Responding to COVID-19: Workers’ Compensation and Workplace Safety

Tuesday, June 16, 2020
2:00 pm EDT
William Arnone

Chief Executive Officer
National Academy of Social Insurance
Les Boden

Boston University
Chair, Academy Data Panel on Workers' Compensation
Ives v South Buffalo Railroad,
March 22, 1911

Triangle Shirtwaist Fire,
March 23, 1911

Pennsylvania Mine Fire,
April 7, 1911

Alabama Coal Dust Explosion,
April 8, 1911
Benefits Paid Disabled Workers, Billions (2017)

- WC: $62 billion
- SSDI/SSI: $126 billion
Workers’ Compensation

- Primarily a state-based system: compensation without regard to fault
  - Employers must purchase insurance or self-insure
  - Employers generally immune from tort liability
- Medical costs reimbursed
- Disability benefits partly cover lost earnings
- Importance now: Workplace exposure is a key source of transmission of COVID-19
Work-related Illness and WC

• No-fault but must show work-relatedness
• Barrier to compensation for most illnesses, especially those common in the population
• How/when did a worker contract COVID-19?
Debbie Berkowitz  
Worker Safety and Health Program Director  
National Employment Law Project

Jeff Eddinger  
Senior Division Executive – Regulatory Business Management  
National Council on Compensation Insurance

Melissa McInerney  
Associate Professor of Economics  
Tufts University
Debbie Berkowitz

Worker Safety and Health Program Director

National Employment Law Project
COVID-19 is spreading in the workplace

- CMS reports that over 34,000 nursing home workers infected with COVID-19 and over 300 have died
- At least 24,000 meatpacking workers infected with COVID-19 and 100 have died
- In early April, public transportation unions report over 1,000 cases among bus drivers and scores dead
- Over 3,000 UFCW grocery store members infected with COVID-19; scores have died
- Other areas of spread: warehouse; farmworkers; manufacturing
Federal OSHA Has Decided Not to Issue any Specific Requirements for Employers

- Federal OSHA has failed to issue a standard to protect workers from COVID-19 exposure in the workplace
- Federal OSHA is not enforcing CDC Guidance (as it did during H1N1 pandemic)
- Guidance issued by OSHA and CDC is voluntary; filled with words such as ‘consider this’ or implement ‘if possible’
- OSHA has conducted very few if any inspections so far (most in response to fatalities); issued only one citation on reporting violation
- Because of the lack of Federal action, states have implemented new standards, either through EO or Ordinances, requiring workplace protection measures
- IL, PA, NY, NJ, CA, OR, WA, NV, MI, MN, and now VA
Specific State Actions to Cover COVID-19

• Some states expand coverage for COVID-19 to health care workers and emergency responders (KY, WA, MI, AK, AR for example)
• Some states expand coverage to all essential workers: CA (IL will soon)
• Actions done through legislation and Executive Orders.
COVID-19 Impact on Workers Compensation

Jeff Eddinger, FCAS, MAAA
Senior Division Executive

June 16, 2020
COVID-19 – Impact on Workers Compensation

• COVID-19 Claims not the only issue for WC
  • Mass telecommuting
  • Furloughed workers
  • High unemployment
  • Recession

• Compensability
• State Actions
COVID-19 – NCCI Response

- FAQ’s
- Rule Filings
- Legislative Analysis & Tracking
- Hypothetical Scenarios Tool
  - Infection rates, compensability rates, etc.
  - Wide range of scenarios
  - $2.7B to over $80B on WC system
  - First Responders / All Healthcare Workers
  - By state for 38 NCCI states
COVID-19 – NCCI Response

• Industry facing this from a position of strength
• NCCI continues to update information on its COVID-19 Resource page on ncci.com
• NCCI will be making decisions soon relating to upcoming rate filings
Melissa McInerney

Associate Professor of Economics
Tufts University
Occupational exposure is important to the pandemic

- Next to home, most social contacts occur at work
  - Mossong et al., 2008

- Seasonal flu spreads less when jurisdiction has mandated paid sick leave
  - Pichler et al., 2019

- Seasonal flu spreads more when economic activity is higher
  - Markowitz et al., 2019
Despite efforts by states and private insurers, infected workers may face significant costs related to medical care due to COVID-19

- DC, MA, and NM have required that all private insurers waive cost-sharing
- ID, MI, and MN have negotiated with several of the large insurers in their state to do the same
- Many of the largest private insurers are voluntarily waiving cost-sharing for COVID treatment
  - *In many cases, for in-network care*

**Source:** MEPS data, 2018
Despite the paid sick leave mandated in the Families First Act, infected workers may face significant costs related to time away from work.

- Employers with fewer than 500 employees are mandated to provide two weeks (10 days) of paid sick leave at full pay for workers quarantining for or recovering from COVID-19.
  - *Employers with fewer than 50 employees may request an exemption*

 SOURCE: BLS data, 2019
Despite expansion of unemployment compensation under the CARES Act, current workers will not benefit and higher benefit ends soon

- **Pandemic Unemployment Assistance (PUA)** extends unemployment compensation to those typically not covered by UI, including: self-employed, seeking part-time employment, or otherwise would not qualify for regular unemployment compensation
  - *Not available to those who are still working*
  - *Does not cover those who quit because do not feel comfortable going to work*
  - *Ends December 31, 2020*

- **Federal Pandemic Unemployment Compensation Program (FPUC)** provides an additional $600/week to UI and PUA recipients
  - *Not available to those who are still working*
  - *Ends July 31, 2020*