

To: Members of the House Committee on Commerce and Economic Development

From: Lake Champlain Chamber

Date: June 19, 2020

Re: Proposed Workers' Compensation Changes

While the language considered today might have had merit during a "Stay Home, Stay Safe" order, where interaction with other individuals was fairly limited to coworkers and others in the workplace; as we have graduated to a "Be Smart, Be Safe" order, the proposal does not reflect the myriad of chance exposures that individuals may expose themselves to in the hours in which they are not working.

Last week you took an important step in remedying a situation in which a person might have made more if they had left their job by providing retroactive hazard pay to a narrow scope of essential employees. We applaud your committee's restraint in waiting until guidance around such an application of funds was less opaque, an action that will ensure that the state is not liable for tens of millions from a clawback from the federal government. Importantly, this pay covers a tumultuous time period, as you all discussed, in which there were many unknowns and our mitigation efforts were not where they are now.

Since the early days of this crisis, extensive protocols and procedures have been developed for employers and individuals to mitigate exposure. Employers have a myriad of incentives to comply with VOSHA guidelines, spanning from altruistic to self-serving. First, employers understand that they have a duty to protect the health and safety of their communities. Second, not following these practices opens employers to legal liability and negative community perception. Third, employers risk losing their employees as they can self-separate and be eligible for unemployment insurance under the criteria within Act 91 if the employer is not following VOSHA guidelines. Finally, employers are being checked on by insurance carriers to ensure that there are not deficiencies which could increase volatility.

To this end, the workplace might be the safest place for some individuals, as there are strict protocols and procedures for health and safety. Employers have no control over the activity of employees outside of the workplace, and outside of basic syndromic surveillance, have no ability to understand the scope of that activity or the effect they will have on the employee's health. Even within the workplace, an employer can only control employees' actions to some extent; if any employee refuses to wear a mask or follow the business' plan to comply with VOSHA guidance there is little recourse beyond sending the employee home.

The latest numbers from the National Council on Compensation Insurance (NCCI) paint a picture of potentially astronomical additional cost to businesses from the changes represented in this bill. As you've well heard, Vermont employers do not have the capacity to take on an additional cost. Additionally, as the state climbs out of this crisis, we do not know what our premium base will look like going forward as organizations close or reduce operations.

For this reason, it would behoove the state to shift costs to the federal level as much as possible which will have the co-benefits of providing more remunerative benefits to employees, narrowing the risk-pool, while reducing short and long-term rate impacts in the state.

According to the Center for Disease Control, the hospitalization rate for many working-age individuals is between 2.5 and 7.4 cases per every 100,000 cases. Because most cases do not require hospitalization, they can easily be handled with leave created by Congress under the Families First Coronavirus Response Act (FFCRA). The presumption in this draft bill would actually encourage people to use workers' compensation despite it being a less efficacious remedy and will inevitably invite conflict as the claimant is drawn into a proceeding around the legitimacy of the claim for all the reasons stated above.

The Lake Champlain Chamber requests that you do not proceed with this legislation. However, if the Committee chooses to proceed with creating a presumption, we suggest that the Committee;

- Not all Individuals working in an essential industry or service should be covered by the same blanketed presumption. If you choose to proceed with creating a presumption, it should be applied judiciously and narrowly to those who have regular, close contact with individuals who have a high probability of being infected with COVID-19, in the same way as essential worker hazard pay.
- Make it clear that the use of Workers' Compensation is the method of last resort by including direction to the Department of Labor to provide FFCRA information and guidance to employers upon the filing of a COVID-19 related claim. An employer may pay out indemnity payments in the form of FFCRA leave and if the severity of the illness reaches the level of hospitalization that case can be reassessed to see if it should proceed as a Workers' Compensation claim and the indemnity payments would be credited to the account.
- Create a back-stop to utilizing CARES Act Coronavirus Relief funds to limit the financial impact on Vermont's small businesses. Not doing so will only further deplete resources from Vermont businesses, and as stated above, the best outcome for all Vermonters is if expenses related to COVID-19 are paid by federal dollars or programs. Our supposition is that the most recent guidance allowing hazard pay would also allow CARES Act use for this purpose.

In these uncertain times, it is important that legislation does not solely focus on the worst-case scenario and instead also accommodates for improvements and adaptations of conditions. We have already seen provisions of both the FFCRA leave and the self-termination criteria of Act 91 create confusion. As our country re-opens, people are seeking to move about more, however, states with conservative restarts still require those traveling to certain areas to quarantine upon return and we are hearing situations in which such a directive allows individuals who may have left the state for a non-essential personal trip to access these benefits. This was not the intention of these pieces of legislation, however, they were conceived at a time when the circumstances of our current restart paradigm could not have been anticipated.

Applying the lesson of these two pieces of legislation to the conversation we are in now, we should build this legislation not just for the worst-case scenario, but also for the best-case scenario. Re-opening the economy will create more risk for those who do not take steps to mitigate their exposure to COVID-19. As we outlined, Vermont businesses have a myriad of

reasons to mitigate risk by following the best guidance of the CDC and VOSHA making the presumption proposed by this legislation needless.