



February 28, 2021

The Honorable Anastasia Williams  
Chair, House Labor Committee  
State of Rhode Island  
House of Representatives  
State House  
Smith Street  
Providence, RI 02903

Re: H 5474

Dear Chairwoman Williams:

Please accept this letter regarding H 5474 which is presently pending in the House Labor Committee. For the reasons outlined below, we are unable to support the legislation as written. We welcome the opportunity to discuss the items of concern listed below as well as any other matters of interest for you or any members of the Committee with regard to the proposed legislation.

Our concerns are multifaceted, and generally are that if passed, the legislation would:

1. Significantly increase workers' compensation costs in Rhode Island<sup>1</sup>;
2. Unintentionally create significant and fundamental legal and policy issues for the Rhode Island workers' compensation system;
3. Change the nature of workers' compensation benefits and potentially dismantle the constitutional underpinnings of our state's workers' compensation system;
4. Create confusion between existing workers' compensation and other types of employee benefits, which would create delays at the Workers' Compensation Court, and conflict with the jurisdiction and authority of other judicial and administrative bodies; and
5. Impair rights under existing laws, contracts and collective bargaining agreements.

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<sup>1</sup> NCCI Analysis of Rhode Island House Bill 8066 as Introduced on June 18, 2020, indicates that this legislation could potentially result in a 175% increase over the currently expected COVID-19 related costs to the RI workers' compensation system, based on an additional \$376 million in potential payments to individuals infected with the virus, as well as a 55% increase in costs, based on an additional \$119 million in potential payments to quarantined individuals. The Rhode Island workers' compensation system and Rhode Island employers could not sustain such significant increases.



We look forward to further discussion of these legal and policy issues which form the basis for our objection to this legislation at your convenience.

Very truly yours,

A handwritten signature in blue ink that reads "Michael D. Lynch".

MICHAEL D. LYNCH



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RE: H 5474

Dear Chairwoman Williams:

Please accept this letter in lieu of testimony of the Beacon Mutual Insurance Company on H 5474 that is presently pending in the House Labor Committee. For all the reasons outlined below, we cannot support the legislation as written. We hope you find our reasoning useful and informative and look forward to the opportunity to discuss this and any other issues that you or any members of your committee may have on the proposed legislation.

The bill seeks to amend the definitional section of the Occupational Disease chapter (RIGL 28-34-2) and the Report of Injury chapter (RIGL 28-32-4) of the Rhode Island Workers' Compensation Act. We believe that as written, the legislation raises a great many legal and policy issues that would detrimentally impact the Rhode Island workers' compensation system and its primary stakeholders, the employers and employees of our state. We express our concerns sequentially below.

The legislation proposes the creation of a presumption of workers' compensation compensability for a series of listed employments. Not only is this unprecedented in the Act, but the listed employments are unfitting to the legislation's intent. More specifically, without factual basis, the presumption would apply to, any "public safety official, including, but not limited to, police, fire, EMS, medical facility workers, correctional officers, dispatchers, paramedics, pharmacists, pharmaceutical technicians, grocery or retail workers, essential state and municipal employees, public transportation employees, parcel and freight delivery employees, and truck drivers and utility workers." Many of the listed employments are not part of the Rhode Island Workers' Compensation Act, i.e. many of these employees are statutorily subject to the Injured on Duty provisions of the law (RIGL 45-19-1, et. seq.). In fact, police, fire and most EMS employees are specifically excluded from our state's workers' compensation system. Thus, if the intent of the legislation is to provide relief to these employments, then the IOD statute should be amended, not the workers compensation laws.



Of importance, the Workers' Compensation Act already provides for the compensability of Covid-19 cases for those employees who contract the virus at work. RIGL 28-34-2 provides, in pertinent part, as follows:

“the disablement of any employee resulting from an occupational disease or condition described in the following schedule shall be treated as the happening of a personal injury.....(d)isability arising from any cause connected with or arising from the peculiar characteristics of the employment....”

These claims are being memorialized and paid right now, regardless of a presumption, and if they are not preliminarily deemed compensable, petitions are being filed and granted at the Workers' Compensation Court. There is no anecdotal evidence that claims of injured workers who contracted Covid-19 at work are not being paid. Finally, there is no explanation of how this presumption could be rebutted by the employer, regardless of the presumption. This change is unnecessary.

The legislation also uses the term “public safety official” without its being defined. The bill implies that it includes retail workers, truckers and others. Further, its applicability is unlimited, i.e. it states “including, but not limited to...” Thus any employee, depending upon the circumstances, could be deemed a public safety official. The ambiguity continues with reference to employees of a "medical facility." This potentially leaves out health care workers who are not employed in a "medical facility" yet exposed to Covid-19 at work.

From a legal perspective, the universal considerations in the analysis of a workers' compensation claim are the questions of liability and disability. Liability means that an employee suffered an injury that arose out of and in the course of his/her employment. Disability means was there a loss of earning capacity, i.e. did the employee lose pay when out because of the injury. The proposed legislation, as written, ignores these fundamental considerations and makes the changes proposed arguably unconstitutional.

More specifically, the bill deems symptoms of Covid-19 compensable without an actual injury. Workers' compensation benefits are paid for work related injuries, not symptoms of injuries or quarantine to prevent injury. The workers' compensation system was founded in a “grand bargain” between employers and employees: employees gave up the right to sue their employer for a work related injury in exchange for quick and certain benefits. Employers gave up the right to raise affirmative defenses in this no fault system but avoided uncertain and potentially large tort damages. The constitutionality of the system is grounded in this bargain, i.e. both sides give something up when a workplace injury occurs.

This bill requires the employer to pay benefits regardless of injury. In fact, the bill deems symptoms of Covid-19 compensable without a diagnosis or positive test, for just symptoms of the virus (without distinction from symptoms from any other ordinary disease of life) and even for no injury, i.e. periods of quarantine for coming into contact with someone infected with Covid-19 regardless of whether it was or through work. Fundamentally, these circumstances are



not work related injuries thus not within the province of workers' compensation. Workers' comp is for work related injuries. Health insurance, TDI, unemployment benefits and other pandemic programs are for non - work related injuries. Other than a compensable Covid-19 injury that is already compensable in our system, these circumstances should not be the province of the employer or the workers' comp system.

In addition to the above, the bill confuses the issue of disability and awards benefits regardless of loss of earning capacity. Where the bill states that an employee retains the ability to use sick, vacation or other time off and makes the lost time "on duty time," it creates issues regarding incapacity/loss of earning capacity. Workers' compensation benefits are paid for loss of earning capacity, not for the injury itself. In the absence of a loss of earning capacity, potentially every Covid-19 case suffered by the majority of employees in our state are subject to litigation. It could cripple the Workers' Compensation Court and add enormous expense to every employer in the state.

Adding to the ambiguities, the bill provides that the "time of incapacitation or inability to perform their duties shall be considered as emergency hazard health disability." This is neither defined nor a legal term used in the workers' compensation laws of our state or any other state or federal system. This in and of itself will result in a great deal of litigation.

Another ambiguity argues against indemnity benefits in the absence of hospitalization. The proposal speaks to entitlement to benefits during periods of hospitalization, quarantine and self-quarantine. Is this the limit of incapacity to which indemnity benefits are paid, regardless of length of incapacity for a work related Covid-19 injury? What if the incapacity is longer and he or she is not hospitalized? In this circumstance, the injured worker loses out on indemnity entitlement, regardless of his/her inability to work.

These proposals also raise the legal issue of the jurisdiction of the Workers' Compensation Court, other state and federal courts and commissions, insurance coverage, conflict with unemployment benefit entitlement and other state and federal pandemic relief programs. An employee's entitlement to benefits such as sick, vacation or other time off or the term used in the bill of "on duty time" are not the province of the Workers' Compensation Court. RIGL 28-29-1, et. seq. In the event a petition is filed on this issue, not only would the court decline to hear the case, but the employers workers' compensation insurer will either decline coverage, provide a defense under a reservation of rights and decline to indemnify any damages awarded by the Court or any other judicial body. The standard insurance policy of every carrier, as mandated by statute and approved by the Department of Business Regulation, provides coverage for work related injuries and not employee benefit issues. In addition, by statute, there are other Courts and Commissions that determine these issues, particularly if there is a collective bargaining agreement in place. These include the Human Rights Commission, the NLRB, the Federal District Court, and the Rhode Island District and Superior Court. Jurisdictional issues on these proposals could tie up our courts for years with no benefit to the employees or employers of our state.



There is also an issue of timing. The proposal creates a presumption of compensability only when the "federal, state or municipal government" declares a state of emergency because of Covid-19. If one town declares a state of emergency, does this then entitle all Rhode Island employees to the presumption? How does this get underwritten for insurance purposes? How are rates established? Further adding to the issue, it is fundamental constitutional and workers' compensation law that statutory changes, such as those proposed here, are prospective in nature. Nothing herein would apply and benefit any of those employees who did (or did not) contract Covid-19 during the course of their employment before the date the law became effective.

Of interest, the proposed changes also raise the issue of citizenship. The Workers' Compensation Act presently entitles injured workers to benefits, regardless of immigration status. No stakeholder in the system reports any data to the state or federal government on immigration status. This change is completely unnecessary in our state workers' compensation system.

Finally, the proposal assumes the workers' compensation industry is the best place to pay for the costs of the pandemic. It ignores the systems put in place by our state and federal government to compensate our citizens for time lost from work when quarantined or diagnosed with the virus. If this legislation passes, the downstream impact on businesses and our state's economy is huge as employers will be unable to find affordable workers' compensation insurance. Rhode Island businesses are currently in a vulnerable state due to the pandemic. Adding cost to doing business in the State of Rhode Island is the last thing our citizens need right now. Workers compensation should continue to compensate work related injuries (including Covid-19) and other programs should pay for non-work related injuries. Shifting the entire responsibility of compensation related to Covid-19 will result in economic chaos to the detriment of the employees and employers of our state.

In conclusion, we have tried to outline all the legal and policy issues in the proposed legislation. We look forward to discussing them further and hope you understand they form the basis for our objection to the passage of this legislation.

Very truly yours,

A handwritten signature in blue ink that reads "Michael D. Lynch". The signature is fluid and cursive.

MICHAEL D. LYNCH