

EXECUTIVE SUMMARY

Expanded use of presumption and the implications for the “Grand Bargain”

Workers' compensation began as a system for injured workers in the early 1900s. In order to receive workers' compensation benefits, an injured employee must establish that their injury arose out of and in the course of their employment.

Today, we operate in a world where the COVID-19 pandemic is center stage. Many are re-evaluating the concept of presumptions in workers' compensation. Historically, presumption laws applied primarily to certain public entity employees, such as first responders — police officers, emergency medical technicians and firefighters. Communicable diseases have not typically been covered by workers' compensation because it is difficult to establish that the illness was contracted in the workplace, a primary premise for workers' compensation coverage.

The COVID-19 environment has generated renewed conversations around compensability presumptions. Some argue that broadening workers' compensation coverage beyond what are employment related risks for which employers have no ability to control or prevent, would seem not only counter-productive but counter intuitive as well. Such broadening could generate the perception that we are entering a new era through presumptions where the focus is moving towards "socialization of risks" and less on the distinctions of work-related risk and its attendant focus on a safe and productive work environment.

As to the "socialization of risk", It has been proposed that society is a third interested party to the Grand Bargain, with the role of balancing protections for the employee with the critical role of business to a well-functioning economy. With all losses, whether work-related or not, someone must pay the cost. With the current pandemic, state governments began evaluating what the balance should be between the interest of business/employers, employees and society as to the cost of the losses associated with COVID-19.

The workers' compensation industry operates best in an environment of forthrightness and transparency. Clear delineation of what workers' compensation covers allows employers to promote and ensure a safe work environment, employees to know what conditions, injuries and diseases for which they can attain workers' compensation benefits, and carriers to determine in a fair manner what insurance coverage is needed at an appropriate rate. For workers' compensation risks and costs both the insurance industry and employers are looking for predictability, while injured workers see fairness and equity as they recover from their accidents and diseases.

It remains to be seen if this is a true shift representing a new era moving to a greater degree towards socialization of risks.

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