

COVID-19 & ILLINOIS GENERAL ASSEMBLY HOUSE BILL 2455

The Illinois General Assembly (“ILGA”) sent House Bill 2455 (“HB 2455”) to Governor Pritzker on May 29, 2020. Governor Pritzker signed HB 2455 into law on June 5, 2020.

HB 2455 is an omnibus bill that addresses Section 5 of The Illinois Works Jobs Program Act, Section 10 of The Illinois Pension Code, Section 15 of The Workers’ Occupational Diseases Act, and Section 20 of The Unemployment Insurance Act.

This KPD Update will focus on the amendment to Section 15 of The Workers’ Occupational Diseases Act. The ILGA provided statutory language both more comprehensive and more limiting than the Emergency Amendment previously issued and retracted by the IWCC.

HB 2455 amends Section 15 by adding new language beginning under subsection (g), spanning nearly 3.5 pages. Importantly, this amendment provides a rebuttable presumption for first responders and front-line workers. HB 2455 also provides requirements regarding precisely what an employee must provide to apply the rebuttable presumption at trial. It also provides further guidance on how to overcome the rebuttable presumption, as well as how the date of injury will be determined.

THE COVID-19 REBUTTABLE PRESUMPTION

HB 2455 created a rebuttable presumption within Section 15 of the Workers’ Occupational Diseases Act that:

- A first responder or front-line worker’s exposure to COVID-19 **arose out of and in the course** of employment.
- The injury or occupational disease resulting from COVID-19 **is causally connected** to the hazards or exposure of employment.

A rebuttable presumption is an assumption made by a court that is taken as true unless someone comes forward to contest it or prove otherwise. This assumption will stand as a fact unless or until contested or proven otherwise.

The HB 2455 rebuttable presumption applies to cases tried after the effective date of this amendatory Act (June 5, 2020) *and* where there is a diagnosis of COVID-19 made on or after March 9, 2020 and before December 31, 2020.

REQUIREMENTS FOR THE REBUTTABLE PRESUMPTION TO APPLY AT TRIAL

For the rebuttable presumption to apply at trial, the employee must provide:

- A **confirmed medical diagnosis** by a licensed medical practitioner **or a positive laboratory test** for COVID-19 or for COVID-19 antibodies (for cases on or before June 15, 2020);
- A **positive laboratory test** for COVID-19 or COVID-19 antibodies (for cases occurring after June 15, 2020).

OVERCOMING THE REBUTTABLE PRESUMPTION

HB 2455 outlined examples of evidence that may rebut the presumption:

- If the employee was either **working from home or on leave from employment for 14 or more consecutive days immediately prior to the injury**, occupational disease, or period of incapacity resulting from COVID-19 exposure, or some combination thereof.
- The **employer was engaging in** and applying to the fullest extent possible or enforcing to the best of its ability **industry-specific workplace sanitation, social distancing, health and safety practices for 14 consecutive days prior to the employee's injury, occupational disease, or period of incapacity resulting from exposure to COVID-19.**
 - The employer's safety precautions should be based on either Centers for Disease Control and Prevention ("CDC") or Illinois Department of Public Health ("IDPH").
 - HB 2455 indicates the precautions should rely on "updated" guidance from the CDC and IDPH, or guidance in effect at least 14 days prior to the COVID-19 diagnosis.
- The employer's safety precautions could be shown via a combination of **administrative controls, engineering controls, or personal protective equipment** to reduce the transmission of COVID-19 **to all employees for at least 14 consecutive days prior to the employee's injury**, occupational disease, or period of incapacity relating to COVID-19.
- The presumption may be overcome by showing the employee was exposed to COVID-19 by an alternate source.

DEFINITIONS AND CLARIFICATIONS UNDER HB 2455

The term "COVID-19 first responder or front-line worker" includes:

- Police;
- Fire personnel;
- Emergency medical technicians;
- Paramedics;
- All individuals employed and considered first responders;
- All workers for health care providers, including nursing homes and rehabilitation facilities and home care workers;
- Corrections officers;
- Any individual employed by essential businesses and operations as defined in Executive Order 2020-10, as long as employees of said essential businesses are **required by employment to encounter the general public**, or work in employment locations of **15 or more employees**.

Please recall that Executive Order 2020-10 includes the following:

- Stores that sell groceries and medicine;
- Food, beverage and cannabis production and agriculture;
- Organizations that provide charitable and social services;
- Gas stations and businesses needed for transportation;
- Financial institutions;
- Hardware and supply stores;
- Critical trades;
- Mail, post, shipping, logistics, delivery and pick-up services;
- Educational institutions;
- Laundry services;
- Restaurants for consumption off-premises;
- Supplies to work from home;
- Supplies for essential businesses and operations;
- Transportation;
- Home-based care and services;
- Residential facilities and shelters;
- Professional services;
- Day care centers for employees exempted by the Stay in Place Order;
- Manufacture, distribution and supply chain for critical products and industries;
- Critical labor union functions;
- Hotels and motels;
- Funeral services.

HB 2455 clearly states that “an employee’s **home** or place of **residence is not a place of employment**, except for home care workers. HB 2455 provides that personal protective equipment includes, but is not limited to:

- Face coverings;
- Gloves;
- Safety glasses;
- Safety face shields;
- Barriers;
- Shoes;
- Earplugs or muffs;
- Hard hats;
- Respirators;
- Coveralls;
- Vests;
- Full body suits.

The **date of injury** or the beginning of the employee's occupational disease is the earlier of the following two dates:

- The date that the employee was unable to work **due to contraction** of COVID-19;
- The date the employee was unable to work **due to symptoms** that were **later diagnosed** as COVID-19.

HB 2455 provides that for an employee to qualify for **temporary total disability benefits** under the presumption, the **employee must be certified or recertified** for temporary disability.

HB 2455 provides that an **employer is entitled to a credit against liability for temporary total disability due to an employee contracting COVID-19 when any sick leave or extended salary benefits are paid under:**

- Emergency Family Medical Leave Expansion Act;
- Emergency Paid Sick Leave Act of the Families First Coronavirus Response Act;
- Any other federal law;
- Or, any other credit to which an employer is entitled under the Workers' Compensation Act.

We are monitoring the rapid developments of COVID-19 and the implications of practice before the IWCC. As we obtain information, we will keep you informed of any developments. Should you have any questions, please do not hesitate to contact us. Our team is happy to assist you and answer any questions you may have. Stay safe and know that we are here for you.

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