 2020-10. For example item 11 of the EO states: "*Businesses Covered by this Executive Order: any for-profit, non-profit, or educational entities, regardless of the nature of the service, the function it performs, or its corporate or entity structure.*" The Commission's Emergency Rule exceeds its authority by expanding the scope of the rebuttable presumption to workers who are not identified under the statute. It also expands rights to a rebuttable presumption for a firefighter, EMT, or paramedic who has not worked in that profession for at least 5 years. Both expansions are inconsistent with statute.

IWCC's Emergency Rule of April 16, 2020 has an adverse economic impact on small business, small municipalities and non-profit organizations:

All employers, as defined in Section 1 of the Workers' Compensation Act (820 ILCS 305/1), must provide coverage to pay benefits for workers' compensation and occupational diseases claims filed by workers and determined compensable by the IWCC. Rates of insurance coverage for most employers and costs incurred by employers approved to self-insure are determined by the benefits that the statute provides. Changing the burden of proof for determining those benefits could have a profound impact on the costs of insurance to employers, both private and public, for-profit and not-for-profit. Employers in certain industries with greater exposure to benefit claims will see a greater cost impact as each employer with insurance coverage has an "experience modifier" that insurance companies use to determine that employer's insurance rate.

Given the financial uncertainty that the Governor's Executive Orders to address the COVID-19 crisis have created, Illinois employers do not need the additional, significant financial burden that the IWCC's Emergency Rule produces. For many employers, it will be difficult enough to get back on their feet. This Emergency Rule just adds an additional, unnecessary roadblock in their efforts to open their doors.

There is not an emergency which is the basis of the need to implement the IWCC's Emergency Rule of April 16, 2020: The IWCC reason for the emergency contends that a worker's only avenue for financial support is through benefits provided by the Workers' Compensation or Occupational Diseases Acts. This is untrue as recently enacted federal law provides a number of ways employees are able to attain income to support them and their families. The Families First Act requires employers of 500 or less employees to provide two weeks of paid sick leave and expands paid Family and Medical Leave benefits beyond the two weeks of paid sick leave to employees affected by the COVID-19 virus. Employers are incentivized to provide these benefits as the employer receives 100% reimbursement from the federal government.

The federal government also has provided a loan program (PPP) under the CARES Act that provides the employer loan forgiveness if the employer maintains payment of employee salaries and benefits during the pandemic.

In addition, the federal government has expanded unemployment insurance benefit eligibility to individuals not eligible for benefits such as independent contractors and sole proprietors. It has expanded the number of weeks of eligibility for UI benefits from 26 weeks to 39 weeks and is providing a bonus \$600 per week until July 1, 2020 to all recipients of unemployment insurance benefits.

Employers are using all these federal tools as well as benefits they also provide to employees to maintain continuity of employment with affected workers. It is in the employer's interest to help their employees financially and to bring the worker back to work when they are able to do so.

While the IWCC has dramatically reduced its operations, it continues to accept applications for a benefits under the Acts. As indicated previously, current law may provide benefits under the Acts given the specific facts of the claim. Consequently, those claims are not being denied access to the system being administered by the IWCC. Unless the IWCC would determine these claims to be a priority and change its rules to fast track their consideration, these COVID-19 claims will not be determined for many months after the claim has been filed with the IWCC. In some cases, finalizing the claim may take years.

Illinois has been under a State of Emergency since March 9, 2020. If this was an emergency situation why has it taken so long for the IWCC to act. .

Finally, the IWCC notice includes the statement that "the emergency rule does not create or diminish any substantive rights of any party". The undersigned strongly disagree as the Emergency Rule shifts a burden of proof to the responding employer and creates a new right of presumption for individuals that under current law they do not currently enjoy.

The undersigned are willing to address the merit of the intended purpose of the IWCC Emergency Rule in the legislative process which is where the expansions provided in the Emergency Rule should legally occur.

Without legislative changes, we urge the members of JCAR to object and suspend the IWCC Emergency Rule of April 16, 2020.