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FOR IMMEDIATE RELEASE

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Should small employers be blamed for essential employees with COVID-19?

*New legislation automatically PRESUMES employers are culpable
Legal defense fees and Workers Comp rates will add more burdens
Small Business community offers Fair and Reasonable compromise
for both employers and essential employees*

Sal Risalvato, Executive Director of the New Jersey Gasoline, Convenience, Automotive Association (**NJGCA**), released the following statement in response to legislation that was sent to the governor's desk:

On Thursday, the Legislature passed S-2380, a bill which presumes that if an employee at an essential business gets sick with COVID-19, they are assumed to have been infected at work and therefore are eligible for workers compensation payments.

The biggest problem with this bill is the open ended timeframe for essential employees to claim their infection was a result of going to work. Governor Murphy is likely to keep the current public health emergency in effect (at least officially) for months if not years to come. Therefore, a specific timeframe for this presumption should be in effect. The Small Business community has proposed a very reasonable period when the official "stay at home" order was in effect, plus the two weeks afterward in order to include anyone who was infected on that final day but did not show symptoms.

Sal Risalvato, the New Jersey Gasoline, C-Store, and Automotive Association's Executive

Director pointed out “During that window of time, effectively the only reason an individual was leaving home and potentially having sustained contact with strangers was if they were an essential worker. It is understandable to have a presumption that an essential employee was infected through contact with the general public at the workplace. But once the stay-at-home order ended, and nonessential retail was reopened, and reduced capacity indoor and outdoor gatherings were allowed again, the likelihood that an infection was the result of the workplace cannot be reasonably or fairly presumed.”

Current events now prove this to be true as COVID-19 infections are on the rise and are being traced to contact with others away from the workplace. Recent news reports have shown new outbreaks tied to house parties and other activities people are attending. Most of these partygoers were not wearing masks or any face coverings. These gatherings are happening in big numbers both indoor and outdoor.

Currently, the Governor’s Executive Order 163 requires masks in all indoor facilities, and also outdoor gatherings, when in prolonged proximity to others, which significantly lowers the risk of contracting the virus. Videos taken at gatherings show that safety protocols are being ignored entirely. Most concerning, is that many who attended these activities are not cooperating with contact tracers.

Risalvato asks “While these gatherings have all made the news, how many beach encounters, or family get-togethers are unknown and never become public? In the past six weeks how many more social gatherings have taken place that have compromised the spread of this ugly disease?” Risalvato followed up his query, “it is widely reported that people have let their guard down and are eager to ignore the safety protocols prescribed by medical experts, and seem to be dismissing social distancing and facemask requirements.”

Risalvato posed more questions, “Is it fair to automatically place culpability on an employer and the workplace if an essential worker has become infected with COVID-19 after being exposed in one of these risky gatherings? Is it reasonable?” Will the employer ever know an employee attended a family birthday party, or backyard BBQ? How many of these are taking place?

NJGCA has banded together with other Small Business Associations to form a coalition that has asked Governor Murphy to conditionally veto the legislation that was sent to his desk. The coalition has reasonably offered to accept automatic presumption of culpability during the period of time when it was much less likely that an essential employee contracted COVID-19 outside of the workplace, even though it was still possible for that to have happened.

Small Business fears that a surge in Workers Comp claims because of automatic presumption of culpability will lead to a dramatic and unfair rise in the rates that are paid for Workers Comp insurance. While some advocates have emphasized that the presumption created by this bill is rebuttable, that rebuttal process also creates a huge cost to the small business owners, in both time and legal fees.

“Why would you want to put small business owners in such a precarious position of costly defense?” Risalvato questioned, and then continued, “If this legislation passes, and assuming the Governor keeps the current public health emergency in effect for any extended period of time, small businesses will be on the hook for an undetermined amount of costs that can easily amount to billions of dollars out of their own pockets for higher premiums. This unknown estimate was put forth by NJCRIB, which is the state run NJ Compensation Rating and Inspection Bureau. Small businesses should not have to suffer such losses due to any activities if they do not have any culpability.”

Risalvato finished with, “NJGCA members and their employees who work the gas pumps, auto repair shops, and convenience stores answered the call of duty from the very beginning of this crisis. They did so at great personal and business risk. It is fair to protect them both, and the compromise that is being requested of the governor by virtue of a conditional veto accomplishes that. The compromise being put forth by the business community screams reasonable and fair, and we hope Governor Murphy is listening to us.”

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