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NEW ILLINOIS LAW ALTERS UNEMPLOYMENT AND WORKER'S COMPENSATION CLAIMS FOR REMAINDER OF 2020

On June 5, 2020, Governor Pritzker signed Public Act 101-633 into law. This new legislation will have a significant and immediate effect on unemployment and workers' compensation claims filed by certain school district and joint agreement employees through December 31, 2020.

Amendments to the Unemployment Insurance Act

In past years, a non-professional school employee who did not

work during the summer was ineligible to receive unemployment benefits between school years as long as there was a “reasonable assurance” that he or she would be employed the following school year. Public Act 101-633 modifies this rule for the remainder of 2020. Under this new law, a school district employee who does not provide “instructional, research, or principal administrative” services (e.g. a 9 or 10 month custodian, paraprofessional, cafeteria worker, bus driver, or clerical worker) may be entitled to receive unemployment benefits for any week of unemployment from March 15, 2020 through December 31, 2020, regardless of whether the employee has a reasonable assurance of returning to work for the 2020-21 school year. Notably, an employee is considered unemployed both (a) if the employee is not working, or (b) if the employee’s hours have been reduced such that his or her wages are less than the employee’s weekly unemployment benefit amount. Furthermore, in addition to regular unemployment compensation, a non-professional employee may also be entitled to the federal \$600 weekly unemployment benefit provided under the CARES Act for each week of unemployment through July 31, 2020.

While a non-professional employee is not barred from receiving benefits for the rest of the year by virtue of a reasonable assurance of future employment, it is unclear what, if any, other steps an individual must take to be entitled to unemployment benefits. Public Act 101-633 provides that unemployment benefits shall be payable to an employee who does not work in an “instructional, research, or principal administrative capacity...as long as the individual is otherwise eligible for benefits.” This language suggests that non-professional school employees may not be automatically entitled to unemployment benefits without meeting the other requirements imposed by the Unemployment Insurance Act. For example, a non-professional school employee might still be required to actively seek employment to obtain unemployment benefits. Moreover, Public Act 101-633 also, and somewhat cryptically, qualifies the availability of unemployment benefits by saying that they are only payable to the extent permitted by Section 3304(a)(6) of the Federal Unemployment Tax Act (a federal law covering the approval of state unemployment laws for purposes of FICA tax credits). Accordingly, school districts and joint agreements who wish to oppose unemployment claims filed by non-professional staff members may take the position that these individuals are



not entitled to receive unemployment benefits unless they comply with the Unemployment Insurance Act's other eligibility requirements.

To date, the Illinois Department of Employment Security ("IDES") has not issued any regulations or guidance interpreting this provision or providing clarification on whether non-professional staff are required to meet the standard eligibility criteria. It is therefore unclear whether IDES will be receptive to arguments that non-professional school employees are required to meet the Unemployment Insurance Act's eligibility requirements. Unless contrary guidance is provided in the future, however, school districts and joint agreements can object to unemployment claims on this basis.

In addition to permitting non-professional staff to seek unemployment benefits despite reasonable assurances of future employment, Public Act 101-633 also modified how employers are charged for unemployment benefits paid out as a result of COVID-19. For unemployment weeks beginning March 15, 2020

through December 31, 2020, most employers who contribute to the state's unemployment insurance program will not be charged for benefits paid when the applicable unemployment is "directly or indirectly attributable to COVID-19." In contrast, however, non-profit and state and local government employers, such as public school entities, who make direct unemployment payments, instead of state fund contributions, will be charged for 50% of the benefits paid for unemployment that is directly or indirectly attributable to COVID-19.

Amendments to the Workers' Compensation Act

Public Act 101-633 also amended the Workers' Compensation Act as it pertains to claims filed by individuals who have been infected with COVID-19 between March 9, 2020 and December 31, 2020. This law creates a rebuttable presumption that certain employees who contract COVID-19 did so in the course of their employment and are entitled to workers' compensation benefits.

Specifically, this presumption applies to “COVID-19 first responders or front-line workers” who are defined to include, among others, “any individuals employed by essential businesses and operations as defined in Executive Order 2020-10” as long as those individuals “are required by their employment to encounter members of the general public or to work in employment locations of more than 15 employees.”

Educational institutions were declared an essential business in Executive Order 2020-10. Consequently, if a school employee works on-site (as opposed to at home) with 15 or more employees, or encounters the general public through his or her job, and suffers an injury or disease resulting from COVID-19, it is presumed that the employee’s disease or injury arose out of his or her employment.

Although Public Act 101-633 creates a presumption that a COVID-19 first responder contracted COVID-19 in the course of his or her employment, an employer can rebut this presumption by presenting evidence that the employee contracted the disease

outside of work. A non-exhaustive list of sufficient evidence includes: (1) evidence that the employee worked from home and/or was on leave for at least 14 consecutive days immediately prior to the employee's injury/disease resulting from COVID-19; (2) evidence that the employer was actively following COVID-19 public-health guidelines for at least 14 consecutive days immediately prior to the employee's disease/injury arising out of COVID-19; and (3) evidence that the employee was exposed to COVID-19 from a different source.

The statute further clarifies that, although this rebuttable presumption applies to all workers' compensation cases tried after June 5, 2020, "under no circumstances shall any COVID-19 case increase or affect any employer's workers' compensation insurance experience rating or modification[.]"

Because the burden is on employers to rebut this presumption, employers should take certain preventative steps to reduce their potential workers' compensation liability. First, employers should encourage employees to work from home, if possible.

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Second, employers should follow federal, state, and local public health guidance, and document these efforts. Third, employers should document any information they have regarding employees' exposure to COVID-19 outside of work.

Our office will continue to provide updates as more information becomes available. If you have any questions, please do not hesitate to contact one of our attorneys.

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