

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

**GLENN SPENCER**  
SENIOR VICE PRESIDENT  
EMPLOYMENT POLICY DIVISION

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April 22, 2020

The Honorable Gavin Newsom  
Governor of California  
1303 10th Street, Suite 1173  
Sacramento, CA 95814

**VIA FACSIMILE: (916) 558-3160 (one page)**

Dear Governor Newsom:

The U.S. Chamber of Commerce appreciates your efforts to address the many policy issues surrounding the ongoing coronavirus pandemic and in particular its impact on individuals who remain at work in industries deemed essential. Among these issues, the use of workers' compensation programs to compensate employees who become ill from the virus reportedly has emerged as a consideration in some states, including California. Before any legislation, regulations, or guidance is crafted to create a presumption that a worker has contracted the disease on the job, the U.S. Chamber respectfully offers the following suggestions to assist in your deliberation.

As you are aware, Congress passed the Families First Coronavirus Response Act (FFCRA) to provide federal funding for emergency paid sick leave at businesses with less than 500 employees. The law allows individuals who are sick up to 80 hours of paid leave at their regular rate of pay up to a maximum of \$511 per day. California has its own additional paid leave requirements. To the extent that a state is considering applying workers' compensation coverage for coronavirus -related reasons, whatever coverage may apply should be offset by the paid leave provided under the FFCRA or state law.

In addition, a presumption under workers' compensation should be limited in its application and not cover all industries deemed "essential." For example, some states have applied the presumption only to front line health care workers and first responders, or to other state employees whose work requires them to interact with the public. The Commonwealth of Kentucky recently issued an executive order regarding workers' compensation that is a bit broader, but still limits the industries to which it will apply.<sup>1</sup>

However, should the state choose to apply the presumption more broadly, the duration of the presumption should not extend past the expiration of the state of emergency or other "stay at home" requirements currently in place. When the day comes that businesses are free to resume

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<sup>1</sup> Hon. Andy Beshear, Governor of Kentucky, Executive Order 2020-277. April 9, 2020.

operations and individuals are free to socialize and operate more or less as usual, the risk of exposure to the coronavirus will still be present, but it will be essentially impossible to determine whether a future exposure is truly occupational.

Finally, any presumption should only apply to temporary total disability provisions to the extent that the exposure is truly occupational. In the referenced executive order, the Commonwealth of Kentucky stipulates that “there must be a causal connection between the conditions under which the work is performed and COVID-19, and which can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment.”<sup>2</sup> Such a policy will ensure that workers’ compensation plans can maintain coverage without placing enormous stress on the entire system.

As an alternative to the workers compensation system altogether, workers who are home ill with the coronavirus are also eligible for federal Pandemic Unemployment Assistance, which includes an extra \$600 per week supplement through July 31. This is likely to be a far superior option for workers than taking a claim into the workers’ compensation system.

Thank you for the opportunity to provide some thoughts on the use of workers’ compensation to address the impact of the unprecedented coronavirus pandemic. The Chamber recognizes the need to assist those facing employment challenges due to it, while at the same time we encourage adopting the policies best suited to do so.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn Spencer", with a long horizontal flourish extending to the right.

Glenn Spencer  
Senior Vice President  
Employment Policy Division

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<sup>2</sup> *Id.*