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**COVID-19, WORKERS' COMPENSATION,
& RELATED ISSUES****Dan Price and Rebecca Bradley**

Author Contact Information:

Rebecca Bradley

Abernathy, Roeder, Boyd & Hullett, P.C.

McKinney, TX 75069

rbradley@abernathy-law.com

214-544-4055

Dan Price

Shanley Price, LLP

Austin, TX 78731

dprice@sp-legal.com

5122-265-8985

COVID-19, Workers' Compensation, & Related Issues

I. Summary

Amidst the COVID-19 pandemic, a lot of questions have been raised regarding the effects of COVID-19 on the operations of school districts and charter schools across the state. One of the unknown and unlitigated areas of law include workers' compensation benefits for COVID-19 claims. New legislation is proposed that would broaden workers' compensation coverage for school employees related to the contraction of COVID-19 in the school setting. The new legislation would greatly affect school district's budgets and funding moving forward.

II. How Big is the Problem related to COVID-19 and Workers' Compensation Claims?

The Texas Department of Insurance compiled data and created a report regarding COVID-19 in the Texas Workers' Compensation System, which was updated as recently as December 2020. Since January 2020, according to TDI, worker's compensation claims are 14% higher than the same period in 2019.¹ Despite mandated closure for many employers, insurance carriers reported 32,438 COVID-19 claims with the highest claims being asserted in July 2020.² 42% of the claims reported by insurance carriers were claimed by political subdivisions, although the type and nature of the political subdivisions were not further divided out or reviewed.³ Only 5% of the claims were related to "educational services," while the most were in public administration" (52%)⁴ While the number of claims related to school districts or education services is unclear, until a decision is issued regarding whether COVID-19 is a compensable injury, a significant number of claims may

¹ <https://www.tdi.texas.gov/wc/reg/documents/covid19txwc1220.pdf>

² *Id.*

³ *Id.*

⁴ *Id.*

still be in process or may arise as the COVID-19 variations and other changes sweep across the country.

III. A Quick Primer on Workers' Compensation Benefits

Subject to a few limited and narrow exceptions, the recovery of workers' compensation benefits is the *exclusive remedy* of an employee covered by workers' compensation insurance against the employer by an employee who sustains a work-related injury or death.⁵ Under the Texas Workers' Compensation Act, all public and federal employers are required to carry workers' compensation insurance coverage.⁶ Under workers' compensation, there are four types of benefits that may be awarded to an employee:

1. Income benefits⁷;
 - a. Temporary Income Benefits, which provide payment if work-related injury or illness causes an employee to lose some or all of his/her wages for more than seven days;
 - b. Impairment Income Benefits, which provide payment if a work-related injury or illness results in an award of an impairment rating percentage based on the permanent impairment to the employee's body as a whole sustained as a result of the compensable injury;
 - c. Supplemental Income Benefits, which provide payment on a monthly basis after an employee's impairment income benefits end if, the employee received an impairment rating percentage of 15% or greater and: (1) he has

⁵ Tex. Labor Code § 408.001.

⁶ Tex. Lab. Code Ann. § 406.002.

⁷ Tex. Labor Code § 408, subchapters E-I.

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