IWCC Emergency Rule of Practice Sections 9030.70(1) and 9030.70(2)

Presumption of Liability for COVID-19 Claims

[On April 13, 2020, the Illinois Workers’ Compensation Commission adopted new rules in Sections 9030.70(1) and (2) of the Rules of Practice before the Illinois Workers’ Compensation Commission to address claims for employees infected with COVID-19](https://inmanfitzgibbons.wordpress.com/2020/04/13/illinois-iwcc-passes-emergency-rule-for-covid-19/). These rules **create a rebuttable presumption** **that employees who contract the COVID-19 illness did so in the course and scope of their employment**. This Rule is applicable to first responders (police, fire, paramedics and EMT’s), front line medical providers, and employees of “essential business and industry” that have remained open during the State of Emergency.

In his March 20, 2020 Executive Order, following the State of Emergency declaration of March 9, 2020, Governor Pritzker clarified the “shelter in place” order that shuttered most businesses in Illinois by declaring certain businesses and industries “essential businesses,” adding that those businesses were permitted to remain open and operational during the State of Emergency, which continues to remain in effect as of April 15, 2020. This list of “essential businesses” is really quite extensive and includes the following:

* Stores that sell groceries and medicine
* Food, beverage, and cannabis production and agriculture
* Organizations that provide charitable and social services
* Gas stations and business needed for transportation
* Financial institutions
* Hardware and supply stores
* Critical trades (including but not limited to plumbers, electricians, exterminators, cleaning and janitorial staff for commercial and government properties, security staff, operating engineers, HVAC, painting, moving and relocation services, and other service providers that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses and Operations)
* Mail, post, shipping, logistics, delivery, and pick-up services
* Educational institutions
* Laundry Services
* Restaurants for consumption off-premises
* Supplies to work from home
* Supplies for Essential Business and Operations (Business that sell, manufacture, or supply other Essential Business and Operations with the support or materials necessary to operate, including computers, audio, and video electronics, household appliances; IT and telecommunication equipment; hardware, paint, flat glass; electrical, plumbing and heating material; sanitary equipment; personal hygiene products; food, food additives, ingredients and components; medical and orthopedic equipment; optics and photography equipment; diagnostics, food and beverages, chemicals, soaps and detergent; and firearm and ammunition suppliers and retailers for purposes of safety and security
* Transportation
* Home-based care and services
* Residential facilities and shelters
* Professional services
* Day care centers for employees exempted by this Executive Order
* Manufacture, distribution, and supply chain for critical products and industries (Manufacturing companies, distributors, and supply chain companies producing and supplying essential products and services in and for industries such as pharmaceutical, technology, biotechnology, healthcare, chemicals and sanitization, waste pickup and disposal, agriculture, food and beverage, transportation, energy, steel and steel produces, petroleum and fuel, mining, constructions, national defense, communications, as we as products used by other Essential Businesses and Operations)
* Critical labor union functions
* Hotels and motels
* Funeral services

In addition to the rebuttable presumption that first responders and front line medical providers who contract COVID-19 as the result of their work duties, the Emergency Rule enacted by the IWCC provides this same rebuttable presumption for all employees in those businesses listed above that also contract COVID-19.

What does this all mean? The bottomline is that as the result of these Emergency Rules, the *burden of proof is now placed on employers* to prove that the COVID-19 illness afflicting the employee did NOT arise out of and in the course of the employment. Given the widespread nature of this pandemic, it will be almost impossible to prove that an employee did not get this from an exposure at their place of work rather than due to an exposure in a public place or at the employee’s home. Generally it means there will be a lot of COVID-19 claims that will have to be accepted and paid.

While much about this disease remains unknown, we are hopeful that many of these claims may have minimal, if any, cost to employers consisting of perhaps a few weeks of TTD while the employee is recovering or under quarantine along with very limited medical expenses. At this time, according to published reports of the disease in Illinois and across the country, in the majority of cases hospitalization is not required, the patients recover with home treatment, and medical costs may involve an ER or doctor’s office visit plus medications. What if any permanent disability benefits may be paid on the cases will vary greatly, but we remain optimistic that the majority will have minimal, if any, permanent partial disability resulting from contraction of COVID-19.

We truly appreciate and respect the work our first responders and front line medical providers are performing during this unprecedented pandemic. Please be assured it will continue to be the focus of IPMG and the ICRMT to see that its members’ claims for their first responders and front line medical providers are handled with the compassion and respect those claims deserve. We expect that most of those COVID-19 claims will be accepted and handled by our team remaining cognizant of the facts of each claim and handling each claim fairly for both the ICRMT member and the first responder or front line medical provider on a case-by-case basis.