

## **Guidance for Employers Returning to Work; COVID Infections as Worker's Compensation Injuries, and More.**

Many of our clients are operating in a limited fashion pursuant to one of the many [exemptions](#) set forth in Governor Pritzker's stay at home order. More employers will open up or expand their existing operations in the near future. The EEOC recently issued [practical guidance](#) to employers who are resuming operations.

The most relevant guidance from the EEOC is set forth below:

**Q. During the pandemic, may employers ask employees specific questions about any illness the employee is experiencing?**

A. Yes. During the pandemic, employers can ask employees if they are experiencing COVID-19 symptoms like fever, chills, shortness of breath, or sore throat. Employers should maintain this information in a confidential medical file. The file should be safe, secure, and accessible to HR professionals and supervisors on a need to know basis only.

**Q. During the pandemic, may employers take employees' body temperatures.**

A. Yes. During the pandemic, employers may take employees' body temperatures, but employers should be competent in the fashion that they measure temperatures, and employers should remember that some people with COVID-19 do not have a fever.

**Q. May a temporary staffing agency that places an employee in an employer's workplace notify the employer if it learns the employee has COVID-19?**

A. Yes. The employer, in turn, should determine who the temporary employee had contact with.

**Q. What kind of reasonable accommodations might an employer be required to grant a disabled (high risk for complications) employee if working from home is not feasible?**

A. Accommodations for those who request reduced contact with others due to a disability may include changes to the work environment such as designating one-way aisles; using plexiglass, tables, or other barriers to ensure minimum distances between customers and coworkers.

### **COVID Infections and the Rebuttable Presumption that They Occurred at Work**

On April 13, 2020, the Illinois Workers' Compensation Commission passed an [Emergency Amendment](#) to their rules of evidence which provides that, whenever an

employee claiming workers' compensation coverage is a COVID-19 "First Responder or Front-Line Worker," and the employee's incapacity resulted from exposure to the COVID-19 virus during the COVID-19 state of emergency, there will be a rebuttable presumption that the condition was caused at work.

Further, the rule includes all employees employed by businesses that were deemed "essential businesses" by Governor Pritzker's Stay at Home Order.

The amended evidentiary rule means that an employee working in any of the essential businesses who becomes ill with COVID-19 during the "state of emergency" will be likely to recover workers' compensation benefits.

A variety of employer trade groups are opposed to this emergency rule. There are two important points to remember, however. First, Illinois' worker's compensation system is a legal bar to injuries that occur at the workplace. Presumably, if an employee suffers a COVID infection at work that is covered by the worker's compensation system, she will not be able to sue her employer under traditional theories of negligence.

Second, the Illinois Department of Insurance issued a [letter](#) on April 17<sup>th</sup> saying that COVID-19 worker's

compensation claims, during the pandemic, will be excluded from Illinois employers experience modification.

### **Employer Takeaway**

Illinois employers will be going back to work. Employers should be planning the discrete actions they will take to keep their employees safe. When the inevitable COVID-19 infection arises, employers should be prepared to calmly and responsibly communicate the necessary facts to affected personnel and engage in whatever efforts are necessary to maintain a safe workspace.

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