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## **COVID-19, WORKERS' COMPENSATION, & RELATED ISSUES**

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## **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.<sup>1</sup> Despite mandated closure for many employers, insurance carriers reported 32,438 COVID-19 claims with the highest claims being asserted in July 2020.<sup>2</sup> 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.<sup>3</sup> Only 5% of the claims were related to "educational services," while the most were in public administration" (52%)<sup>4</sup> 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

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

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *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.<sup>5</sup> Under the Texas Workers' Compensation Act, all public and federal employers are required to carry workers' compensation insurance coverage.<sup>6</sup> Under workers' compensation, there are four types of benefits that may be awarded to an employee:

1. Income benefits<sup>7</sup>;
  - 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

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<sup>5</sup> Tex. Labor Code § 408.001.

<sup>6</sup> Tex. Lab. Code Ann. § 406.002.

<sup>7</sup> Tex. Labor Code § 408, subchapters E-I.

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