February 24, 2021

Senator Melissa Melendez
State Capitol
Sacramento, CA 95814

SUBJECT: SB 213 (CORTESE) WORKERS' COMPENSATION: HOSPITAL EMPLOYEES
OPPOSE

Dear Senator Melendez,

The Greater Coachella Valley Chamber of Commerce respectfully OPPOSES SB 213 (Cortese), which will impose an astronomical financial burden on employers in the healthcare industry that is presently grappling with the effects of the COVID-19 pandemic and create a troubling precedent for the workers' compensation system in general by creating a legal presumption that blood-borne infectious disease, tuberculosis, meningitis, methicillin-resistant Staphylococcus aureus (MRSA), cancer, musculoskeletal injury, post-traumatic stress disorder, or respiratory disease are presumptively workplace injuries for all hospital employees that provide direct care.

Injuries occurring within the course and scope of employment are automatically covered by workers' compensation insurance, regardless of fault. SB 213 would require that hospital employees do not need to demonstrate work causation for specified injuries or illnesses in any circumstance. Instead, these injuries and illnesses are presumed under the law to be work related. Presumptions of industrial causation for specific employees and injury types are simply not needed and create a tiered system of benefits that treats employees differently based on occupation and undermines the credibility and consistency of our workers' compensation system. The Legislature has consistently rejected this bill in all of its forms.

Presumptions and the Workers' Compensation System:

SB 213 creates a presumption of industrial causation for all hospital employees that provide direct patient care who manifest a blood-borne infectious disease, tuberculosis, meningitis, methicillin-resistant Staphylococcus aureus (MRSA), cancer, musculoskeletal injury, post-traumatic stress disorder, or respiratory disease during their employment, and for a time period after employment. The practical impact of creating a presumption of industrial causation is that hospitals will have a higher burden of proof when attempting to contest a claim that they believe is non-industrial.

Workers' compensation insurance is a "no fault" system that is intentionally constructed in a way that leads to the vast majority of claims being accepted. In fact, when determining compensability, a Workers' Compensation Appeals Board administrative law judge is required to interpret the facts liberally in favor of injured workers.

Labor Code Section 3202: "This division and Division 5 (commencing with Section 6300) shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment."

California's no-fault system of workers' compensation insurance that must be "liberally construed" with the purpose of extending benefits to injured workers does not create many obstacles for employees who believe that they have been injured at work. The creation of a presumption for employees, absent some significant justification, serves only to make it nearly impossible for an employer to contest any claim for benefits, which will unnecessarily increase costs for employers.

In 2019, SB 567 (Caballero) included presumptions for a very similar list of illnesses and injuries. The Senate Committee on Labor, Public Employment and Retirement issued an analysis concluding that there was no evidence supporting the need for this presumption. It also warned that "the creation of presumptive injuries is an exceptional deviation that uncomfortably exists within the space of the normal operation of the California workers' compensation system," and to not limit them "would essentially consume and undermine the entire system".

The Presumption Is Extended for Up to 10 Years After Termination of Employment:

Not only does this special standard for accepting claims apply to hospital workers while employed, but also it continues for up to 3, 5, or 10 years (depending on the injury) after leaving employment. Generally, there is a one-year statute of limitations for workers' compensation claims. By requiring claims to be filed within one year from the date of injury, existing law ensures claims will be resolved while evidence and witnesses are still available. Stale claims, faded memories, and unavailable witnesses not only impede an employer's ability to defend against a claim, but also impedes the ability of the workers' compensation system to properly evaluate a claim.

However, per SB 213, a former employee could come back and file a claim based on this presumption for up to 10 years after employment had ended and the employer would be virtually powerless to question the compensability of the claim. This presents a number of problems, not the least of which is that there is no rationale for basing the duration of an employee's post-employment presumption on the length of their service with a specific employer.

SB 213 Creates a Troubling Precedent and is Broader Than The COVID-19 Presumption Under SB 1159:

Although there is a long history of legal presumptions being applied to public safety employees in the workers' compensation system, there has never been a presumption applied to private sector employees outside of the COVID-19 pandemic. In 2020, the Legislature passed SB 1159 (Hill), which established a rebuttable presumption that certain employees who contracted COVID-19 were covered under workers' compensation. The pandemic presented a unique moment in history when millions of Californians were contracting COVID-19 and the virus was spreading quickly. Even in this exceptional circumstance, SB 1159 was limited in both time and scope. The bill has a sunset date of January 1, 2023 and most employees outside of a few industries can only fall under the presumption if four or four percent of other workers at the worksite also contracted COVID-19 within a short time frame.

SB 213 reaches far beyond SB 1159 without justification by making a permanent presumption that can apply up to 10 years after an employee has stopped working. Workers' compensation is designed to apply a consistent, objective set of rules to determine eligibility, medical needs and disability payments for all injured workers in California. We do not believe that the Legislature should take on the role of trying to identify likely injuries for every occupation in the state with the goal of creating special rules for those employees. This is an unrealistic expectation in an insurance system that covers thousands of types of employees and employers.

There Is No Evidence Supporting the Presumption Proposed by SB 213:

Supporters of SB 213 have argued that healthcare workers are more likely to contact blood-borne infectious disease, tuberculosis, meningitis, Methicillin-resistant Staphylococcus aureus (MRSA), cancer, musculoskeletal injury, post-traumatic stress disorder, and respiratory disease. The Senate Committee on Labor, Public Employment and Retirement has explained in analyses of prior versions of this bill that there is no evidence to support that argument. Even if there were, all employees, in every type of occupation, face risks inherent to their employment. This is anticipated by current labor law, which requires every employer to evaluate the specific risks faced by their employees and develop an "Injury and Illness Prevention Plan" that mitigates those risks. It is also anticipated by California's workers' compensation system, under which more than 90% of all workers' compensations claims and requests for medical treatment are approved, including claims filed by healthcare workers.

There is no evidence that hospital workers should be entitled to a separate legal standard for certain injuries and illnesses. In fact, it logically follows that the most obvious types of occupational injuries and illnesses for any given occupation would be far more likely to be accepted as industrial by employers and less in need of a legal presumption to obtain benefits.

Moreover, there is no demonstrated need for hospital workers to have special legal status in the workers' compensation system. There has been no statistical evidence presented that would indicate, in any way, that workers' compensation claims by hospital employees for exposure to blood-borne infectious disease, tuberculosis, meningitis, Methicillin-resistant Staphylococcus aureus (MRSA), cancer, musculoskeletal injury, post-traumatic stress disorder, and respiratory disease are being inappropriately delayed or denied by employers or insurers. In addition, there has been no demonstration that hospital employees are uniquely impacted in a negative way by the current legal standard for determining compensability of industrial injuries.

All Prior Versions of this Presumption Have Failed:

Both similar and much narrower versions of this bill have all failed passage with many of them not making it out of committee or failing on the Senate Floor. The most recent iterations of this bill, SB 893 (Caballero) and SB 567 (Caballero) received 0 and 1 Aye votes in committee, respectively.

In 2014, AB 2616 (Skinner), the only version to make it to the Governor's desk, was vetoed by Governor Edmund G. Brown, Jr. In his veto message he stated, "This bill would create a first of its kind private employer workers' compensation presumption for a specific staph infection -- methicillin-resistant Staphylococcus aureus (MRSA) -- for certain hospital employees. California's no-fault system of worker's compensation insurance requires that claims must be 'liberally construed' to extend benefits to injured workers whenever possible. The determination that an illness is work-related should be decided by the rules of that system and on the specific facts of each employee's situation. While I am aware that statutory presumptions have steadily expanded for certain public employees, I am not inclined to further this trend or to introduce it into the private sector."

Notably, AB 2616 was limited to only MRSA and the post-employment presumption only extended for 60 days, yet the bill was still vetoed. Here, SB 213 extends the presumption to laundry list of illnesses and injuries including cancer where the post-employment presumption is 10 years.

Such a drastic shift in the law will create an astronomical financial burden on healthcare employers and the system, creating an appreciable impact on the cost of healthcare at a time when we are trying to make healthcare more affordable.

For these reasons, we respectfully OPPOSE SB 213.

Sincerely,

Joshua R. Bonner, IOM
President and CEO
Greater Coachella Valley Chamber of Commerce