

Presumptive Benefits in Workers' Compensation

Emerging Issues Before and After COVID-19

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Today's Presenters

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 - Chairperson, Academy Workers' Compensation
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Agenda

- What does workers' compensation ("WC") presumption mean?
- To whom do these presumption laws apply?
- How do these laws vary by state?
- Cost considerations
- Emerging trends
 - Post-traumatic stress disorder ("PTSD")
 - COVID-19
- Future considerations

What does WC presumption mean?

- An injured worker must prove that his/her injury arose out of and in the course of employment
- Purpose of these presumption laws is to shift the burden of proof onto the employers for certain types of diseases and certain types of claimants
 - Burden of proof shifts to the employer to prove the injury is not work-related

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Most laws classify these injuries as "rebuttable"

To whom do these presumption laws apply?

- Historically, presumption laws have applied to first responders
 - firefighters (employed and volunteer), police officers, and emergency medical personnel
 - their employment is deemed inherently linked to physical and emotional stress
 - mostly employees of local public entities (e.g., cities, counties, school/water/fire districts, etc.), which tend to be self-insured
- Federal workers
- Recently with COVID-19, presumption laws have been applied to "essential workers" or "front-line" "or "essential critical infrastructure" workers
 - Health care, grocery, restaurant, gas station, and hardware supply store

How do these laws vary by state?

- Occupations
- Injuries/diseases
- Eligibility criteria
- Rebuttability

Cost considerations

- Drivers already noted on prior slide
- Time period of benefits
- Uncertainty
 - Low frequency / high severity
- Can be highly publicized
- Varying conclusions about estimated frequency of claims
- Ambiguity in the presumption law language
- Long latency period
- Interaction with other benefits (e.g., health, pension)
- The treatment of volunteers
- Sunset laws, as regards the limitation in which a claim can be reported



Other challenges to cost estimation

- Most data not compiled centrally
 - Public entities tend to be self-insured / pooled
- Cost shifting
- Incentives to file claim or not
- Coordination of benefits
- Different court standards as to rebuttability
- Retroactive benefits cause uncertainty

How do these laws impact various constituents?

- Public entities
- Insurers
- Affected workers / unions
- Businesses
- Society at large

Emerging Trends—PTSD

- Significance of mental injuries for first responders
- 37 states cover some form of PTSD benefits under WC
 - 9 states provide WC for injuries without physical evidence, like PTSD
 - 28 states cover injuries without physical evidence in limited circumstances (such as a sudden or unusual incident, or just for first responders)
 - 13 states do not provide for so-called "mental-only" injuries.
- Of 37 states above, 10 states currently include PTSD as a qualifying presumption injury type
- California was last state to pass a PTSD presumption, in October 2019

PTSD (cont.)

- Similarly, all states have differing statutory language regarding:
 - Definition of PTSD
 - Who is covered
 - Injuries covered
 - Prerequisite for coverage (e.g., timing of diagnosis)
 - Definition of contributing event
- Likely growth
 - In 2019, at least 26 states considered new legislation addressing PTSD WC coverage

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Emerging Trends—COVID-19

- As of June 1, 2020, 21 state governments have either issued executive orders or proposed and enacted legislation that pertains to presumptive coverage of COVID-19-related claims
- Stemmed from concern over workers potentially being denied WC benefits if exposed to COVID-19 on the job
- State variations
 - Occupations covered: first responders (firefighters, EMTs, police officers); health care workers; all essential workers (grocery store employees, gas station attendants)
 - Positive COVID-19 test results; common symptoms diagnosed by doctor
 - Time period: retroactive dates; end dates
 - Benefits provided: lost wages; death benefits



COVID-19—Cost Considerations

- Certain rating advisory organizations attempted early on to project the potential cost impact of these decisions.
 - California (WCIRB)
 - New York (NYCIRB)
 - National Council on Compensation Insurance ("NCCI")
- Emergence of actual WC claims

Future considerations

- Continuing initiatives
- Since June 1, states such as CT, NJ, and VT have implemented presumption policies
 - Michigan WC Disability Compensation Agency—covering "first response employees" automatically
 - Numerous other states have legislation pending
 - Teachers being included, given start of school
 - Proposals for certain federal employees (TSA, etc.) pending in Congress
 - Will other injuries/diseases and other occupations be included?
- Key constituents
 - State legislators
 - WC insurance market
 - Public entities
 - Affected workers / unions
 - Businesses
 - Society at large
- WC actuaries should monitor closely



Questions?

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