

2021 House Bill No. 1433
Testimony before the House Industry, Business and Labor Committee
Presented by Jodi Bjornson
Workforce Safety and Insurance
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Mr. Chairman and Members of the Committee:

My name is Jodi Bjornson, and I am the General Counsel at WSI. I am here today to provide testimony regarding House Bill No. 1433. The WSI Board does not support this bill which proposes to provide a presumption of workers' compensation coverage for essential employees who contract COVID-19.

By way of background, N.D.C.C. section 65-01-02(11)(b)(1) provides a compensable injury does not include "[o]rdinary diseases of life to which the general public outside of employment is exposed". As a result, illnesses such as influenza and the common cold are not compensable under North Dakota workers' compensation law. These types of illnesses are generally excluded from workers' compensation coverage because of the difficulty in determining the source of contraction. This is demonstrated with COVID-19 where those spreading the virus can be asymptomatic.

ND Exec. Order No. 2020-12 temporarily suspends section 65-01-02(11)(b)(1) for first responders and health care providers assisting in the State's emergency response to the COVID-19 pandemic. Executive Orders 2020-12.1 and 2020-12.2 also extend COVID-19 coverage to funeral home personnel and direct care providers for disabled individuals. The Executive Orders are effective during the Emergency period and employees are eligible to file claims for work-place exposures occurring throughout the duration of the Emergency period.

As of March 13, 2020, the employees covered under the Executive Orders who are exposed to COVID-19 in the course of employment can file a claim for worker's compensation coverage and be eligible for up to fourteen days of wage replacement and medical coverage if quarantined. If COVID-19 is contracted, these employees are eligible for full workers' compensation benefits.

A rather measured approach was taken in providing coverage under the Executive Orders because of the lack of information available about the virus to adequately assess the impact of COVID-19 coverage to the Workers' Compensation Fund. Workers' compensation claims can develop slowly, and the payout patterns can extend for many years. Once a claim is accepted, WSI can be liable for medical and indemnity payments for the life of the injured employee.

There are several differences in the Executive Orders and the proposed bill. The bill before you would expand the coverage provided in the Executive Orders. Subsection 1(b) of the bill provides thirty-four separate categories of essential workers, resulting in approximately 306,723 covered employees, in contrast to the Executive Orders which

covers approximately 62,460 employees. This employee count is further narrowed in the Executive Orders by the requirement exposure must have taken place when rendering frontline services in the identified capacity.

Under the bill, when an essential worker tests positive for COVID-19 or COVID-19 antibodies, a rebuttable presumption is created that the virus was contracted at work and is a compensable injury. When it applies, the presumption eliminates an employee's requirement to prove the elements of the claim.

Under the Executive Orders, there is no presumption, and the employee has the burden to prove the claim resulted from their employment and was contracted from a person for whom services or care was being provided. In addition, the Executive Order provides quarantine benefits and does not allow for antibodies tests to prove contraction of the disease. On the other hand, the proposed bill does not provide quarantine benefits and allows for antibodies tests. This creates two benefit structures for COVID-19 claims.

The bill also provides the presumption can be rebutted, meaning it can be disproven by a party. The proposed law suggests the presumption can be rebutted by demonstrating the employee was away from the workplace for the requisite number of days prior to the exposure, demonstrating certain COVID-19 safety practices were strictly followed prior to the employee's diagnosis, or proving the infected employee was exposed from an alternative source. We question whether rebutting the presumption will be feasible or worthwhile for an employer. There is inherent difficulty in rebutting a presumption of contraction with a virus that is highly contagious and carriers can be asymptomatic.

Finally, I direct your attention to the fiscal note developed by WSI and its actuarial consultants. An attempt was made to estimate the cost of the benefits under this bill. It is noted COVID-19 is a new phenomenon to workers' compensation coverage and the data used is relatively immature. As a result, reasonable assumptions were made to estimate a benefit cost through July 31, 2023 to be in the range of \$40 million to \$85 million. There is considerable uncertainty in these estimates and entirely possible the ultimate result could be outside this range.

This concludes my testimony and I would be happy to answer any questions at this time.