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ALERT

New Law in Illinois Exposes Employers to Civil Liability for Long-Dormant Occupational Diseases

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In Illinois, the long standing rule had been that employees were barred from bringing a civil lawsuit against their employers because workers' compensation benefits were an employee's exclusive remedy for a workplace injury. (820 ILCS 305/5(a), 11 (West 2010); 820 ILCS 310/5(a), 11 (West 2010). There were also time restrictions regarding when workers could file claims for benefits. For example, workers who were injured by exposure to "radiological materials or equipment or asbestos," were required to file a claim for benefits within 25 years of the last day the employee was employed in an environment containing said materials or they were barred from any recovery. (820 ILCS 305/6(d); 820 ILCS 310/6(c)). On May 17, 2019, Governor Pritzker signed Senate Bill 1596 into law, changing these longstanding rules for this particular class of workers and potentially opening the flood gates against employers.

Under the new law, workers who manifest a disease more than 25 years after exposure are no longer time-barred by the statute of limitations. These workers can now file civil actions against employers for latent injury cases, subjecting the employer to unlimited exposure in the tort system. However, if a worker develops the same disease in less than 25 years, then the law does not apply and the employee must file a workers' compensation claim.

The law also does not specifically state whether it is retroactive. Therefore, the exclusive remedy provision in effect prior to Senate Bill 1596 should remain the controlling law for all pre-2019 injuries. However, it is highly probable that there will be litigation on this issue as well as challenges to the law in general.

Senate Bill 1596 also has the potential to give rise to contentious insurance coverage issues, and possibly expose employers to claims from their employees for which there is no coverage. General liability insurance policies typically exclude claims alleging bodily injury to an employee of the insured arising out of and in the course of employment by the insured or performing duties related to the conduct of the insured's business, or claims brought by employees' family members as a result of such injuries. It has also become increasingly common for general liability policies to exclude injuries resulting from exposure to asbestos, beginning with endorsements in the late 1970s and then becoming widely adopted through the 1986 revisions to the general liability coverage form, although these exclusions would not apply to earlier exposures.

In light of the exclusions in general liability policies, employers may look to their employer's liability policies for coverage. However, employer's liability insurers often argue that their policies do not cover direct civil claims against the employer by employees, as the insurer argued in *TKK USA, Inc. v. Safety National Casualty Corp.*, 727 F.3d 782 (7th Cir. 2013). The court in TKK rejected the insurer's argument, holding that the insurer had a duty to defend a civil suit, which was based on a late employee's contraction of mesothelioma as a result of workplace exposure to asbestos. The court said the scope of coverage did not depend on whether the ODA gave the insured a defense to the widow's suit. Since that defense may no longer apply to some civil suits, insureds will need knowledgeable advice concerning the coverage their insurance programs may provide for suits based on occupational diseases.