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Memorandum in Opposition
Budget Proposal to Include COVID-19 as a Presumptive Occupational Disease
under NYS Workers Compensation Law

This proposal would make COVID-19 an allowable, work related condition under current NYS Workers Compensation Law. It would establish COVID-19 as a presumptive occupational disease for occupations defined as “essential” by Executive Order 202.6. This includes, but is not limited to, hotels and other accommodations, in addition to the food service industry. Any employee who contracts COVID-19 while employed in an essential occupation, would qualify for workers compensation benefits unless their employer was successful in challenging the case before the State Workers’ Compensation Board. NYSHTA, along with our partners the Ski/NY and the Campground Owners of NY (CONY), strongly oppose this legislation for the reasons outlined below.

Negative Economic Impact on the Hospitality Industry and Small Business: At a time when so many businesses face closure, it would be reckless to pursue such expansive changes to the workers compensation system. The proposal would cause an exponential increase in Workers Compensation claims, and ultimately increase employer premiums. This cost would be unbearable, particularly for small businesses, and further restrain their ability to reopen and rehire those workers temporarily laid off or furloughed as a result of compliance with State in-person workforce limitations.

Recently Enacted Legislation Already Expands Benefits: New York State recently enacted paid sick leave legislation which provides extensive benefits, beyond what Workers Compensation would cover for employees. The law provides additional paid sick leave, as well as insurance benefits under paid family leave and statutory disability policies to employees that are subject to a mandatory or precautionary order of quarantine. Additionally, it is anticipated that the federal government will be passing legislation that may include financial support and provide benefits similar to, or superseding, those provided for in New York law.

Further Strain the Compensation System: It is estimated that approximately 80% of New Yorkers will at some point contract the COVID-19 virus. The cost of this proposal would have a massive impact on commercial workers’ compensation carriers, the State Insurance Fund and self-insured employers. Additionally, many claims organizations are not currently staffed to handle the increase in claims volume this would generate.

Would Place Additional, Unnecessary Burdens on the Health Care System: This proposal may also cover claims related not only to COVID-19 contraction, but possibly exposure as well. Such exposure claims would undoubtedly result in a large increase of requests for testing. This means that non-life-threatening and less severe cases would be using up time and resources that should otherwise be going to more critical cases. Additionally, it would limit a patient’s care option to providers already approved to participate in the workers’ compensation system. This would result in an unreasonable burden on an already limited health care system.

New York State has already taken aggressive compensation and job protective measures to assist employees affected by the COVID-19 disaster. This proposal would not provide any significant additional benefits beyond what has already been enacted. Moreover, it would impose unnecessary economic hardship on businesses, particularly those in the hospitality industry which have been especially affected by the crisis. Moreover, the proposal would fundamentally alter the Workers Compensation Statute in such a way that it would be almost impossible for an employer to challenge a claim. It is for these reasons the NYS Hospitality and Tourism Association, along with the Ski NY and the Campground Owners of New York, strongly oppose this legislation.

Scott Brandi, President Ski/NY

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