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First Responders Demand That Governors Order Comp Coverage for Quarantine: Top [2020-03-30]

With first responders and health workers now testing positive for COVID-19, their unions and attorneys in Florida and Minnesota are urging governors to order that they be covered by workers' compensation benefits.

In a letter last week to Gov. Ron DeSantis, Orlando attorney Geoff Bichler, who represents firefighters and other public safety workers around the state, said the governor should immediately issue an executive order requiring employers to provide indemnity benefits for first responders who have been quarantined.

Dozens of responders across Florida have been sent home because they have shown symptoms of the respiratory disease or are awaiting test results. In Jacksonville, 28 fire and rescue personnel and another 25 sheriff's employees were isolated last week because of the disease. In Palm Beach County, 40 sheriff's deputies were quarantined, although most have been cleared to return to work, according to news reports.



"These people are putting their lives at risk helping others. They should not have to burn all their vacation time while they're quarantined," Bichler said.

Bichler and union officials also are asking the Florida governor to order municipalities and insurers to essentially presume that first responders and health workers diagnosed with COVID-19 contracted the disease in the course of employment, and they should receive medical and indemnity benefits.

The Florida League of Cities, in a letter sent to the state's top insurance regulator late Friday, did not go as far as Bichler and endorse benefits during quarantine or while waiting for the results of a virus test. But the League did agree that first responders who test positive for COVID-19 have suffered a compensable disease, "unless it is determined the disease was not contracted in the line of duty," according to a letter from League Director Jeannie Garner.

DeSantis' office did not respond to calls and emails from WorkCompCentral by Friday evening.

The governor has declared a state of emergency, but many want him to follow the lead of governors in most other states and order more drastic measures. Democrats and health officials have criticized the governor for balking at ideas such as ordering a statewide shutdown of all but essential businesses in the state.

It's not clear, however, if governors have the constitutional authority to order jurisdictions or insurance pools to pay comp benefits. Governors in states with monopolistic workers' comp systems, including North Dakota and Washington, have issued such orders without much resistance.

And some insurance carriers, including Kentucky Employers' Mutual Insurance, whose board is appointed by the governor, have voluntarily agreed to allocate wage-replacement benefits for quarantined health workers. State-chartered carriers including Oregon's SAIF Corp. and Pinnacle Assurance in Colorado have also pledged to provide benefits to first responders who are quarantined.

But it's a question of constitutional law if governors in market-driven states can take such actions.

"I would think that the governor does not have this power and that such a change would require passage of appropriate

legislation. But we are living in unprecedented times, so it's possible that a court might disagree with me," said Robert Jarvis, a professor of constitutional law at Nova Southeastern University in Fort Lauderdale.

Bichler acknowledged that the governor could face some constitutional issues if he were to pen such an order. But in the current state of emergency, Bichler said few employers would mount a formal challenge in the courts.

A prominent workers' comp appeals lawyer, George Kagan, of Miami, said he wasn't sure about the constitutional allowances in a state of emergency, because national and statewide emergencies like the coronavirus are so rare. But he said that as a layman, he feels that a governor's executive order would probably survive any public or court challenges.

An executive order may apply more directly to counties because county governments are generally considered to be political subdivisions of the state. But cities, which employ most firefighters, are incorporated and may not be subject to an order, attorneys said.

In Minnesota last week, firefighters, police, nurses and other safety workers demanded workers' comp coverage for coronavirus illness and quarantines.

Minnesota lawmakers have introduced a bill that would extend occupational disease benefits for emergency responders quarantined because of the pandemic. But the measure has not yet passed and a firefighters' association has asked the governor to step in with an executive order.

"This is a crisis and in crisis, we need decisive action and we need to stand up for the men and women that are on the front lines protecting the public," said Chris Parsons, president of the Minnesota Professional Fire Fighters Association, according to a Twin Cities news report.

A bill pending before lawmakers in Alaska would create a conclusive presumption that COVID-19 is an occupational disease for first responders including paramedics, firefighters and law enforcement officers.

Florida, however, may face more urgency than some states. By late Friday, nearly 2,900 COVID-19 cases had been confirmed in the state, with 33 deaths. Minnesota has 396 confirmed cases and Alaska has 58.

Bichler's letter was prompted in part because a Miami highway patrolman last week became the first safety worker in the state diagnosed with the disease. But across the state, others have had to go into quarantine, in part because many health and safety workers do not have enough protective masks for themselves and others.

"They don't have what they need," Bichler said. "In rural areas, it's horrible."

Other attorneys who represent first responders in comp claims said that some departments already provide time off and supplemental disability benefits for disease, thanks to collective bargaining agreements.

"However, in light of the current pandemic, I believe adjustments are going to have to be made all around, including in workers' compensation," said Tampa claimants lawyer Tonya Oliver. "It is all new territory for everyone, and I believe it will be addressed."

Florida's Legislature has adjourned for the year, so legislation expanding workers' comp benefits would require a special session. State comp law generally requires claimants to show, through "clear and convincing evidence," a connection between a disease and employment before it can be compensated, courts have held.

That's one reason the state needs more guidance from the governor on how workers' comp will protect emergency responders. Both Bichler and Oliver said they had been inundated with calls from health and safety workers asking about coverage for COVID-19 illness and quarantines.

"The time to act is now, as there must be complete uniformity in how employing agencies will respond to this unprecedented crisis," Bichler's letter to DeSantis reads. "Your leadership is needed, and greatly appreciated."