

## **HOUSE BILL 1057 WOULD BRING ABOUT SIGNIFICANT, UNNECESSARY AND UNJUSTIFIED CHANGES IN LONGSTANDING NORTH CAROLINA WORKERS' COMPENSATION POLICY**

- House Bill 1057 would completely shift the burden of proof in workers' compensation cases involving COVID-19 and future pandemics.
- Under the current North Carolina Workers Compensation Act employees may already file a workers' compensation claim for COVID-19. For an employee who contracts COVID-19 to have a compensable workers' compensation claim they would only need to show 1) that their work caused the disease and 2) that their work placed them at increased risk as compared to the general public to contract COVID-19.
- House Bill 1057 would instead create a rebuttable presumption for COVID-19 with regards to workers' compensation claims. In order to have a compensable workers' compensation claim, a worker would only have to demonstrate 1) they were an essential worker under the Governor's Executive Order and 2) that they contracted COVID-19. The employer or insurer would then have to demonstrate by "clear and convincing evidence" that they employee did not receive COVID-19 at their place of employment.

## **THE FINANCIAL IMPACT OF HOUSE BILL 1057 TO NORTH CAROLINA'S EMPLOYERS IS POTENTIALLY DEVASTATING**

- Creating a rebuttable presumption for COVID-19 workers' compensation claims will mean that self-insured employers and insurers will have to accept and pay for every single workers' compensation claim for COVID-19. The burden to rebut the presumption is too high a hurdle to clear for self-insured employers and insurers to shift the burden back to the worker.
- The National Council on Compensation Insurance (NCCI) estimates that changing North Carolina's Workers' Compensation law to create the rebuttable presumption will cost the North Carolina Workers' Compensation System in excess of \$1 billion thereby undoing all of the workers' compensation reforms from the last ten years.
- Applying the rebuttable presumption retroactively to workers' compensation claims means that employers and insurers are paying for claims that they had no ability to underwrite for when a policy was issued.
- With an occupational disease like asbestosis it is easy to pinpoint that the exposure to asbestos occurred at the place of employment and was cause of asbestosis. However, COVID-19 can be contracted anywhere which is why the schools, churches, camps and businesses have been closed because COVID-19 is so contagious. To require self-insured employers and insurers to pay for workers' compensation claims for a disease that can be contracted anywhere is patently unfair.
- Because the North Carolina Department of Insurance has prevented any cancellations of mandatory workers' compensation policy for non-payment from early March until May 26, 2020, insurers will be forced to pay for claims they cannot contest when they have not received any premium to underwrite these claims.
- It is doubtful that reinsurers who are not under the jurisdiction of the State will pay for these claims meaning North Carolina employers and insurers will be left to pay for the entire cost of each COVID-19 claim.

**HOUSE BILL 1057 IS COMPLETELY UNNECESSARY TO PROTECT WORKERS EXPOSED TO COVID-19 IN CONNECTION WITH THEIR EMPLOYMENT: EMPLOYEES CURRENTLY HAVE VALID CLAIMS FOR COVID-19 UNDER NORTH CAROLINA LAW BUT MUST SHOW CAUSATION**

- The North Carolina Industrial Commission has already acknowledged this fact by placing a FAQ on its website under the injured workers tab. As of May 11, 2020, 193 COVID-19 Workers' Compensation Claims have been filed with the North Carolina Industrial Commission.
- These COVID-19 Workers' Compensation Claims will allow for causation to be proved using circumstantial evidence such as showing exposure in employment and the absence of COVID-19 prior to work. The requirement that an employee must prove causation is the foundation of the workers' compensation system. Since 1951, there have been at least 15 appellate decisions that have noted the burden to prove causation keeps the Workers' Compensation Act from becoming a general health or disability plan.

**BY CREATING A REBUTTABLE PRESUMPTION AND SUBSTITUTING A CLEAR AND CONVINCING EVIDENCE STANDARD TO OVERCOME THAT PRESUMPTION, HOUSE BILL 1057 PLACES BURDENS ON EMPLOYERS WHICH ARE UNJUSTIFIED AND WHICH ARE NOT GENERALLY UTILIZED IN WORKERS' COMPENSATION**

- There are very few rebuttable presumptions in the North Carolina Workers Compensation Act. None of the rebuttable presumptions applies to specifically enumerated occupational diseases.
- The "clear and convincing evidence" standard of proof is the highest level of proof required in civil cases. It is applied when terminating parental rights--a constitutionally protected status; removal of a judge for willful misconduct in office; and proof of modification of a contract. The "clear and convincing evidence" standard of proof is not applied to a single issue in workers compensation. The standard of proof that applies to rebuttable presumptions under the Workers' Compensation Act is the greater weight of the evidence, not clear and convincing evidence.

Capital Associated Industries (CAI)  
Employers Coalition of North Carolina  
WCI  
Independent Insurance Agents of North Carolina  
Insurance Federation of North Carolina  
National Federation of Independent Businesses  
North Carolina Association of County  
Commissioners  
North Carolina Association of Defense Attorneys  
North Carolina Association of Self-Insurers  
North Carolina Automobile Dealers Association  
North Carolina Beer and Wine Wholesalers  
Association  
North Carolina Chamber  
North Carolina Chamber Legal Institute  
North Carolina Farm Bureau Federation  
North Carolina Forestry Association

North Carolina Healthcare Association  
North Carolina Home Builders Association  
North Carolina Independent Colleges and  
Universities  
North Carolina League of Municipalities  
North Carolina Manufacturers Alliance  
North Carolina Pork Council  
North Carolina Petroleum and Convenience  
Marketers Association  
North Carolina Poultry Association  
North Carolina Restaurant and Lodging Association  
North Carolina Retail Merchants Association  
North Carolina School Boards Association  
North Carolina Trucking Association  
The Employers Association  
American Property Casualty Insurance Association  
National Association of Mutual Insurance Companies