

COVID-19 Updates Impacting Workers Compensation and OSHA

SmithAmundsen OSHA Alert
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In follow up to our webinar from last week, there have been a number of recent, important updates from the Illinois Workers' Compensation Commission and OSHA as to how they intend to handle COVID-related cases, as outlined below:

1. The Illinois Workers' Compensation Commission issued an Emergency Rule declaring that any employee in an "essential industry" that contracts COVID will be rebuttably presumed to have contracted COVID at work. In short, the Rule shifts the burden of proof from the employee to the employer, requiring the employer to present evidence that the employee did not contract COVID at work. As a result, Illinois has made it easier for a much broader segment of employees to successfully pursue COVID-related work compensation claims. We expect many blue states to issue similar rules in the coming weeks.
2. OSHA, on the other hand, issued interim guidance indicating that employers outside of the health care, emergency response, and correctional spheres do not need to record or report COVID illnesses except when the general reporting and recording criteria has been met AND there is objective evidence that the COVID was work related and that evidenced has been made available to the employer. In short, OSHA appears to be putting the burden on employees to convince their employers that their contraction of COVID occurred at work.
3. OSHA has also released an interim enforcement plan explaining how it will prioritize and conduct COVID-related inspections. Given the high volume of COVID-related reports and complaints, OSHA intends to conduct onsite inspections for COVID-related fatalities that occur at "high risk" jobs only, such as first responders and those working in health care facilities, nursing homes, hospices, laboratories, and morgues. For virtually all other COVID-related illnesses and reports, including those working medium risk jobs (interact with the public) and low risk jobs (no interaction with the public), OSHA intends to allow those employers to submit their investigation findings via OSHA's self-reporting tool.

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