

Impact of the Emergency Worker Compensation Rule on the Construction Industry

Well before Gov. Pritzker's Executive Order deeming construction as essential, our union contractors were working with organized labor to formulate strategies to keep worksites safe.

Our top priority has been and remains the health and welfare of every employee on our job sites -- both our skilled tradespeople and the management staff.

Where we could adapt our construction sites to CDC standards, we did. Where worker safety could not be assured, sites were closed.

It is important to understand why construction sites are different than other work locations:

- Hospital workers and first responders are on the front lines. As a core function of their jobs, those groups are working heroically and rushing toward dangers presented by the general public.
- **Construction workers work in controlled environments with mandated safety protocols** for those who are allowed to enter.
- These sites are not open to the public and workers do not interact with the general public.
- Because of the nature of our job sites, we are able to maintain the mandated social distancing standards.
- Our employees' basic uniform consists of a variety of PPE, including gloves and masks. This is not new and is not a response to a pandemic; rather, it's a core requirement that has been taught from day one of apprenticeship school.
- **Construction workers typically move from job to job as their skills and the work dictate.** It's the nature of the industry.

It is important to note that the liability for an unsafe job site rests solely with contractors – not the government and not the unions. **The latest ruling by the Workers Compensation Commission heaps even more liability on contractors – at a time when government should be supporting its small businesses. They are in direct opposition to OSHA guidelines on the same subject.**

We ask that the State of Illinois reconsider its ill-conceived decision that will serve to create unlimited liability exposure for construction contractors who do not control the behavior of their workers for the two-thirds of the day they are not on the job site. They now find themselves in the extraordinary position of choosing between delivering essential infrastructure projects – as they have been asked to do -- and trying to protect their businesses from financial ruin.

The costs of the emergency rule are not fully known – only that they will be catastrophic. This action was taken without any consultation with the construction or insurance industries. **Construction companies – mostly small businesses operating on thin margins – cannot weather this impact.**

TITLE 50: INSURANCE
CHAPTER VI: ILLINOIS WORKERS' COMPENSATION COMMISSION

PART 9030
ARBITRATION

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AUTHORITY: Implementing and authorized by the Workers' Compensation Act [820 ILCS 305] and the Workers' Occupational Diseases Act [820 ILCS 310].

SOURCE: Filed and effective March 1, 1977; amended at 4 Ill. Reg. 26, p. 159, effective July 1, 1980; emergency amendment at 5 Ill. Reg. 8547, effective August 3, 1981, for a maximum of 150 days; amended at 6 Ill. Reg. 3570, effective March 22, 1982; emergency amendment at 6 Ill. Reg. 5820, effective May 1, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 8040, effective July 7, 1982; amended at 6 Ill. Reg. 11909, effective September 20, 1982; codified at 7 Ill. Reg. 2514; amended at 9 Ill. Reg. 19722, effective December 6, 1985; emergency amendment at 14 Ill. Reg. 4913, effective March 9, 1990, for a maximum of 150 days; emergency expired August 6, 1990; amended at 14 Ill. Reg. 13141, effective August 1, 1990; amended at 15 Ill. Reg. 8214, effective May 17, 1991; amended at 20 Ill. Reg. 4053, effective February 15, 1996; amended at 36 Ill. Reg. 17913, effective December 4, 2012; recodified from 50 Ill. Adm. Code 7030 to 50 Ill. Adm. Code 9030 at 39 Ill. Reg. 9605; amended at 40 Ill. Reg. 15732, effective November 9, 2016; emergency amendment at 44 Ill. Reg. _____, effective _____ for a maximum of 150 days.

Section 9030.70 Rules of Evidence

EMERGENCY

- a) The Illinois Rules of Evidence shall apply in all proceedings before the Commission, either upon Arbitration or Review, except to the extent they conflict with the Act, the Workers' Occupational Diseases Act [820 ILCS 310], or the Rules Governing Practice Before the Workers' Compensation Commission (50 Ill. Adm. Code Chapter VI).

1) In any proceeding before the Commission where the petitioner is a COVID-19 First Responder or Front-Line Worker as defined in Section (a)(2), if the petitioner's injury or period of incapacity resulted from exposure to the COVID-19 virus during a COVID-19-related state of emergency, the exposure will be rebuttably presumed to

have arisen out of and in the course of the petitioner's COVID-19 First Responder or Front-Line Worker employment and, further, will be rebuttably presumed to be causally connected to the hazards or exposures of the petitioner's COVID-19 First Responder or Front-Line Worker employment.

- 2) The term "COVID-19 First Responder or Front-Line Worker" means any individuals employed as police, fire personnel, emergency medical technicians, or paramedics and all individuals employed and considered as first responders, health care providers engaged in patient care, correction officers, and the crucial personnel identified under the following headings in Section 1 Part 12 of Executive Order 2020-10 dated March 20, 2020: "Stores that sell groceries and medicine"; "Food, beverage, and cannabis production and agriculture"; "Organizations that provide charitable and social services"; "Gas stations and businesses needed for transportation"; "Financial institutions"; "Hardware and supplies stores"; "Critical trades"; "Mail, post, shipping, logistics, delivery, and pick-up services"; "Educational institutions"; "Laundry services"; "Restaurants for consumption off-premises"; "Supplies to work from home"; "Supplies for Essential Businesses and Operations"; "Transportation"; "Home-based care and services"; "Residential facilities and shelters"; "Professional services"; "Day care centers for employees exempted by [Executive Order 2020-10]"; "Manufacture, distribution, and supply chain for critical products and industries"; "Critical labor union functions"; "Hotels and motels"; and "Funeral services".

- b) Exhibits offered in evidence, whether admitted or rejected, shall be retained by the assigned Arbitrator or Commissioner until a decision is issued in the matter. Exhibits may not be removed by the parties. Once a final decision is rendered, exhibits shall be retained by the Commission pursuant to the requirements of Section 17 of the Act.

(Source: Amended by emergency rulemaking at 44 Ill. Reg. _____, effective _____ for a maximum of 150 days)