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## INVESTIGATION OF COVID-19 CLAIMS

### ILLINOIS WORKER'S COMPENSATION DEFENSE

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### **Investigation of Covid-19 Claims in Illinois Worker's Compensation**

As COVID-19 continues to rapidly spread in many states, including Illinois, it is important for employers to prepare for an influx of COVID-19 related workers' compensation cases. Rapid investigation and fact gathering is especially important in light of recent emergency rules promulgated by the Illinois Workers' Compensation Commission. The Commission recently issued a rule establishing a rebuttable presumption that COVID-19 cases involving "First Responders" and "Front-Line Workers" arose out of and in the course of the employment. It is important that those involved in investigating COVID-19 workers' compensation cases be proactive about investigating and determining whether a COVID-19 arose out of and in the course of employment or is the result of community spread.

#### **Diagnosis:**

Determine whether the claimant has a definitive diagnosis with COVID-19. An employer should not rely on representations from the claimant alone or even symptoms that suggest a possibility of COVID-19. Keep in mind that based on COVID-19 test results that have been reported in Illinois, the majority of individuals that have been suspected of having the condition have tested negative. Out of the suspected cases that have undergone testing, approximately 20% (or 1 in 5) of the test results have been positive and received a definitive diagnosis.

- Has the employee received a reputable COVID-19 test?
- Is the test positive?
- Are there medical records corroborating the positive test? Can the claimant produce the test results and/or supporting physician documentation?

#### **Investigation:**

Evaluate whether the employee's position puts them at an increased risk of exposure and whether the condition was, in fact, related to a workplace exposure.

- **Claimant interview:** If at all possible, the employer/insurer should obtain a recorded statement from the claimant. The interview should inquire regarding the following issues:
  - When did the claimant start noticing symptoms?
  - What is the claimant's position and duties?
    - What interactions does that position require with the general public?
    - Has the claimant been in contact with the public while performing their duties and what is the frequency of that contact?
    - Has the claimant been directly exposed to anyone at work that has been diagnosed with COVID-19? If so, when?
  - What are the other possible sources of the condition?
    - What activities has the claimant been engaged in outside of work?
    - Has the claimant been going to public places like grocery stores, pharmacies, doctor's offices/hospitals, or other "essential" businesses?
    - Has the claimant visited with friends or relatives outside of the immediately family living with them?



- When out in public on personal errands, does the employee wear gloves/mask, practice social distancing and good hygiene practices, and observe state and federal recommendations designed to curb transmission of the illness?
  - Have individuals residing with claimant been working outside the home? Have these individuals been following the government recommended sheltering guidelines?
  - Has claimant interacted anyone outside of work who has tested positive, including family and friends? When?
  - Has the claimant or individuals living with claimant traveled recently? Where, when and how?
- **Employer Interview/Investigation:** At a minimum, the investigation should include an interview with the claimant's manager at work and potentially, other coworkers. The discussion may cover many of the same issues but in terms of liability, should be more focused on potential workplace exposure.
  - As with the claimant's interview, an interview with the employer should include a discussion regarding the claimant's position.
    - What is the claimant's position?
    - Does that position require regular interaction with the public?
    - What is the frequency and extent of these interactions?
  - What is the employee's schedule?
    - Where and when has the employee been working?
    - How many other employees were working at the premises when the claimant was working/allegedly exposed?
    - Obtain wage records and time cards.
  - Have there been potential workplace exposures?
    - How many employees work at the employer?
    - Has anyone at the workplace tested positive for coronavirus?
    - If so, was the claimant exposed to that person?
    - Has the employer imposed safety guidelines limiting employee contacts and exposure? What measures are in place that would prevent transmission of the disease between employees and members of the general public?
      - Social distancing?
      - What protective equipment is available and is it used?
      - Is remote work available and has the claimant been working remotely? During what time periods?
      - Were these measures put into writing, posted or sent out to employees? If so, obtain copies of the materials.
      - Were the requirements consistently enforced and followed by the employees?



- What did the claimant report and when?
  - What did the claimant state about the source of the illness?
  - Did the claimant ever mention family members or friends being sick?
  - Did the claimant ever mention engaging in other activities outside of work that would have put the claimant at risk of contracting the illness?
- **Medical Opinion Evidence:** Depending on the results of this investigation, it may be worthwhile to obtain an opinion from an expert. This may be either an internal medicine specialist or a more credible option is an infectious disease specialist. Opinions from a well qualified infectious specialist will be more persuasive before the Commission. The doctor should be provided with enough documentary evidence to give a well-reasoned opinion including test results, medical records, witness statements and other available documentary evidence, if available.