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Labor & Employment Alert

Governor Wolf Signs Bill Expanding Heart and Lung Act Coverage to Include Short-Term Coronavirus Infection

On Wednesday, April 29, 2020, Governor Wolf signed into law House Bill 1869 which makes changes to the Enforcement Officer Disability Benefits Law, commonly referred to as the Heart and Lung Act (Act). The amendment creates an additional, closed-ended benefit as follows:

> A person covered under Section 1(a) of the Act of June 28, 1935 (P.L. No.193), referred to as the Enforcement Officer Disability Benefits Law, who contracts or is diagnosed with coronavirus disease 2019 (Covid-19), as identified in the proclamation of disaster emergency issued by the Governor on March 6, 2020, published at 50 Pa.B. 1644 (March 21, 2020), or is subject to quarantine resulting from exposure to Covid-19, and by reason thereof is temporarily incapacitated from performing his duties, shall be compensated in accordance with section 1(a) of the [Heart and Lung Act].

The maximum duration of the benefit is sixty (60) days per incident, and the amendment is prospective only. In terms of scope of individuals eligible for benefits, nothing has changed. It still includes full-time (and limited part-time) police and firefighters at the municipal level. Benefits under both the Act and the amendment continue to be 100% of salary with no deductions for state, federal or local taxes. Like all heart and lung benefits, although no taxes may be withheld, other items, such as pension and healthcare contributions may continue to be deducted. In addition, any medical costs associated with treatment are the responsibility of the municipality. Potentially, this could be addressed through existing health insurance products. However, before doing so, you should discuss this with your solicitor.

Although there are many similarities between the amendments and the existing Act, there remains at least one key unanswered question. Specifically, reading the amendment in a vacuum, many police organizations have taken the position that the amendment creates a shorter-term heart and lung benefit which does not require proof that the COVID-19 infection or the quarantine must caused by the "performance of duties" as is typically required under the Act. The basis for this position appears to be that the General Assembly did not carry that language through in the amendment. Conversely, other groups have suggested that nothing has changed in regard to eligibility and proof because the General Assembly used the phrase "[a] person covered under Section 1(a)," which would mean that the individual must not only be a person in the occupations outlined in Section 1(a), but also be injured in the performance of duties, as is also set forth in Section 1(a). Unfortunately, absent a clarifying amendment, a court will most likely have to interpret to the intent of the amendment. Regardless of the interpretation, at a minimum, public employers should ensure that they receive appropriate documentation that establishes that an employee requesting these expanded benefits has either been infected with COVID-19 or is genuinely subject to quarantine.

Presently, there are also two additional considerations which municipalities must take into account. The first is that, depending upon the interpretation placed upon the statute, coverage issues may arise in the event that you have purchased insurance for heart and lung benefits. Specifically, depending upon the ultimate interpretation of the above language and the language of your agreement with your insurer, your municipality may find itself in a situation where it either agrees to (or is compelled to) provide heart and lung benefits to an employee whose infection or quarantine is wholly unrelated to the performance of duties. In such cases, your insurer may refuse to provide coverage because the scope of the coverage is limited to existing heart and lung claims, *i.e.*, those incurred in the performance of duties and does not include benefits under the amendments to the Act. It is equally possible that, if the ultimate interpretation of the

amendment discards the "in the performance of duties" standard, many workers' compensation carriers will decline to accept coverage in those circumstances. Thus, municipalities may need to prepare for a scenario under which they are completely responsible for both wage and medical benefit coverage with no assistance from either workers' compensation carriers or heart and lung carriers.

Second, many public employers are either contemplating or have recalled many of their employees from layoff. Some of those employers are also utilizing temperature scans as part of their mitigation strategy to provide a safe working environment for all employees, including their police officers and paid firefighters. Under these practices, all employees with an elevated temperature are sent home. In that case, are public employers walking into an expanded heart and lung request? The short answer is, most likely, no. Although a fever or chills are symptoms of COVID-19, the fact remains that every person who presents with a fever or chills has not been infected with COVID-19, though some employees may be. Additional inquiry is necessary in such a case, but the act of sending home a person evidencing a low or high body temperature does not, in and of itself, result in the conveyance of heart and lung benefits.

Before agreeing to pay these expanded heart and lung benefits, and to ensure that you are paying benefits appropriately, you should contact your solicitor or your labor counsel for additional guidance.

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