



Lawmakers Dump COVID-19 Workers' Comp Bills Into Study

Employers Seeing Nearly 7 Percent Reduction in Rates

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SEPT. 22, 2020.....Massachusetts businesses are in line to save on workers' compensation insurance over the next year while efforts in the Legislature to expand the ability of workers to tap into those benefits for COVID-19 care appear to have hit a dead end.

Workers' compensation coverage for COVID-19 in Massachusetts is limited to situations in which "the hazard of contracting such diseases by an employee is inherent in the employment," the attorney general's office said, meaning health care workers like nurses are likely to be covered.

As of late August, officials in at least 15 states had passed legislation, issued executive orders or enacted other administrative policy changes to directly address workers' compensation coverage of COVID-19, according to the National Conference of State Legislatures.

In Massachusetts, the Joint Committee on Labor and Workforce Development this month put two workers' compensation bills -- H 4749 from New Bedford Rep. Chris Hendricks and H 4739 from Bedford's Rep. Ken Gordon and Cambridge Rep. David Rogers -- into a study order, effectively spelling the end of the line for those bills during this extended legislative session.

Hendricks wrote in May that he filed his bill "to fast-track workers compensation benefits for frontline health care workers during the COVID-19 crisis" and asked Gov. Charlie Baker to issue an executive order to streamline workers' compensation claims and create a rebuttable presumption that any essential worker infected with COVID-19 contracted the virus while on the job.

"As the law stands today, front-line workers are already able to file workers compensation claims related to COVID-19 diagnoses. However, these employees will unfortunately have the burden of showing that the COVID-19 diagnosis was a result of their job. This will lead to insurance companies denying claims en masse, because - while it is obvious that these diagnoses are the result of being on the front-lines - it is nearly impossible to show where the COVID-19 molecule was actually ingested," Hendricks wrote in a [May letter to Baker](#). "In short, the current threshold will be too high for these workers. We owe it to them to ease this burden."

Under Hendricks' bill, as well as Gordon's, infected frontline workers would become eligible for immediate wage relief in the form of 60 percent of their average weekly wage, as well as 100 percent of COVID-19-related medical care at Department of Industrial Accidents rates.

"During a time when our unemployment benefits system will be challenged in ways that we have never seen before, it is crucial that we ease that administrative burden by rightfully directing these cases into the workers' compensation system," Hendricks wrote.

The committee's dismissal of the bills could keep the landscape steady for businesses, which stand to save on workers' compensation insurance costs thanks to a recent state approval of rate with an average reduction of 6.8 percent.

The Workers' Compensation Rating and Inspection Bureau of Massachusetts, an industry group that represents hundreds of member carriers, filed its request for an average 3.8 percent decrease in workers' compensation premiums, effective July 1, 2020, back in December. By late January, the WCRIBMA, the State Rating Bureau and the attorney general's office had started negotiating a possible settlement.

On March 13, the parties filed a stipulation that provided for a 6.8 percent reduction in the existing overall average workers' comp insurance rates for policies effective July 1, 2020. The presiding officer from the Division of Insurance ruled March 24 that the stipulation would provide for classifications and rates that are "not excessive, inadequate, or unfairly discriminatory for the risk to which they respectively apply, and fall within a range of reasonableness." On March 27, Commissioner of Insurance Gary Anderson affirmed the ruling.

"We appreciate the collaboration by all the parties to lower workers' compensation rates. This relief removes any further delay and uncertainty for policyholders and is especially

important for businesses grappling with the economic impact of the COVID-19 public health crisis," Anderson said in a statement in March.

Though there are some exceptions, most Massachusetts businesses are required to purchase workers' compensation insurance to cover lost wages and other expenses for employees who become injured on the job. The Division of Insurance said the 6.8 percent average decrease in premiums for the next year "will result in savings for business owners across the Commonwealth."

That's in stark contrast to what Massachusetts business owners can expect when it comes to unemployment insurance costs. With a jobless rate that was the highest in the nation for two months and as the unemployment insurance trust fund braces for a multibillion-dollar deficit over the next four years as a result, unemployment insurance contributions from businesses are [poised to increase](#) nearly 60 percent when the calendar turns to 2021.

A group that analyzes workers' compensation insurance industry trends said it is important to keep in mind that ratemaking is "prospective in nature," meaning that it reflects anticipated losses and payroll in the future, during the effective period of the rates. That makes it difficult to account for the impacts of an unfolding pandemic.

"At present, the uncertainty surrounding the course of the COVID-19 pandemic and unavailability of quantitative COVID-19-related ratemaking data prevents determining a credible estimate of anticipated future losses and makes forecasting COVID-19 claims in the effective period uncertain," the National Council on Compensation Insurance (NCCI) wrote in a post about the 2020-2021 rate filing season. "In addition, potential impacts of the COVID-19 pandemic will not be explicitly reflected in filed trend factors, as the combined impact and direction of all direct and indirect COVID-19-related forces is unknown. It is reasonable to believe the pandemic will give rise to component changes that may, to some extent, have offsetting impacts on system costs."

For example, the NCCI said, there might be a steep increase in claims from occupations that have greater potential exposure to the coronavirus, but there could also be an overall decrease in claims since so many more employees are working from home.

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