Workers' Comp

Webcast: Workers’ Compensation Legislation Addressing Essential Workers Affected by COVID-19

Event Details

Start: April 26, 2020 @ 8:00PM EDT End: @ Location: Online Event

As the United States continues to battle COVID-19, many states have taken emergency legislative and regulatory actions to address potential issues related to workers’ compensation. In this webinar, Mitchell Vice President of Government Affairs, Brian Allen, discusses the impact of COVID-19 on workers’ compensation from a regulatory and compliance perspective. Watch Now

Summary

One major concern for those working on the front lines as healthcare workers and first responders is the increased risk for infection from COVID-19. According to the New York Times, as of April 3, 2020, one of every six New York Police Department officers is on sick leave and one of every five Detroit Police Department officers is on sick leave. Across the U.S., large percentages of healthcare workers make up states’ reported coronavirus cases. Here are the major issues facing the workers’ compensation industry in relation to front line workers and COVID-19.

Presumption Laws

Since these workers are considered essential, many states are looking at whether presumption laws should apply to those affected by COVID-19. Presumption laws state that a person’s injury is presumed to be caused by their line of work and therefore should be compensable. Typically, presumptions do not include illnesses such as the common cold or flu, since it is extremely difficult to prove these arose from a person’s line of work. However, states are taking a different approach to COVID-19. Several states, including North Dakota, Kentucky, Arkansas, Florida, Washington, Michigan, Illinois and Missouri, have put forth executive orders adding presumptions for COVID-19 for various occupations. Most states list just first responders and front-line health care workers, but Illinois has granted presumptions for an expansive list of essential workers. Minnesota, Utah, Alaska, Wisconsin, New York, California, New Jersey and Pennsylvania have passed or are considering

emergency legislation similar to these executive orders. In addition to states passing emergency rules, several groups, including the nation's largest police union (the National Fraternal Order of Police), are calling for presumption laws to be expanded in all states. As the issue progresses, we expect to see more legislation across the United States related to presumptions.

Care Interruptions

As we consider the potential for workers' compensation coverage for those on the front lines, we also have to be cognizant of any potential interruptions for current claimants. As states made emergency declarations at the beginning of the pandemic, most included modifications to pharmacy care, including early refills, longer fills and emergency fills of life-saving medications. On the medical care side, many states have prohibited non-urgent surgery until the pandemic has passed. There are also restrictions on non-urgent care and limited access to appointment times, which could affect workers' compensation patients. One area that has filled the void of in-person appointments and can be beneficial for workers' compensation patients is the increase in telemedicine. A significant number of states have expanded access to telemedicine, which provides a socially distant way to manage triage, office visits, physical therapy and mental health treatment.

Operations Interruptions

As nearly every business has had to adapt to some form of shelter-in-place rules, normal work practices have shifted to accommodate working from home. For workers' compensation, this has affected both those working for workers' compensation insurance providers and those that may be injured while working from home. On the insurance provider side, hearings have moved to virtual platforms, deadlines have been pushed out or waived altogether, and accessibility to agency resources has been delayed. Providers are shifting their workforce to home-based offices, which creates challenges that include adapting technology for working from home, keeping employees engaged and managing processes and production via technology. On the risk management side, companies have to consider how to keep their employees safe, both from a physical, ergonomic perspective and from a cyber-risk perspective. Determining what injuries fall under "work time" and would be compensable versus those that fall under "personal time" may prove a challenge as well. The impact on workers' compensation claims is still unclear. Potentially, there could be a decrease in traditional claims because of the current stay-at-home orders and job furloughs, while there could also be an increase in claims from what are currently deemed essential industries. It is too early to tell if this will create an offset in claims. Of course, this could all be impacted by rule or law changes as the pandemic develops.

Post-Pandemic Impact

After the pandemic, what changes will continue to affect the workers' compensation industry? Brian Allen expects there to be an impact on the claims experience, such as presumption changes, lingering physical effects on those infected, and the influx of fraudulent claims. He also predicts a potential for increased accidents as workplaces reopen. He also foresees several legal challenges related to:

- Legitimacy of Executive Orders or Emergency Rules
- COVID-19 Claims Causation
- Defective Personal Protective Gear
- Employers Failing to Adequately Protect Employees
- First Responders, Health Care Providers and Other Essential Workers for Accidental Transmission

Overall, the workplace will likely change after the pandemic. Many people may choose to continue working from home even after businesses reopen. Social distancing will likely continue for a long time, especially if

people have lingering fears of close contact. Revised sanitation and cleaning protocols will become the norm in office buildings as well. As the world adapts to changing norms due to COVID-19, the workers' compensation industry will see a ripple effect as a result of those changes. What shape that future will take is uncertain, but we have an opportunity to influence and create an even better tomorrow as we look towards a post-pandemic world. Mitchell will keep you informed as things change. Learn More



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