

**IN THE CIRCUIT COURT  
FOR THE SEVENTH JUDICIAL CIRCUIT OF ILLINOIS  
SANGAMON COUNTY, ILLINOIS**

ILLINOIS MANUFACTURERS' )  
ASSOCIATION and ILLINOIS RETAIL )  
MERCHANTS ASSOCIATION, )

Plaintiffs, )

v. )

Case No. 2020CH000098

ILLINOIS WORKERS' COMPENSATION )  
COMMISSION and MICHAEL J. )  
BRENNAN, COMMISSIONER, IN HIS )  
OFFICIAL CAPACITY, )

Defendants. )

**PLAINTIFFS' MEMORANDUM IN SUPPORT  
OF A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

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Plaintiffs Illinois Manufacturers' Association and Illinois Retail Merchants Association, by their counsel Greensfelder, Hemker & Gale, P.C., state the following as their Memorandum in Support of a Motion for a Temporary Restraining Order and Preliminary Injunction:

## **I. INTRODUCTION**

On April 15, 2020, the Illinois Workers' Compensation Commission ("Commission") published a Notice of Emergency Amendments to the Illinois Workers' Compensation Act ("IWCA"), which went into effect on April 16, 2020 ("Amendments" attached hereto as Exhibit A). The Amendments mandate sweeping substantive legal reform, grant new rights to a broad class of employees, and infringe on protectable interests of employers by declaring COVID-19 a *prima facie* Occupational Disease under the IWCA and Illinois Workers' Occupational Disease Act ("IODA"), and by affording employees a burden-shifting rebuttable presumption that COVID-19 was in fact contracted *in the workplace*. Although the Commission attempted to disguise its legal reform merely as a "modification of evidentiary rules regarding practice before the Commission" (Ex. A. ¶ 9), there is no doubt that the Amendments create substantive new rights for employees and new liabilities for employers. There also is no doubt that the Commission's substantive law making exceeds its authority and violates the Illinois Administrative Procedure Act ("IAPA").

As set forth more fully below, if left unchecked, the Commission's unlawful usurp of power reserved solely for the legislature will result in immediate, irreparable harm to both employees and employers. To be clear, this case is not about the wisdom of the substantive new law expressed by the Commission. This case is about the Commission far-exceeding its rulemaking authority. The substantive law of Illinois, and the wisdom of implementing it, is for the legislature, after proper discourse, and not the whim of the Commission.

## **II. STANDARD FOR ISSUING A TRO**

In considering whether to issue injunctive relief, the court must consider four factors: (1) whether the movant has a right or interest that needs to be protected, (2) whether the movant has an adequate remedy at law, (3) the threat of irreparable harm to the movant if the injunction is not granted, and (4) the reasonable likelihood of success on the merits. *Arcor, Inc. v. Haas*, 363 Ill. App. 3d 396, 399 (1<sup>st</sup> Dist. 2005). The movant need not show an actual injury before an injunction may issue. The threat of such injury is sufficient. *Gannett Outdoor of Chicago v. Baise*, 163 Ill. App. 3d 717, 722 (1<sup>st</sup> Dist. 1987).

A temporary restraining order (“TRO”) is an equitable remedy that is issued when necessary to preserve the status quo until the court has an opportunity to rule on a motion for preliminary injunction after an evidentiary hearing. “Status quo” is defined as the last actual, peaceable, uncontested status preceding the controversy. *NW Steel & Wire Co. v. Indus. Comm’n*, 254 Ill. App. 3d 472, 476 (1<sup>st</sup> Dist. 1993). Plaintiffs seek to preserve the status quo of the IWCA, the IODA, and the IAPA prior to the controversy at issue here: the Commission’s unlawful usurp of power reserved for the legislature by exceeding its rulemaking authority under, and in violation of, the IAPA.

## **III. PLAINTIFFS LIKELIHOOD OF SUCCESS ON THE MERITS**

To show a likelihood of success on the merits, a party only needs to raise “a fair question about the existence of his right and that the court should preserve the status quo until the case can be decided on the merits. *In re Estate of Wilson*, 373 Ill. App. 3d 1066, 1075 (1<sup>st</sup> Dist. 2007); *see also Arpac Corp. v. Murray*, 226 Ill. App. 3d 65, 72 (1<sup>st</sup> Dist. 1992). As set forth below, Plaintiffs’ Verified Complaint raises more than fair questions about the existence of the rights of Plaintiffs’ members, the limitations on the Commission’s authority, the substantive nature of the

Amendments, the Commission's violations of the IAPA, and the resulting nullity of the Amendments where the Commission has exceeded its jurisdiction.

**A. The Commission Only Has Authority To Publish Procedural Rules And The Amendments Are Facially Substantive**

The Notice of Emergency Amendments provides that the purported authority to implement the Amendments is found in Sections 1.1(b), 13 and 16 of the IWCA [820 ILCS 305 *et seq.*] and Section 16 of IODA [820 ILCS 310 *et seq.*]. (See Exhibit A, ¶ 4). There is nothing, however, in these cited sections which authorizes the Commission to undertake substantive rule making. In fact, the opposite is true. These sections expressly limit the Commission's authority to procedural rule making. See 820 ILCS 305/16 ("The Commission shall make and publish **procedural rules and orders** for carrying out the duties imposed upon it by law and for determining the extent of disability sustained, which rules and orders shall be deemed prima facie reasonable and valid"); 820 ILCS 310, Section 16 ("The Commission shall make and publish **procedural rules and orders** for carrying out the duties imposed upon it by law, which rules and orders shall be deemed prima facie reasonable and valid."); 820 ILCS 305/13(k) ("In the **promulgation of procedural rules**, the determination of cases heard en banc, and other matters determined by the full Commission, the Chairman's vote shall break a tie in the event of a tie vote.") (emphasis in each section added).

Not only is there a void of statutory authority allowing the Commission to make substantive law, courts in Illinois have long-held that the Commission cannot, "by any rule or custom extend the substantive provisions of the [Workers'] Compensation Act." *Hamilton Eng'g Co. v. Indus. Comm'n*, 399 Ill. 30, 41 (1947); see also *Madsen v. Indus. Comm'n*, 383 Ill. 590, 597 (1943) ("While the Industrial Commission is vested with the power to make rules for carrying out its statutory duties it is without power to make rules creating substantive rights. It is

restricted to making only such rules as will aid in carrying out the duties imposed upon the commission by the statute.”).

Limiting the Commission’s rule making authority to procedural, not substantive, rules assures that the rule making power of the Commission is not “superior to the legislative power of the General Assembly.” *Madsen*, 383 Ill. at 597.<sup>1</sup> “The power to make the laws is a sovereign power vested in the legislature,” and this power cannot be delegated to an administrative body. *People v. Tibbitts*, 56 Ill.2d 56, 58 (1973). The Commission is an administrative body created by legislative enactment for the purposes of administering the IWCA. It can only make such orders as are within the powers granted to it by the General Assembly. *Trigg v. Indus. Comm’n*, 364 Ill. 581, 588 (1936). An administrative agency cannot, by its rules or regulations, extend the substantive provisions of a legislative enactment, nor can it create substantive rights thereby. *People v. Kueper*, 111 Ill. App. 2d 42, 47 (5<sup>th</sup> Dist. 1969).<sup>2</sup> The Commission is an administrative agency, and therefore, has no general or common law powers. *Alvarado v. The Industrial Commission*, 216 Ill.2d 547, 553 (2005) (citing *Chicago v. Fair Employment Practices Comm’n*, 65 Ill.2d 108, 113 (1976)); see also *Business & Professional People for the Public Interest v. Illinois Commerce Comm’n*, 136 Ill.2d 192, 243-44 (1989); *Interstate Scaffolding, Inc. v. The Illinois Workers Compensation Commission*, 236 Ill.2d 132, 145 (2010).

Having established that the Commission has no authority to create substantive law, the issue turns to whether the Amendments are merely procedural, or whether they establish new

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<sup>1</sup> The Commission has implicitly acknowledged the limitations on its rule making authority by attempting to characterize the Amendments as relating to evidentiary and procedural rules. (See Exhibit A, ¶ 9). As set forth more fully below, the Commission’s self-serving characterization is a façade.

<sup>2</sup> Although the Commission has not cited the IAPA in connection with its authority to enact the Amendments, to be clear, the IAPA does not confer any such authority. Section 5-10 of the IAPA allows for the making of rules of procedure for hearings; Section 5-15 allows for the making of rules regarding organization, information requests and rulemaking; and Section 10-5 allows for the making of rules for the handling of contested cases. None of these provisions, nor any other in the IAPA, expressly authorizes any agency to promulgate substantive rules relating to the implementation or enforcement of particular statutes within their jurisdiction. Rather, the IAPA merely provides the procedure for making rules which are otherwise authorized by law.

substantive rights and obligations. The Amendments at issue are clearly substantive in that they create new rights for employees and new obligations for employers. Employers have a protectable interest in being free from invalid lawmaking that blatantly requires employers to carry the healthcare load of a public pandemic. That is exactly what is going on here. Even Governor Pritzker has acknowledged as much in making the following comments regarding the Amendments: “In the middle of an emergency, the only way you have to operate is to protect people as best you can. And to the extent that it is required that someone has to pick up the tab for that, sometimes that will fall on the people who are most able to pick up the tab.”<sup>3</sup>

Although the Commission attempts to mask the Amendments as procedural or evidentiary, the Commission ignores the very clear, very substantive impact of the Amendments. Prior to the Amendments, there was nothing in the IWCA that afforded the substantive right to employees to claim COVID-19 as a *prima facie* compensable workplace injury and/or occupational disease. In other words, the Commission is not applying a rebuttable presumption to a specific substantive right that was already expressed in the IWCA. Instead, the Commission, as a matter of law, has declared that COVID-19 is a *prima facie* Occupational Disease and not a disease common to the public. That declaration of law, coupled with the burden-shifting rebuttable presumption the Commission attaches to it, is entirely substantive in nature.<sup>4</sup>

“Occupational Disease,” as defined in the IODA, “means a disease arising out of and in the course of employment or which has become aggravated or rendered disabling as a result of the exposure of the employment. Such aggravation shall arise out of a risk peculiar to or increased by the employment and not common to the general public.” 820 ILCS 310/1(d). The

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<sup>3</sup> Ben Orner, *Illinois Essential Employees Guaranteed Workers’ Compensation During Pandemic*, HERALD&REVIEW (April 14, 2020), [https://herald-review.com/news/state-and-regional/illinois-essential-employees-guaranteed-workers-compensation-during-pandemic/article\\_4796a4f6-3608-5c09-8b85-83d473cdce43.html](https://herald-review.com/news/state-and-regional/illinois-essential-employees-guaranteed-workers-compensation-during-pandemic/article_4796a4f6-3608-5c09-8b85-83d473cdce43.html).

<sup>4</sup> The substantive burden-shifting in violation of the IAPA is discussed more fully in Section III.B, below.

Amendments declare that COVID-19 is, in fact, a “disease arising out of and in the course of employment” whereas the law otherwise states that “a mere possibility of contamination in the course of employment is not sufficient to as award of compensation.” *City of Chicago v. Indus. Comm’n*, 403 Ill. 105, 107 (1949). Whereas before an employee had to present all elements of his or her claim, including proof that he or she suffered an injury in the course and scope of his or her employment<sup>5</sup>, a COVID-19 employee can now bring a claim merely for having contracted COVID-19.

The only section in the IWCA that is analogous to what the Commission is attempting to accomplish through the Amendments is Section (6)(f). 820 ILCS 305/6(f). Section 6(f) provides a rebuttable presumption, under limited circumstances, for respiratory and other illnesses contracted by and narrowly tailored to firefighters, emergency medical technicians and paramedics. Notably, the enactment of Section 6(f) was appropriately implemented by the legislature, not the Commission. *See* 95th Ill. Gen. Assem., House Bill 928, 2007 Sess.; Public Act 95-316 (eff. Jan. 1, 2008); *Johnson v. Illinois Workers’ Compensation Commission*, 2017 IL App (2d) 160010WC, ¶ 43. Tellingly, all other references to rebuttal presumptions found in the IWCA also were enacted by the legislature.<sup>6</sup> The Amendments at issue even alter the substantive rights of the Section 6(f) class of workers because the legislature only afforded a rebuttable presumption to firefighters, emergency medical technicians, and paramedics employed in such capacity for more than five (5) years, and the legislature excluded such employees

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<sup>5</sup> *Nee v. Illinois Workers’ Compensation Commission*, 2015 IL App (1<sup>st</sup>) 132609WC, ¶19.

<sup>6</sup> 820 ILCS 305/8.7(j)— 94th Ill. Gen. Assem., House Bill 2137; Public Act 94-277 (eff. July 20, 2005) (creating a rebuttable presumption regarding denial of payments in compliance with the utilization review program); 820 ILCS 305/11— 97th Ill. Gen. Assem., House Bill 1698; Public Act 97-18 (eff. June 28, 2011) (creating a rebuttable presumption regarding employee intoxication); 820 ILCS 305/16— 94th Ill. Gen. Assem., House Bill 2137; Public Act 94-277 (eff. July 20, 2005) (creating a rebuttable presumption regarding certified medical records); and 820 ILCS 305/19(l)— 94th Ill. Gen. Assem., House Bill 2137; Public Act 94-277 (eff. July 20, 2005) (creating a rebuttable presumption regarding delay in payment of benefits).

engaged in medical transfers between medical care facilities. Thus the Amendments unlawfully rewrite this piece of legislation, too.

Although the Amendments at issue even pronounce substantive changes relative to the class of Section 6(f) employees, the larger point is that the Amendments at issue create new, substantive rights for an expansive category of employees, including police, fire personnel, emergency medical technicians, paramedics “and all individuals employed and considered as first responders, health care providers engaged in patient care, corrections officers, and the crucial personnel identified under Section 1 Parts 7, 8, 9, 10, 11, and 12 of Executive Order 2020-10 dated March 20, 2020.” Those parts of the Executive Order, attached hereto as Exhibit B include broadly defined Healthcare and Public Health Operations; Human Services Operations; Essential Infrastructure; Essential Government Functions; and Essential Businesses and Operations, including stores that sell groceries and medicine; food, beverage and cannabis production and agriculture; organizations that provide charitable and social services; media; gas stations and businesses needed for transportation, financial institutions; hardware and supply stores; critical trades; mail, post, shipping logistics, delivery, and pick-up services; educational institutions; laundry services; restaurants for consumption off-premises; supplies to work from home; supplies for essential business and operations; transportation; home-based care and services; residential facilities and shelters; professional services; day care centers; manufacture, distribution, and supply chain for critical products and industries; critical labor union functions; hotels and motels; and funeral services.

The Executive Order is so broad that that the laundry list of excepted employees nearly swallows the rule, and under the Commission’s Amendments, this entire body of employees has been vested with new, substantive rights and compensable claims under the Workers’

Compensation Act. And, the Amendments concomitantly impose new obligations on a swath of employers. The creation of such rights and accompanying obligations, however, is vested solely with the legislature (as it did with Section 6(f) of the IWCA and every other section of the IWCA in which a rebuttable presumption was created). *See*, footnote 5, *supra*.

The Commission has no authority to pass-off the substantive changes to the IWCA as merely procedural. A "procedure" is the machinery for carrying on a suit, including pleading, process, evidence and practice. By contrast, a "substantive" act establishes, creates or defines rights. *Doe v. Univ. of Chicago*, 404 Ill.App.3d 1006, 1012 (1<sup>st</sup> Dist. 2010). Stated another way, "procedure" generally prescribes the means for enforcing rights and the practice of legal rules which direct the course of proceedings whereas "substantive law" involves the rights underlying the lawsuit. *United City of Yorkville v. Vill. of Sugar Grove*, 376 Ill. App. 3d 9, 21 (2<sup>nd</sup> Dist. 2007); *People v. Atkins*, 217 Ill.2d 66, 71-72 (2005) (*quoting Rivard v. Chicago Fire Fighters Union, Local No. 2*, 122 Ill.2d 303, 310–11 (1988)); *see also, Royal Imperial Grp., Inc. v. Joseph Blumberg & Assoc., Inc.*, 240 Ill. App. 3d 360, 364 (1<sup>st</sup> Dist. 1992).

Although the Amendments are facially substantive, another hallmark of a substantive rule is that it cannot be applied retroactively. Section 4 of the Statute on Statutes (5 ILCS 70/4) instructs that if new legislation or an amendment is procedural, it may be applied retrospectively, but if it is substantive, it may not be so applied. *See also, Alwan v. Kickapoo-Edwards Land Tr.*, 2018 IL App (3d) 170165, ¶ 12; *Caveney v. Bower*, 207 Ill.2d 82 (2003); *Grigsby v. Industrial Commission*, 76 Ill.2d 528 (1979); *Royal Imperial Grp., Inc.*, 240 Ill. App. 3d at 364; *Rivard*, 122 Ill.2d at 310–11; *Maiter v. Chicago Board of Education*, 82 Ill.2d 373 (1980). With respect to the Amendments at issue, the Commission has conceded that the Amendments will only be applied prospectively, not retroactively, thus implicitly acknowledging the substantive nature of

the Amendments. After the Commission held a reading of the Amendments on April 15, 2020, the Commission left open the submission of public comments and questions due to the difficulty in managing the reading with hundreds of people via conference call. After the reading, Mark Denzler, President of the Illinois Manufacturers' Association, sent the Commission an email inquiry regarding the prospective versus retroactive nature of the Amendments. In response, Mr. Denzler was informed that "Our rule is prospective, not retroactive." *See* Affidavit of Mark Denzler, Para. 9, attached as Exhibit C.

The Amendments at issue are facially substantive as they establish, create, and define new rights and corresponding obligations. To reiterate what Governor Pritzker said about the Amendments, they impose an obligation on employers to "pick up the tab" for COVID-19. To be clear, the policy underlying the Commission's unlawful Amendments is debatable, but not at issue in this case. The issue in this case is striking down a substantive law that clearly exceeds the Commission's rulemaking authority. The policy debate and substantive law making is reserved solely for the legislature, not an emergency amendment by the Commission with no such authority and no public discourse.

The Commission has rewritten the law to affirmatively state that a mere possibility of contamination is sufficient for COVID-19. This pronouncement of new law is not only inconsistent with black letter law in Illinois, but presumes on nothing more than a hunch that contamination did in fact occur in the workplace. The Commission has supplied a causal connection that the employee must otherwise have to prove. This standing alone is substantive, but when coupled with the presumption afforded to COVID-19 cases discussed below, the substantive nature of the Amendments is even more pronounced.

**B. The Commission Must Adhere To The Administrative Procedure Act And Did Not Do So With Respect To The Amendments**

The Notice of Emergency Amendments is noticeably silent on the Commission acting on authority derived from, or in accordance with, the IAPA. That is because the Amendments were published in total disregard of the IAPA and in violation of the IAPA. The Commission is subject to the IAPA. 5 ILCS 100/1 – 5; 5 ILCS 100/1-20; *Berrios v. Rybacki*, 190 Ill. App. 3d 338 (1<sup>st</sup> Dist. 1989); *see also*, authority cited in Section III.A., *supra*. As such, while the Commission may make procedural rules of the type addressed above, it cannot enact rules establishing procedures that do not minimally comply with the IAPA—regardless of whether the lack of compliance is substantive or merely procedural.

Section 10-10 of the IAPA provides that “[a]ll agency rules establishing procedures for contested cases shall at a minimum comply with the provisions of this Article 10.” 5 ILCS 100/10-10. As claims before the Commission are “contested cases,” the procedures for those cases must follow Article 10 of the IAPA. *See* 5 ILCS 100/1-30. Accordingly, the workers’ compensation cases that are brought before the Commission must comply with the procedural rules of the IAPA.

The IAPA requires that the Commission follow the rules of evidence in the proceedings before it. 5 ILCS 100/10-40(a) (“The rules of evidence and privilege as applied in civil cases in the circuit courts of this State shall be followed.”); *Scott v. Depart. of Commerce and Comm. Affairs*, 84 Ill.2d 42, 53 (1981). In addition, the Illinois Supreme Court has construed the IAPA to require that the moving party have the burden in asserting a claim (*Id.*) and a claimant with an action before the Commission has the burden to present evidence in support of each element of his or her right to compensation. *Navistar International Transportation Corp. v. The Industrial Commission*, 315 Ill. App. 3d 1197, 1202-03 (1<sup>st</sup> Dist. 2000). Accordingly, in order to justify compensation, a claimant is required to present evidence to establish that his/her injuries arose

out of and in the course of their employment. *Id.* at 1203; *Nee v. Illinois Workers' Compensation Commission*, 2015 IL App (1<sup>st</sup>) 132609WC, ¶19.

The Amendments eviscerate and remove a substantive element of a claimant's workers' compensation claim with regard to COVID-19, i.e., that the injury arose out of and in the course and scope of employment, and also shift the burden of proof on this issue to the employer. The Amendments create the rebuttable presumption that the claimant in fact contracted COVID-19 in the workplace. A presumption is a rule of law that requires the fact finder to take as established the existence of a fact, unless sufficient evidence is introduced tending to rebut the presumed fact. *In re B.B. and K.B.*, 2011 IL App (4<sup>th</sup>) 110521, ¶24 (citing *People v. Funches*, 212 Ill.2d 334, 341 (2004)). Thus, the Amendments require the Commission to accept as true at the outset and without any supporting evidence that the claimant contracted COVID-19 in the workplace unless the employer can provide evidence to rebut a virtually irrefutable presumption. *English v. Village of Northfield*, 172 Ill. App. 3d 344, 347 (1<sup>st</sup> Dist. 1988). In *People v. Watts*, the Illinois Supreme Court defined this type of presumption as a mandatory presumption that shifts the burden of proof to the defendant. *People v. Watts*, 181 Ill.2d 133, 142 (1988).

The presumption establishes a substantive change to the IWCA that the Commission is without the authority to enact. A substantive change in the law establishes, creates or defines rights, whereas a procedural change merely prescribes a method of enforcing rights or involves pleadings, evidence and practice. *Doe Three v. Depart. of Public Health*, 2017 IL App (1<sup>st</sup>) 162548, ¶ 34. Except for certain narrow legislatively made exceptions (e.g., Section 6(f) of the IWCA), the IAPA requires that the claimant in a workers' compensation claim first present evidence to establish that his or her injury was the result of his or her employment. The Amendments remove this as claimants are no longer required to produce evidence to support

their claim that their injury arose in the workplace. Instead, the Commission must assume that this element of the claim has been established by the claimant unless the employer, through the burden shifting mechanism of the Amendments, can present evidence to rebut this presumption. And only in the unlikely event that the employer can bear this new burden and present such evidence to rebut this presumption, would the claimant have to present evidence to establish this element of a workers' compensation claim. As a result, the Amendments—whether labeled substantive or procedural—are beyond the authority of the Commission because the Amendments alter the minimal requirements of the IAPA with respect to the burden of proving the essential elements of a workers' compensation claim. Only the legislature can enact such rebuttable presumptions. *See* footnote 5, *supra*.

When, as here, the Commission acts outside of its specific statutory authority, it acts without “jurisdiction” and “[i]ts actions are void, a nullity from their inception.” *Daniels v. The Industrial Commission*, 201 Ill.2d 160, 165 (2002); *Alvarado*, 216 Ill.2d at 553. “Rules not properly promulgated are invalid, not effective against any person or entity, and may not be invoked by an administrative agency for any purpose.” *Walk v. Illinois Dept. of Children and Family Services*, 399 Ill. App. 3d 1174, 1184 (4<sup>th</sup> Dist. 2010) (*quoting Champaign-Urbana Public Health Dist. v. Illinois Labor Relations Bd. State Panel*, 354 Ill. App. 3d 482, 488 (4<sup>th</sup> Dist. 2004)). Here, Plaintiffs’ burden to obtain a TRO is merely to raise fair questions of their likelihood of success on the merits. Plaintiffs have established more than fair questions in this respect. If the Court applies the principles of law set forth above, the Amendments are a nullity and the Court should enjoin the Commission from giving any effect to the Amendments or invoking the Amendments in any manner.

#### **IV. PROTECTABLE RIGHTS AND INTERETS ARE AT STAKE**

It should go without saying that Plaintiffs' members have protectable rights and interests at stake. As set forth more fully above, Plaintiffs' members have a protectable right and interest in being free from invalid lawmaking that blatantly requires employers to carry the healthcare load of a public pandemic. The Commission has substantively declared that employers should "pick up the tab" for providing the citizens of Illinois with what the State has deemed essential services in this time of crisis.

**V. IRREPARABLE HARM EXISTS FOR WHICH THERE IS NO ADEQUATE REMEDY AT LAW**

Once a protectable interest has been established, "**irreparable injury [or harm] is presumed** if that interest is not protected." *Guns Save Life, Inc. v. Raoul*, 2019 IL App (4<sup>th</sup>) 190334, ¶ 51 (*quoting Cameron v. Bartels*, 214 Ill. App. 3d 69, 73 (4<sup>th</sup> Dist. 1991)) (emphasis added). Moreover, for harm that is of a continuous nature, and involves a right for which monetary compensation would be inadequate, courts have considered it to be *per se* irreparable harm. *C.J. v. Dept. of Human Services*, 331 Ill. App. 3d 871, 891-92 (1<sup>st</sup> Dist. 2002). Here, the harm is of a continuing nature as long as the Amendments are left unchecked and capable of being enforced by the Commission. Moreover, Plaintiffs' members face an unnecessary Sophie's Choice: acquiesce to paying the employee's medical bills at the outset or face harsh penalties for trying to overcome the virtually irrefutable presumption regarding COVID-19 claims. See IWCA, § 19; *see also* Exhibits C and D. Note that this rebuttable presumption, as well as all rebuttable presumptions found in the IWCA, was passed by the legislature, not the Commission. *See* footnote 5, *supra*. Point being, even though where, as here, irreparable harm is presumed for the protectable interests at stake, the substantive changes enacted by the Commission, coupled with the substantive procedure enacted by the legislature, also puts

employers in danger of immediate irreparable harm for which there is no adequate remedy at law.

This case also is unique in that it presents issues of irreparable harm for which there is no adequate remedy at law that would befall *both employers and employees*, and the public interest would be served by an injunction. In Section 9 of the Notice of the Amendments (Ex. A. hereto), the Commission attempts to justify exceeding its rule making authority by explaining the “potential for irreparable and irreversible harm to the public interest” as follows:

Without the passage of this emergency rule, the uncertainty associated with the prior rules may put an individual in the untenable position of balancing their need to receive a continued paycheck to support their family and making the correct decision to miss work and self-isolate and self-quarantine. Without the emergency rule, individuals may feel forced to act against the public interest, potentially creating an even more dire hazard that the State already faces. There is also the further potential that an individual who is a responder or essential front-line worker and is capable of providing essential services may choose to miss work or to temporarily withdraw from the workforce out of fear of contracting the virus and being uncertain whether or not they will be afforded the protections of the Workers’ Compensation Act—protections that every working Illinoisan deserves to be confident in and reassured by.

The irony is that the Commission’s illegal lawmaking is in conflict with the Commission’s stated purpose of the Amendments: to create certainty. The further irony is that the stated purpose of resolving “uncertainty associated with the prior rules” is demonstrative of the Commission’s intention to declare with certainty, and as a matter of law, that COVID 19 is an Occupation Disease whereas the law previously excluded the mere possibility that a disease common to the public was contracted in the course of employment.

The Notice of Emergency Amendments suggests that employees now can choose with confidence to continue their essential-services employment with certainty that they will be afforded the protections of the IWCA. The uncertainties created by the Commission’s illegal law making, however, conflict with the stated purpose of the Amendments. In the absence of an

injunction and an expedited final ruling on the merits, employees will make misguided decisions on assurances that the Commission has no business and/or authority providing. Employees who guess wrong about the validity of the Commission's assurances will be irreparably impacted.

The Commission also has overlooked the chilling effect on employers who are, according to the State, providing essential services during the crisis. In only citing the public interest of self-isolation and self-quarantine, the Commission ignores the public interest in essential services that Illinoisans are dependent upon in this time of crisis. The financial impact the Amendments will have on employers put them in the untenable position of providing essential services (as deemed essential by the Governor's March 20, 2020 Order) or closing their doors because they are unable to "pick up the tab."

The Commission also overlooks the public interest in not being subject to rogue lawmaking. This is exactly why the Commission's attempt at sweeping reform should be rejected in favor of the proper legislative process. Again, this case is not about whether the Commission's legal reform is good policy, balancing all of the interests involved, but whether the Commission has the authority to undertake such legal reform. The answer is no, and the Commission should be enjoined from enforcing the Amendments.

WHEREFORE, Plaintiffs respectfully request that this Court enjoin the Commission from invoking the Amendments in favor of or against any person or entity until this Court has the opportunity to fully and finally declare the Amendments as a nullity.

Respectfully submitted,

ILLINOIS MANUFACTURER'S ASSOCIATION  
and ILLINOIS RETAIL MERCHANTS  
ASSOCIATION

By:  /s/ Scott Cruz  
One of Their Attorneys

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**EXHIBIT A**  
**to Memorandum in**  
**Support**

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ILLINOIS REGISTER

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WORKERS' COMPENSATION COMMISSION

NOTICE OF EMERGENCY AMENDMENTS

- 1) Heading of the Part: Arbitration
- 2) Code Citation: 50 Ill. Adm. Code 9030
- 3) Section Numbers: 9030.70                      Emergency Action:  
Emergency Amendment
- 4) Statutory Authority: Implementing and authorized by Sections 1.1(b), 13 and 16 of the Illinois Workers' Compensation Act [820 ILCS 305] and Section 16 of the Illinois Workers' Occupational Diseases Act [820 ILCS 310].
- 5) Effective Date of Emergency Rules: April 16, 2020
- 6) If this emergency rule is to expire before the end of the 150-day period, please specify the date on which it is to expire: This rule will not expire before the end of the 150-day period.
- 7) Date Filed with the Index Department: April 16, 2020
- 8) A copy of the emergency rules, including any material incorporated by reference, is on file in the Workers' Compensation Commission's principal office and is available for public inspection.
- 9) Reason for Emergency: The rapid spread of COVID-19 and uncertainty created within regulated industry has necessitated the modification of evidentiary rules regarding practice before the Commission to ensure first responders and essential front-line workers, who are most susceptible to exposure to COVID-19, are afforded the full protections of the Workers' Compensation Act in the event they are exposed to or contract the virus.

Due to the unprecedented and extreme exigencies created by the nature and timeline of the spread of COVID-19, going through the normal proposed rulemaking process under section 5-40 of the Illinois Administrative Procedure Act (5 ILCS 100/5-40) would create the potential for causing irreparable and irreversible harm to the public interest, public safety, and public welfare. Without the passage of this emergency rule, the uncertainty associated with the prior rules may put an individual in the untenable position of balancing their need to receive a continued paycheck to support their family and making the correct decision to miss work and self-isolate and self-quarantine. Without the emergency rule, individuals may feel forced to act against the public interest,

WORKERS' COMPENSATION COMMISSION

NOTICE OF EMERGENCY AMENDMENTS

potentially creating an even more dire hazard than the State already faces. There is also the further potential that an individual who is a first responder or essential front-line worker and is capable of providing essential services may choose to miss work or to temporarily withdraw from the workforce out of fear of contracting the virus and being uncertain whether or not they would be afforded the protections of the Workers' Compensation Act—protections that every working Illinoisan deserves to be confident in and reassured by.

The rule is written to be narrowly tailored to only apply to those people who are first responders or essential front-line workers, to only apply to their employment as first responders or essential front-line workers, and to only apply to exposures that occur during a COVID-19-related state of emergency declared by the Governor. Further, the emergency rule does not guarantee or assure an award of benefits to any individual who suspects he or she has contracted COVID-19 or self-isolates and self-quarantines due to an alleged or suspected exposure to COVID-19, but, instead, creates a reasonable rebuttable presumption that a first responder or front-line worker's exposure to the virus is connected to their employment.

The emergency rule does not create or diminish any substantive rights of any party, but, instead, speaks to the rules of evidence and procedural rules to be followed by the Commission's hearing officers for carrying out the duties imposed upon the Commission in the conduct of hearings.

- 10) A Complete Description of the Subjects and Issues Involved: The proposed rules are designed to ensure in any case before the Workers' Compensation Commission where any COVID-19 First Responder or Front-Line Worker, defined within the Rule, is exposed to COVID-19 during the State of Emergency, it will be rebuttably presumed that the individual's exposure arises out of and in the course of their COVID-19 First Responder or Front-Line Worker employment and rebuttably presumed to be causally connected to their COVID-19 First Responder or Front-Line Worker employment.
- 11) Are there any other rulemakings pending on this Part? No
- 12) Statement of Statewide Policy Objective: This rulemaking neither creates nor expands any state mandates on units of local government.
- 13) Information and questions regarding these emergency rules shall be directed to:

Cole D. Garrett  
Deputy General Counsel

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ILLINOIS REGISTER

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WORKERS' COMPENSATION COMMISSION

NOTICE OF EMERGENCY AMENDMENTS

Illinois Workers' Compensation Commission  
100 W. Randolph St., Suite 8-200  
Chicago, IL 60601  
e-mail: [Cole.Garrett@illinois.gov](mailto:Cole.Garrett@illinois.gov)

The full text of the Emergency Amendments begins on the next page:

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ILLINOIS REGISTER

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WORKERS' COMPENSATION COMMISSION

NOTICE OF EMERGENCY AMENDMENTS

TITLE 50: INSURANCE

CHAPTER VI: WORKERS' COMPENSATION COMMISSION

PART 9030  
ARBITRATION

Section

9030.10 Arbitration Assignments

9030.20 Setting a Case for Trial

9030.30 Disqualification of Commissioners and Arbitrators

9030.40 Request for Hearing

9030.50 Subpoena Practice

9030.60 Depositions

9030.70 Rules of Evidence

**EMERGENCY**

9030.80 Briefs, Arbitrators' Decisions

9030.90 Opening and/or Closing Statements

9030.100 Voluntary Arbitration under Section 19(p) of the Workers' Compensation Act and Section 19(m) of the Workers' Occupational Diseases Act

**AUTHORITY:** Implementing and authorized by the Workers' Compensation Act [820 ILCS 305] and the Workers' Occupational Diseases Act [820 ILCS 310].

**SOURCE:** Filed and effective March 1, 1977; amended at 4 Ill. Reg. 26, p. 159, effective July 1, 1980; emergency amendment at 5 Ill. Reg. 8547, effective August 3, 1981, for a maximum of 150 days; amended at 6 Ill. Reg. 3570, effective March 22, 1982; emergency amendment at 6 Ill. Reg. 5820, effective May 1, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 8040, effective July 7, 1982; amended at 6 Ill. Reg. 11909, effective September 20, 1982; codified at 7 Ill. Reg. 2514; amended at 9 Ill. Reg. 19722, effective December 6, 1985; emergency amendment at 14 Ill. Reg. 4913, effective March 9, 1990, for a maximum of 150 days; emergency expired August 6, 1990; amended at 14 Ill. Reg. 13141, effective August 1, 1990; amended at 15 Ill. Reg. 8214, effective May 17, 1991; amended at 20 Ill. Reg. 4053, effective February 15, 1996; amended at 36 Ill. Reg. 17913, effective December 4, 2012; recodified from 50 Ill. Adm. Code 7030 to 50 Ill. Adm. Code 9030 at 39 Ill. Reg. 9605; amended at 40 Ill. Reg. 15732, effective November 9, 2016; emergency amendment at 44 Ill. Reg. \_\_\_\_\_, effective April 16, 2020, for a maximum of 150 days.

**Section 9030.70 Rules of Evidence**

**EMERGENCY**

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ILLINOIS REGISTER

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WORKERS' COMPENSATION COMMISSION

NOTICE OF EMERGENCY AMENDMENTS

- a) The Illinois Rules of Evidence shall apply in all proceedings before the Commission, either upon Arbitration or Review, except to the extent they conflict with the Act, the Workers' Occupational Diseases Act [820 ILCS 310], or the Rules Governing Practice Before the Workers' Compensation Commission (50 Ill. Adm. Code Chapter VI).
- 1) [In any proceeding before the Commission in which the petitioner is a COVID-19 First Responder or Front-Line Worker as defined in Section \(a\)\(2\), if the petitioner's injury, occupational disease, or period of incapacity resulted from exposure to the COVID-19 virus during the Gubernatorial Disaster Proclamation 2020-38 and any subsequent COVID-19 disaster proclamations, the exposure will be rebuttably presumed to have arisen out of and in the course of the petitioner's COVID-19 First Responder or Front-Line Worker employment and, further, will be rebuttably presumed to be causally connected to the hazards or exposures of the petitioner's COVID-19 First Responder or Front-Line Worker employment.](#)
  - 2) [The term "COVID-19 First Responder or Front-Line Worker" means any individuals employed as police, fire personnel, emergency medical technicians, or paramedics and all individuals employed and considered as first responders, health care providers engaged in patient care, corrections officers, and the crucial personnel identified under Section 1 Parts 7, 8, 9, 10, 11, and 12 of Executive Order 2020-10 dated March 20, 2020](#)
- b) Exhibits offered in evidence, whether admitted or rejected, shall be retained by the assigned Arbitrator or Commissioner until a decision is issued in the matter. Exhibits may not be removed by the parties. Once a final decision is rendered, exhibits shall be retained by the Commission pursuant to the requirements of Section 17 of the Act.

(Source: Amended by emergency rulemaking at 44 Ill. Reg. \_\_\_\_\_, effective April 16, 2020, for a maximum of 150 days)

**EXHIBIT B**  
**to Memorandum in**  
**Support**



FILED  
INDEX DEPARTMENT

MAR 20 2020

IN THE OFFICE OF  
SECRETARY OF STATE

March 20, 2020

Executive Order 2020-10

**EXECUTIVE ORDER IN RESPONSE TO COVID-19**  
**(COVID-19 EXECUTIVE ORDER NO. 8)**

WHEREAS, I, JB Pritzker, Governor of Illinois, declared all counties in the State of Illinois as a disaster area on March 9, 2020 (Gubernatorial Disaster Proclamation) in response to the outbreak of Coronavirus Disease 2019 (COVID-19); and,

WHEREAS, in a short period of time, COVID-19 has rapidly spread throughout Illinois, necessitating updated and more stringent guidance from federal, state, and local public health officials; and,

WHEREAS, for the preservation of public health and safety throughout the entire State of Illinois, and to ensure that our healthcare delivery system is capable of serving those who are sick, I find it necessary to take additional measures consistent with public health guidance to slow and stop the spread of COVID-19;

WHEREAS, COVID-19 has resulted in significant economic impact, including loss of income and wages, that threaten to undermine housing security and stability;

WHEREAS, the enforcement of eviction orders for residential premises is contrary to the interest of preserving public health and ensuring that individuals remain in their homes during this public health emergency;

THEREFORE, by the powers vested in me as the Governor of the State of Illinois, and pursuant to Sections 7(1), 7(2), 7(8), 7(10), and 7(12) of the Illinois Emergency Management Agency Act, 20 ILCS 3305, and consistent with the powers in public health laws, I hereby order the following, effective March 21, 2020 at 5:00 pm and for the remainder of the duration of the Gubernatorial Disaster Proclamation, which currently extends through April 7, 2020:

**Section 1. Stay at Home; Social Distancing Requirements; and Essential Businesses and Operations**

1. **Stay at home or place of residence.** With exceptions as outlined below, all individuals currently living within the State of Illinois are ordered to stay at home or at their place of residence except as allowed in this Executive Order. To the extent individuals are using shared or outdoor spaces when outside their residence, they must at all times and as much as reasonably possible maintain social distancing of at least six feet from any other person, consistent with the Social Distancing Requirements set forth in this Executive Order. All persons may leave their homes or place of residence only for Essential Activities, Essential Governmental Functions, or to operate Essential Businesses and Operations, all as defined below.

Individuals experiencing homelessness are exempt from this directive, but are strongly urged to obtain shelter, and governmental and other entities are strongly urged to make

such shelter available as soon as possible and to the maximum extent practicable (and to use in their operation COVID-19 risk mitigation practices recommended by the U.S. Centers for Disease Control and Prevention (CDC) and the Illinois Department of Public Health (IDPH)). Individuals whose residences are unsafe or become unsafe, such as victims of domestic violence, are permitted and urged to leave their home and stay at a safe alternative location. For purposes of this Executive Order, homes or residences include hotels, motels, shared rental units, shelters, and similar facilities.

2. **Non-essential business and operations must cease.** All businesses and operations in the State, except Essential Businesses and Operations as defined below, are required to cease all activities within the State except Minimum Basic Operations, as defined below. For clarity, businesses may also continue operations consisting exclusively of employees or contractors performing activities at their own residences (i.e., working from home).

All Essential Businesses and Operations are encouraged to remain open. To the greatest extent feasible, Essential Businesses and Operations shall comply with Social Distancing Requirements as defined in this Executive Order, including by maintaining six-foot social distancing for both employees and members of the public at all times, including, but not limited to, when any customers are standing in line.

3. **Prohibited activities.** All public and private gatherings of any number of people occurring outside a single household or living unit are prohibited, except for the limited purposes permitted by this Executive Order. Pursuant to current guidance from the CDC, any gathering of more than ten people is prohibited unless exempted by this Executive Order. Nothing in this Executive Order prohibits the gathering of members of a household or residence.

All places of public amusement, whether indoors or outdoors, including but not limited to, locations with amusement rides, carnivals, amusement parks, water parks, aquariums, zoos, museums, arcades, fairs, children's play centers, playgrounds, funplexes, theme parks, bowling alleys, movie and other theaters, concert and music halls, and country clubs or social clubs shall be closed to the public.

This Executive Order supersedes Section 2 of Executive Order 2020-07 (COVID-19 Executive Order No. 5), which prohibited gatherings of 50 people or more.

4. **Prohibited and permitted travel.** All travel, including, but not limited to, travel by automobile, motorcycle, scooter, bicycle, train, plane, or public transit, except Essential Travel and Essential Activities as defined herein, is prohibited. People riding on public transit must comply with Social Distancing Requirements to the greatest extent feasible. This Executive Order allows travel into or out of the State to maintain Essential Businesses and Operations and Minimum Basic Operations.
5. **Leaving the home for essential activities is permitted.** For purposes of this Executive Order, individuals may leave their residence only to perform any of the following Essential Activities:
  - a. **For health and safety.** To engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members (including, but not limited to, pets), such as, by way of example only and without limitation, seeking emergency services, obtaining medical supplies or medication, or visiting a health care professional.
  - b. **For necessary supplies and services.** To obtain necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others, such as, by way of example only and without limitation, groceries and food, household consumer products, supplies they need

to work from home, and products necessary to maintain the safety, sanitation, and essential operation of residences.

- c. **For outdoor activity.** To engage in outdoor activity, provided the individuals comply with Social Distancing Requirements, as defined below, such as, by way of example and without limitation, walking, hiking, running, or biking. Individuals may go to public parks and open outdoor recreation areas. However, playgrounds may increase spread of COVID-19, and therefore shall be closed.
  - d. **For certain types of work.** To perform work providing essential products and services at Essential Businesses or Operations (which, as defined below, includes Healthcare and Public Health Operations, Human Services Operations, Essential Governmental Functions, and Essential Infrastructure) or to otherwise carry out activities specifically permitted in this Executive Order, including Minimum Basic Operations.
  - e. **To take care of others.** To care for a family member, friend, or pet in another household, and to transport family members, friends, or pets as allowed by this Executive Order.
6. **Elderly people and those who are vulnerable as a result of illness should take additional precautions.** People at high risk of severe illness from COVID-19, including elderly people and those who are sick, are urged to stay in their residence to the extent possible except as necessary to seek medical care. Nothing in this Executive Order prevents the Illinois Department of Public Health or local public health departments from issuing and enforcing isolation and quarantine orders pursuant to the Department of Public Health Act, 20 ILCS 2305.
7. **Healthcare and Public Health Operations.** For purposes of this Executive Order, individuals may leave their residence to work for or obtain services through Healthcare and Public Health Operations.

Healthcare and Public Health Operations includes, but is not limited to: hospitals; clinics; dental offices; pharmacies; public health entities, including those that compile, model, analyze and communicate public health information; pharmaceutical, pharmacy, medical device and equipment, and biotechnology companies (including operations, research and development, manufacture, and supply chain); organizations collecting blood, platelets, plasma, and other necessary materials; licensed medical cannabis dispensaries and licensed cannabis cultivation centers; reproductive health care providers; eye care centers, including those that sell glasses and contact lenses; home healthcare services providers; mental health and substance use providers; other healthcare facilities and suppliers and providers of any related and/or ancillary healthcare services; and entities that transport and dispose of medical materials and remains.

Specifically included in Healthcare and Public Health Operations are manufacturers, technicians, logistics, and warehouse operators and distributors of medical equipment, personal protective equipment (PPE), medical gases, pharmaceuticals, blood and blood products, vaccines, testing materials, laboratory supplies, cleaning, sanitizing, disinfecting or sterilization supplies, and tissue and paper towel products.

Healthcare and Public Health Operations also includes veterinary care and all healthcare services provided to animals.

Healthcare and Public Health Operations shall be construed broadly to avoid any impacts to the delivery of healthcare, broadly defined. Healthcare and Public Health Operations does not include fitness and exercise gyms, spas, salons, barber shops, tattoo parlors, and similar facilities.

8. **Human Services Operations.** For purposes of this Executive Order, individuals may leave their residence to work for or obtain services at any Human Services Operations, including any provider funded by the Illinois Department of Human Services, Illinois Department of Children and Family Services, or Medicaid that is providing services to the public and including state-operated, institutional, or community-based settings providing human services to the public.

Human Services Operations includes, but is not limited to: long-term care facilities; all entities licensed pursuant to the Child Care Act, 225 ILCS 10, except for day care centers, day care homes, group day care homes, and day care centers licensed as specified in Section 12(s) of this Executive Order; residential settings and shelters for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness; transitional facilities; home-based settings to provide services to individuals with physical, intellectual, and/or developmental disabilities, seniors, adults, and children; field offices that provide and help to determine eligibility for basic needs including food, cash assistance, medical coverage, child care, vocational services, rehabilitation services; developmental centers; adoption agencies; businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged individuals, individuals with physical, intellectual, and/or developmental disabilities, or otherwise needy individuals.

Human Services Operations shall be construed broadly to avoid any impacts to the delivery of human services, broadly defined.

9. **Essential Infrastructure.** For purposes of this Executive Order, individuals may leave their residence to provide any services or perform any work necessary to offer, provision, operate, maintain and repair Essential Infrastructure.

Essential Infrastructure includes, but is not limited to: food production, distribution, and sale; construction (including, but not limited to, construction required in response to this public health emergency, hospital construction, construction of long-term care facilities, public works construction, and housing construction); building management and maintenance; airport operations; operation and maintenance of utilities, including water, sewer, and gas; electrical (including power generation, distribution, and production of raw materials); distribution centers; oil and biofuel refining; roads, highways, railroads, and public transportation; ports; cybersecurity operations; flood control; solid waste and recycling collection and removal; and internet, video, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services).

Essential Infrastructure shall be construed broadly to avoid any impacts to essential infrastructure, broadly defined.

10. **Essential Governmental Functions.** For purposes of this Executive Order, all first responders, emergency management personnel, emergency dispatchers, court personnel, law enforcement and corrections personnel, hazardous materials responders, child protection and child welfare personnel, housing and shelter personnel, military, and other governmental employees working for or to support Essential Businesses and Operations are categorically exempt from this Executive Order.

Essential Governmental Functions means all services provided by the State or any municipal, township, county, subdivision or agency of government and needed to ensure the continuing operation of the government agencies or to provide for or support the health, safety and welfare of the public, and including contractors performing Essential Governmental Functions. Each government body shall determine its Essential Governmental Functions and identify employees and/or contractors necessary to the performance of those functions.

This Executive Order does not apply to the United States government. Nothing in this Executive Order shall prohibit any individual from performing or accessing Essential Governmental Functions.

11. **Businesses covered by this Executive Order.** For the purposes of this Executive Order, covered businesses include any for-profit, non-profit, or educational entities, regardless of the nature of the service, the function it performs, or its corporate or entity structure.
12. **Essential Businesses and Operations.** For the purposes of this Executive Order, Essential Businesses and Operations means Healthcare and Public Health Operations, Human Services Operations, Essential Governmental Functions, and Essential Infrastructure, and the following:<sup>1</sup>
  - a. **Stores that sell groceries and medicine.** Grocery stores, pharmacies, certified farmers' markets, farm and produce stands, supermarkets, convenience stores, and other establishments engaged in the retail sale of groceries, canned food, dry goods, frozen foods, fresh fruits and vegetables, pet supplies, fresh meats, fish, and poultry, alcoholic and non-alcoholic beverages, and any other household consumer products (such as cleaning and personal care products). This includes stores that sell groceries, medicine, including medication not requiring a medical prescription, and also that sell other non-grocery products, and products necessary to maintaining the safety, sanitation, and essential operation of residences and Essential Businesses and Operations;
  - b. **Food, beverage, and cannabis production and agriculture.** Food and beverage manufacturing, production, processing, and cultivation, including farming, livestock, fishing, baking, and other production agriculture, including cultivation, marketing, production, and distribution of animals and goods for consumption; licensed medical and adult use cannabis dispensaries and licensed cannabis cultivation centers; and businesses that provide food, shelter, and other necessities of life for animals, including animal shelters, rescues, shelters, kennels, and adoption facilities;
  - c. **Organizations that provide charitable and social services.** Businesses and religious and secular nonprofit organizations, including food banks, when providing food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities;
  - d. **Media.** Newspapers, television, radio, and other media services;
  - e. **Gas stations and businesses needed for transportation.** Gas stations and auto-supply, auto-repair, and related facilities and bicycle shops and related facilities;
  - f. **Financial institutions.** Banks, currency exchanges, consumer lenders, including but not limited, to payday lenders, pawnbrokers, consumer installment lenders and sales finance lenders, credit unions, appraisers, title companies, financial markets, trading and futures exchanges, affiliates of financial institutions, entities that issue bonds, related financial institutions, and institutions selling financial products;
  - g. **Hardware and supply stores.** Hardware stores and businesses that sell electrical, plumbing, and heating material;

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<sup>1</sup> On March 19, 2020, the U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency, issued a *Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response*. The definition of Essential Businesses and Operations in this Order is meant to encompass the workers identified in that Memorandum.

- h. **Critical trades.** Building and Construction Tradesmen and Tradeswomen, and other trades including but not limited to plumbers, electricians, exterminators, cleaning and janitorial staff for commercial and governmental properties, security staff, operating engineers, HVAC, painting, moving and relocation services, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses and Operations;
- i. **Mail, post, shipping, logistics, delivery, and pick-up services.** Post offices and other businesses that provide shipping and delivery services, and businesses that ship or deliver groceries, food, alcoholic and non-alcoholic beverages, goods or services to end users or through commercial channels;
- j. **Educational institutions.** Educational institutions—including public and private pre-K-12 schools, colleges, and universities—for purposes of facilitating distance learning, performing critical research, or performing essential functions, provided that social distancing of six-feet per person is maintained to the greatest extent possible. This Executive Order is consistent with and does not amend or supersede Executive Order 2020-05 (COVID-19 Executive Order No. 3) or Executive Order 2020-06 (COVID-19 Executive Order No. 4) except that affected schools are ordered closed through April 7, 2020;
- k. **Laundry services.** Laundromats, dry cleaners, industrial laundry services, and laundry service providers;
- l. **Restaurants for consumption off-premises.** Restaurants and other facilities that prepare and serve food, but only for consumption off-premises, through such means as in-house delivery, third-party delivery, drive-through, curbside pick-up, and carry-out. Schools and other entities that typically provide food services to students or members of the public may continue to do so under this Executive Order on the condition that the food is provided to students or members of the public on a pick-up and takeaway basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site due to the virus's propensity to physically impact surfaces and personal property. This Executive Order is consistent with and does not amend or supersede Section 1 of Executive Order 2020-07 (COVID-19 Executive Order No. 5) except that Section 1 is ordered to be extended through April 7, 2020;
- m. **Supplies to work from home.** Businesses that sell, manufacture, or supply products needed for people to work from home;
- n. **Supplies for Essential Businesses and Operations.** Businesses that sell, manufacture, or supply other Essential Businesses and Operations with the support or materials necessary to operate, including computers, audio and video electronics, household appliances; IT and telecommunication equipment; hardware, paint, flat glass; electrical, plumbing and heating material; sanitary equipment; personal hygiene products; food, food additives, ingredients and components; medical and orthopedic equipment; optics and photography equipment; diagnostics, food and beverages, chemicals, soaps and detergent; and firearm and ammunition suppliers and retailers for purposes of safety and security;
- o. **Transportation.** Airlines, taxis, transportation network providers (such as Uber and Lyft), vehicle rental services, paratransit, and other private, public, and commercial transportation and logistics providers necessary for Essential Activities and other purposes expressly authorized in this Executive Order;

- p. **Home-based care and services.** Home-based care for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness, including caregivers such as nannies who may travel to the child's home to provide care, and other in-home services including meal delivery;
- q. **Residential facilities and shelters.** Residential facilities and shelters for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness;
- r. **Professional services.** Professional services, such as legal services, accounting services, insurance services, real estate services (including appraisal and title services);
- s. **Day care centers for employees exempted by this Executive Order.** Day care centers granted an emergency license pursuant to Title 89, Section 407.400 of the Illinois Administrative Code, governing Emergency Day Care Programs for children of employees exempted by this Executive Order to work as permitted. The licensing requirements for day care homes pursuant to Section 4 of the Child Care Act, 225 ILCS 10/4, are hereby suspended for family homes that receive up to 6 children for the duration of the Gubernatorial Disaster Proclamation.
- t. **Manufacture, distribution, and supply chain for critical products and industries.** Manufacturing companies, distributors, and supply chain companies producing and supplying essential products and services in and for industries such as pharmaceutical, technology, biotechnology, healthcare, chemicals and sanitization, waste pickup and disposal, agriculture, food and beverage, transportation, energy, steel and steel products, petroleum and fuel, mining, construction, national defense, communications, as well as products used by other Essential Businesses and Operations.
- u. **Critical labor union functions.** Labor Union essential activities including the administration of health and welfare funds and personnel checking on the well-being and safety of members providing services in Essential Businesses and Operations – provided that these checks should be done by telephone or remotely where possible.
- v. **Hotels and motels.** Hotels and motels, to the extent used for lodging and delivery or carry-out food services.
- w. **Funeral services.** Funeral, mortuary, cremation, burial, cemetery, and related services.

13. **Minimum Basic Operations.** For the purposes of this Executive Order, Minimum Basic Operations include the following, provided that employees comply with Social Distancing Requirements, to the extent possible, while carrying out such operations:

- a. The minimum necessary activities to maintain the value of the business's inventory, preserve the condition of the business's physical plant and equipment, ensure security, process payroll and employee benefits, or for related functions.
- b. The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.

14. **Essential Travel.** For the purposes of this Executive Order, Essential Travel includes travel for any of the following purposes. Individuals engaged in any Essential Travel must comply with all Social Distancing Requirements as defined in this Section.

- a. Any travel related to the provision of or access to Essential Activities, Essential Governmental Functions, Essential Businesses and Operations, or Minimum Basic Operations.
- b. Travel to care for elderly, minors, dependents, persons with disabilities, or other vulnerable persons.
- c. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services.
- d. Travel to return to a place of residence from outside the jurisdiction.
- e. Travel required by law enforcement or court order, including to transport children pursuant to a custody agreement.
- f. Travel required for non-residents to return to their place of residence outside the State. Individuals are strongly encouraged to verify that their transportation out of the State remains available and functional prior to commencing such travel.

15. **Social Distancing Requirements.** For purposes of this Executive Order, Social Distancing Requirements includes maintaining at least six-foot social distancing from other individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands.

- a. **Required measures.** Essential Businesses and Operations and businesses engaged in Minimum Basic Operations must take proactive measures to ensure compliance with Social Distancing Requirements, including where possible:
  - i. **Designate six-foot distances.** Designating with signage, tape, or by other means six-foot spacing for employees and customers in line to maintain appropriate distance;
  - ii. **Hand sanitizer and sanitizing products.** Having hand sanitizer and sanitizing products readily available for employees and customers;
  - iii. **Separate operating hours for vulnerable populations.** Implementing separate operating hours for elderly and vulnerable customers; and
  - iv. **Online and remote access.** Posting online whether a facility is open and how best to reach the facility and continue services by phone or remotely.

16. **Intent of this Executive Order.** The intent of this Executive Order is to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible, while enabling essential services to continue, to slow the spread of COVID-19 to the greatest extent possible. When people need to leave their places of residence, whether to perform Essential Activities, or to otherwise facilitate authorized activities necessary for continuity of social and commercial life, they should at all times and as much as reasonably possible comply with Social Distancing Requirements. All provisions of this Executive Order should be interpreted to effectuate this intent.

17. **Enforcement.** This Executive Order may be enforced by State and local law enforcement pursuant to, *inter alia*, Section 7, Section 18, and Section 19 of the Illinois Emergency Management Agency Act, 20 ILCS 3305.

18. **No limitation on authority.** Nothing in this Executive Order shall, in any way, alter or modify any existing legal authority allowing the State or any county, or local government

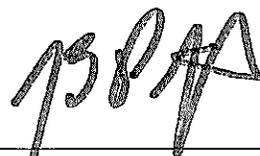
body from ordering (1) any quarantine or isolation that may require an individual to remain inside a particular residential property or medical facility for a limited period of time, including the duration of this public health emergency, or (2) any closer of a specific location for a limited period of time, including the duration of this public health emergency. Nothing in this Executive Order shall, in any way, alter or modify any existing legal authority allowing a county or local government body to enact provisions that are stricter than those in this Executive Order.

**Section 2. Order ceasing evictions.**

Pursuant to the Illinois Emergency Management Agency Act, 20 ILCS 3305/7(2), (8), and (10), all state, county, and local law enforcement officers in the State of Illinois are instructed to cease enforcement of orders of eviction for residential premises for the duration of the Gubernatorial Disaster Proclamation. No provision contained in this Executive Order shall be construed as relieving any individual of the obligation to pay rent, to make mortgage payments, or to comply with any other obligation that an individual may have under tenancy or mortgage.

**Section 3. Savings clause.**

If any provision of this Executive Order or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.



JB Pritzker, Governor

Issued by the Governor March 20, 2020  
Filed by the Secretary of State March 20, 2020

**FILED**  
INDEX DEPARTMENT  
MAR. 20 2020  
IN THE OFFICE OF  
SECRETARY OF STATE

**EXHIBIT C**  
**to Memorandum in**  
**Support**

**IN THE CIRCUIT COURT  
FOR THE SEVENTH JUDICIAL CIRCUIT OF ILLINOIS  
SANGAMON COUNTY, ILLINOIS**

ILLINOIS MANUFACTURERS'	)	
ASSOCIATION and ILLINOIS RETAIL	)	
MERCHANTS ASSOCIATION,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Cause No.
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION and MICHAEL J.	)	
BRENNAN, COMMISSIONER, IN HIS	)	
OFFICIAL CAPACITY,	)	
	)	
Defendants.	)	

**AFFIDAVIT OF MARK DENZLER**

I, Mark Denzler, do herein attest, under penalties of perjury as provided by law, as follows:

1. I am over the age of 18 and under no legal incapacity. I am the President and Chief Executive Officer of the Illinois Manufacturers' Association ("IMA") and have personal knowledge of the facts stated herein. I have held this position since January 2019. Prior to serving in that capacity, I was Vice President and Chief Operating Officer ("COO") for the IMA, a position I held from 2006 to 2019.
2. The IMA is a private not-for-profit manufacturing trade association that represents its members' interest on various matters of importance to Illinois manufacturers, including but not limited to, tax policy, environmental regulations, health care reform, and labor law. It is the only statewide association in Illinois dedicated exclusively to manufacturing.

3. IMA is also the oldest and one of the largest manufacturing associations in the nation, representing nearly 4,000 companies and facilities that employ nearly 600,000 workers.
4. The majority of its members are private corporations and have between 50 and 249 employees. Its members are manufacturers in the following industries: heavy equipment, fabricated metal, food/beverage, chemical, paper, plastics, steel, electronics, transportation equipment, petroleum/energy, wholesale durable goods, printing, and wholesale non-durable goods.
5. In addition, many of the IMA's members are self-insured for paying workers compensation claims.
6. In my roles as President of the IMA since January 2019 and Vice President and COO from 2006 through 2019, I have regular and constant communication with IMA members and have personal knowledge of their manufacturing operations.
7. I have read and familiarized myself with the Amendments to the Illinois Workers' Compensation Act that went into effect on April 16, 2020.
8. If the Amendments are permitted to remain in effect, IMA members will suffer irreparable harm, including but not limited to the following:
  - a. The costs of workers compensation insurance to IMA members will increase substantially and dramatically for so long as the rebuttable presumption is in effect, as the insurance carriers must pass on to all employers, including IMA members, and even those with no COVID-19 related claims, the costs related to the overall increase in compensable claims being paid out.

- b. IMA members, upon receipt of a COVID-19 workers' compensation claim, will have to either acquiesce to paying the employee's medical bills at the outset, or face harsh penalties for attempting to overcome the virtually irrefutable rebuttable presumption regarding COVID-19 claims.
9. On April 15, 2020, I emailed Ronald Rascia, the General Counsel for the Illinois Workers Compensation Commission. A true and accurate copy of the April 15, 2020 email exchange between Mr. Rascia and me is attached as Exhibit A to my Affidavit.
10. In my email to Mr. Rascia, I asked if the Commission's Amendment to the IWCA is intended to be applied retroactively or prospectively.
11. Mr. Rascia responded, in part, "Our rule is prospective not retroactive."

**VERIFICATION**

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, I, Mark Denzler, certify that the statements set forth in this Affidavit are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

4-21-2020

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Mark Denzler

**EXHIBIT A**  
**to Affidavit of Denzler**

[REDACTED]

---

[REDACTED]

[REDACTED]

[REDACTED]

**From:** "Rascia, Ronald" <Ronald.Rascia@Illinois.gov>  
**Date:** April 15, 2020 at 5:19:47 PM CDT  
**To:** Mark Denzler <mdenzler@ima-net.org>, "Brennan, Michael" <Michael.Brennan@Illinois.gov>  
**Cc:** Mark Denzler <mdenzler@ima-net.org>  
**Subject:** RE: IWCC question

Mark  
The emergency rulemaking provisions 5 ILCS 100/5-45 do not contemplate retroactive application. They only speak of a prospective effective date as either upon filing or up to 10 days in the future.  
Our rule is prospective not retroactive. The effective date is April 16, 2020.  
Ron

-----Original Message-----  
From: Mark Denzler <mdenzler@ima-net.org>  
Sent: Wednesday, April 15, 2020 5:00 PM  
To: Brennan, Michael <Michael.Brennan@Illinois.gov>; Rascia, Ronald <Ronald.Rascia@Illinois.gov>  
Cc: EXT Denzler, Mark <mdenzler@ima-net.org>  
Subject: [External] IWCC question

Mike,  
  
Thank you for the call. It was difficult to hear at times. Can you clarify for me.  
  
Is this rule change retroactive or prospective?

Thanks  
  
Mark

Mark Denzler  
President & CEO  
Illinois Manufacturers' Association  
217-522-1240 ext 3726

Sent from my iPhone

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**EXHIBIT D**  
**to Memorandum in**  
**Support**

**IN THE CIRCUIT COURT  
FOR THE SEVENTH JUDICIAL CIRCUIT OF ILLINOIS  
SANGAMON COUNTY, ILLINOIS**

ILLINOIS MANUFACTURERS' )  
ASSOCIATION and ILLINOIS RETAIL )  
MERCHANTS ASSOCIATION, )

Plaintiffs, )

v. )

Cause No.

ILLINOIS WORKERS' COMPENSATION )  
COMMISSION and MICHAEL J. )  
BRENNAN, COMMISSIONER, IN HIS )  
OFFICIAL CAPACITY, )

Defendants. )

**AFFIDAVIT OF ROB KARR**

I, Rob Karr, do herein attest, under penalties of perjury as provided by law, as follows:

1. I am over the age of 18 and under no legal incapacity. I am the President and Chief Executive Officer of the Illinois Retail Merchants Association ("IRMA") and have personal knowledge of the facts stated herein. I have held this position since January 2014.
2. IRMA is a private not-for-profit association that benefits Illinois retailing through effective management with retailers, the general public, policy makers, and the media regarding the impact legislative and regulatory proposals will have on the success of retail operations.
3. IRMA is the only statewide organization exclusively representing retailers in Illinois. IRMA closely monitors legislative and regulatory activity, voicing opposition to anti-business proposals and supporting and passing business friendly initiatives. In

addition to serving as retail lobbyists, IRMA provides services and resources to its members to assist with the development of their businesses.

4. Many of IRMA's members are self-insured for paying workers compensation claims.
5. In my roles as President of IRMA since January 2014, I have regular and constant communication with IRMA members and have personal knowledge of their retailing operations.
6. I have read and familiarized myself with the Amendments to the Illinois Workers' Compensation Act that went into effect on April 16, 2020.
7. If the Amendments are permitted to remain in effect, IRMA members will suffer irreparable harm, including but not limited to the following:
  - a. The costs of workers compensation insurance to IRMA members will increase substantially and dramatically for so long as the rebuttable presumption is in effect, as the insurance carriers must pass on to all employers, including IRMA members, and even those with no COVID-19 related claims, the costs related to the overall increase in compensable claims being paid out.
  - b. IRMA members, upon receipt of a COVID-19 workers' compensation claim, will have to either acquiesce to paying the employee's medical bills at the outset, or face harsh penalties for attempting to overcome the virtually irrefutable rebuttable presumption regarding COVID-19 claims.

**VERIFICATION**

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, I, Rob Karr, certify that the statements set forth in this Affidavit are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

April 21, 2020  
Date

  
Rob Karr