

LEGISLATIVE UPDATE



By Brittan Bolin
IAFPD Lobbyist

States Take Steps to Protect First Responders

What a difference a month can make. At the beginning of March, states that were currently in regular legislative session – including Illinois – were operating business as usual. Within two short weeks, the impact of the current COVID-19 outbreak was realized, and legislative activity switched from business as usual to focusing exclusively on issues related to the coronavirus. This includes a number of measures related to the impact and risks of the disease to first responders.

Most legislative and executive activity relating to first responders has been focused on workers' compensation. On April 13, the Illinois Workers' Compensation Commission issued an emergency rule that essential workers who contract COVID-19 will be assumed to have contracted the disease in the line of duty and may qualify for workers' compensation. First responders covered by the emergency rule include police, firefighters, EMTs, and paramedics. The rule also applies to healthcare workers and those identified as essential workers by Governor JB Pritzker in his initial Stay at Home order, Executive Order 2020-10 which covers many types of employees including grocery store and restaurant workers, critical trades such as plumbers and electricians, and childcare providers.

Under the Illinois Administrative Procedure Act, emergency rules are temporary rules that take effect immediately or up to 10 days after filing with the Secretary of State but remain in effect for no more than 150 days. The Act allows use of emergency rulemaking when an agency determines that a "threat to the public interest, safety or welfare" requires

rules to be adopted in less time than would be needed to complete proposed rulemaking. JCAR reviews emergency rules to ensure that they meet these criteria.

While the emergency rules were praised by Governor Pritzker and groups representing frontline workers, including the AFFI and the Illinois Nurses Association, support for the move was not unanimous. Organizations representing employers voiced strong concerns about the costs that could result from numerous workers' compensation claims filed with rebuttable presumption and the manner in which the rule was issued.

Illinois is joined by a number of other states in trying to protect frontline workers and first responders.

- Missouri Governor Mike Parson announced emergency rules to provide a presumption that COVID-19 exposure occurred on the job for first responders, and that the rule would take effect retroactively for workers who have already tested positive and been quarantined.
- North Dakota took action to extend workers' compensation to first responders and healthcare workers by executive order.
- The Minnesota legislature has approved a measure to ease the ability of first responders to obtain workers' compensation should they contract COVID-19. Under the Minnesota legislation, the burden of proof in workers' compensation claims filed for COVID would be shifted from the employee to the employer. The changes in coverage would sunset after one year.

- The mayor of Houston, Texas announced that the city will assume that any employee who tests positive for the new coronavirus contracted it while on duty after a member of the Houston Fire Department who was quarantined for exposure had a claim denied.
- Legislation to add COVID-19 to the list of occupational diseases in the Ohio workers' compensation law was proposed but has yet to be considered.

Florida, Washington State, Michigan and Kentucky have also taken steps to strengthen workers' compensation coverage for first responders and healthcare workers related to COVID, but under Florida law, agencies and private employers may still opt out of paying workers' compensation claims if it can be established a worker contracted the virus while not performing their duties. Some question whether point of infection can be proven given the highly contagious nature of the COVID-19 virus. It would appear that some jurisdictions like Illinois, Minnesota and Missouri are erring on the side of granting workers' compensation claims related to COVID by certain employees, while others, including Florida, could make it more difficult for claimants.

These proposals are likely the tip of the iceberg. Each day brings new and unanticipated questions related to the outbreak. With our fire protection districts on the front lines of this crisis, we will continue to monitor what steps state and local governments are taking to address occupational risks for first responders. ■