

Testimony in support of SB 216

Andy Jacob on behalf of SEIU Colorado

June 8, 2020

Over 11,000 Coloradans are members of SEIU Colorado. They work in healthcare, janitorial cleaning services, security, and as state employees. Many of them are essential workers, who have been putting themselves at risk every day to care for our health, clean public and private spaces, and keep us safe. We have lost members to COVID-19 who put themselves at risk doing essential work.

Our members, and all essential workers who take the risk to do work that needs to get done, deserve worker compensation coverage if they contract COVID-19. They do not deserve to be forced to fight both the disease and then a denial of coverage. We as a society and their employers are asking them to take a knowing risk by going to work: they deserve the presumption that they are covered by workers compensation if they get COVID-19.

The bill would allow workers to presumptively assert they contracted COVID-19 from their workplace, but that presumption may be overcome by clear and convincing evidence of specific causation, establishing that the essential worker's contraction of COVID-19 did not arise in the course of employment.

SEIU Colorado urges you to support essential workers putting their lives on the line by supporting SB 216.



1700 Lincoln St.
17th Floor
Denver, CO. 80203
303-831-6099
NFIB.com

June 8, 2020

To: Senate Finance Committee

From: A.F. Tony Gagliardi. State Director

Re: Sb 20-216, Workers Compensation for COVID-19

KEY VOTE

On behalf of 7,000 small business members of NFIB Colorado we respectfully request a NO vote on Sb 20-216.

NFIB is an incorporated nonprofit association with about 300,000 members across America and approximately 7,000 members in Colorado. NFIB's mission is to protect the right of Americans to own, operate and grow their businesses and, in particular, ensures that the governments of the United States and of the fifty states hear the voice of small business as they formulate public policies.

The National Council on Compensation Insurance (NCCI) has created a model that provides cost estimates for various COVID-19 presumption proposals. According to the NCCI model, a broad presumption proposal extending to "all workers" in Colorado could add an additional **\$4 billion** in claim costs to the Colorado workers' compensation system. The current losses for the entire workers' compensation system is \$1 billion so such a proposal would add a 400% increase in system costs. This cost scenario assumes a 50% infection rate. Even with a lower 15% assumed infection rate, the cost of the proposal could be over \$1.2 billion, an increase of 120% of current statewide costs without COVID-19 claims.

The current proposed legislation would essentially eliminate the requirement that a worker prove that his or her injury arose out of and in the course of employment as is required for other workers compensation claims, and the current draft proposal simply goes too far and undermines the strength of Colorado workers compensation system. Specifically:

- *Scope of Employment/Essential Workers:* The scope of employees receiving the benefit for the presumption extends far beyond who have direct physical contact with patients who are presenting for diagnosis and treatment of COVID-19. Typically, presumptions, in the limited cases where they exist, apply to a very narrow and small subset of workers. The vast scope of the bill is unprecedented in the Colorado workers compensation system.
- *Proof of COVID-19:* The current draft does not require a positive test. A claimant seeking a presumption should be required to have a positive laboratory test for COVID-19. While it may have been difficult to obtain a test for COVID-19 previously, currently tests are more readily available.
- *Lack of sunset:* In contrast to the approach used by every other state that has enacted a COVID-related presumption, the current draft would embed the presumption in Colorado statute permanently.
- *Rebuttal of the Presumption:* Currently the bill requires an employer or insurer to provide “clear and convincing” evidence that COVID-19 was due to a specific cause outside of work to overcome the established presumption. However, given the community spread of the disease, this is a nearly impossible standard to meet.

For these reasons we request a NO vote on Senate bill 20-216.

Submitted by Email,

A.F. Tony Gagliardi, State Director



Aurora
Public
Schools

**Department of
Risk Management**

15701 E. 1st Ave. #106
Aurora, CO 80011

Phone
303-365-7816

FAX
303-326-1921

Web
aurorak12.org

June 5, 2020

Colorado General Assembly
Senator Nancy Todd
200 E. Colfax, room 346
Denver, CO 80203

RE: SB 20-216: Workers' Compensations for COVID-19

Dear Senator Todd:

As a member of the Colorado Self Insured Association, I want to express Aurora Public School District's opposition to SB 20-216.). We ask that this legislation not move forward in this, or any other, session.

Our primary concern with the legislation for workers' compensation for employees, who contract COVID-19, is the erosion of the Workers' Compensation Statute. The entire premise under the Statute is an injury or occupational disease is covered as long as that individual is an employee and the injury or disease occurred while in the course and scope of that employment. In addition, the alleged injury has to be a result of an incident that occurred. Not all incidents result in an actual injury, i.e. a person can slip and fall and not actually sustain an injury.

The burden has always been on the employee to prove that the injury or disease was a result of that employment, with the exception of the statutory presumption of cancer for fire fighters. It is overwhelmingly concerning that we would allow such legislation to erode that premise, particularly during a pandemic where there is still so much to learn about COVID-19.

This law would create an unprecedented burden on all employers. As you are well aware, school districts are going to feel the impact of COVID-19 for years to come. Regardless of whether most school employees fall under the definition of "essential worker" in the introduced bill, if this passes all workers' compensation premiums are anticipated to increase. With the anticipated reduction in State funds coming to the schools, loss of tax revenues and increased premiums, this is a triple whammy. We already have significant workers' compensation costs, and this will only increase those costs dramatically.

In allowing employees to obtain benefits without having to prove their condition was contracted within the course and scope of their employment is reckless. Not only will it increase the costs, it is fraud. For any other injury that an employee alleges to be work related, we would investigate the

circumstance and if it was found not to be within the course and scope of employment, the claim would be denied. The injury must be proven. This bill does not require the diagnosis of COVID-19. When did workers' compensation become an all-encompassing health insurance policy? Workers' compensation has always, and needs to continue, to be for injuries sustained while in the course and scope of employment and a result of an incident/accident while in that course and scope of employment. MOREOVER, proof of a positive COVID-19 should be required.

No business, but particularly, the public education sector can by no means find the funds to cover the increased workers' compensation costs that this bill will cause. Not only is there the premium costs to consider, but insurance carriers are likely going to increase the self-insured retention amounts for their insured's, because of their loss frequency and higher experience modifications. APS already carries a \$500,000 self-insured retention under our policy. How are we supposed to have a reduction in State funds, increased premiums and increased self-insured retentions and survive?

This bill sets a very unwise and dangerous precedent. It will result in businesses closing, employers having to consider outsourcing positions so that they are not responsible for the workers' compensation, and the erosion of why workers' compensation exists.

On behalf of Aurora Public Schools, I respectfully urge you to oppose SB20-216. Thank you again for all of your hard work on behalf of students and school staff across the state, particularly APS.

Sincerely,


Jeanette O'Dell, AIS, AIC, ARM
Risk Manager

June 8, 2020

TO: Colorado Senate Finance Committee
FR: Pinnacol Assurance
RE: Testimony on SB 20-216

Pinnacol strongly believes in caring for anyone who contracts COVID on the job. Indeed, we are already doing so under the current law.

We've received over 1200 COVID claims so far but most of those have been closed because the individual never tested positive for COVID or the person to whom they were exposed did not. We are covering claims where there has been demonstrated workplace exposure, and have been making those determinations in a timely way. The current system is working for those injured workers.

We would also note that, in March, Pinnacol voluntarily established a wage replacement benefit for first responders and frontline healthcare workers who were exposed to COVID and had to be quarantined. That was especially important in the early days of the crisis when it was taking 10-14 days to get test results. We are not reflecting the cost of that benefit back to our policyholders.

As is our custom, Pinnacol met on a number of occasions with the Workers' Compensation Education Assn. and the Colorado Self-Insurers Assn. to see if we could reach a negotiated agreement on the bill, as we have been able to do on many others. Unfortunately, in this case, the cost impacts to employers were simply too great to overcome – especially to local governments whose tax revenues have plummeted since the COVID lockdown, and which do not have the cushion to absorb significant new costs.

Our internal analysis found that a presumption for COVID coverage would likely cause rates to **increase by 27%** for the general business community (based on a slightly smaller list of essential workers from previous discussions with WCEA). If the presumption were limited to first responders and front-line health care workers, rates for those entities would be **triple what they are currently**. Based on those impacts, and as a responsible fiduciary for our policyholders, we had no choice but to oppose.

Workers' compensation currently covers any injury or disease contracted in the scope of employment – including COVID-19 – and pays for medical treatment, lost wages, and compensation for any temporary or permanent disability, and death benefits. In the case of infectious diseases, an employee must demonstrate that they contracted the disease in the course and scope of their employment.

Workers' compensation coverage is generally based on actual risk and exposure of the employee, especially for occupational diseases. However, SB20-216 grants a presumption of workers' compensation coverage to **a specified list of employees** who have contracted COVID-19, by changing the burden of proof to the employer who must prove the disease was NOT contracted on the job. It also increases the legal standard for that rebuttal to "clear and convincing," a much higher legal standard than current law for all other infectious disease claims.

- Naming a specific list of types of employees **without regard to any demonstrable work-related exposure** will add illegitimate and unnecessary costs to the workers' compensation system – especially for public entities.
- Covering a widespread communicable disease for workers who are not at a higher risk on the job than in other activities of daily living creates an undue burden on employers – and an unfair benefit only to certain workers.
- The workers' compensation system is not designed to act as a public health safety net at a time of community spread of an infectious disease.

Workers' compensation benefits should continue to be based on demonstrable exposure and not an arbitrary list of types of employees.

Edie Sonn – VP Communications & Public Affairs, Pinnacol Assurance
Edie.sonn@pinnacol.com, 720-201-7307



Fwd: FW: Statement

Julie Gonzales

to:

Elizabeth Burger, matt.becker

06/08/2020 01:15 PM

Hide Details

From: Julie Gonzales <senatorjuliegonzales@gmail.com>

To: Elizabeth Burger <elizabeth.burger@state.co.us>, matt.becker@state.co.us

Security:

To ensure privacy, images from remote sites were prevented from downloading. Show Images

In the abundance of caution I am sending this testimony for SB20-216 as well.

Thank you,

Jessica Martinez Vasquez

Aide to Senator Julie Gonzales

----- Forwarded message -----

From: **Mark Elliott** <mark@elliottlawoffices.com>

Date: Mon, Jun 8, 2020 at 12:18 PM

Subject: FW: Statement

To: julie.gonzales.senate@state.co.us <julie.gonzales.senate@state.co.us>

Cc: Robert Rodriguez <SenRobertRodriguez@gmail.com>, Sen. Rodriguez

<robert.rodriguez.senate@state.co.us>, kyle.mullica.house@state.co.us

<kyle.mullica.house@state.co.us>, Mack Babcock <mbabcock@injurylawcolorado.com>

This has been submitted on the link as well. Mark Elliott

From: Brhan Abraha <brhan.biz@gmail.com>

Sent: Monday, June 8, 2020 12:04 PM

To: Mark Elliott <mark@elliottlawoffices.com>

Subject: Statement

Dear whom this may concern,

Our beloved Eden Gebreslassie passed away on May 20, 2020 from complications due to COVID-19. She is leaving behind her husband, four beautiful young daughters, her mother, eight siblings, other family and friends throughout Ethiopia, Europe, and the United States.

Eden was an essential worker on the front lines of the COVID-19 pandemic healing and caring for ill patients. Sadly, she contracted the illness and became a patient herself. After driving to a doctor's appointment to check on a cough, she was unexpectedly admitted, sedated and placed on a ventilator at University Hospital. Her husband, who also contracted the virus was

admitted, but refused the ventilator with his diabetes issue and is recovering. With so much to live for, she fought until her last breath. After a long hard month, Eden lost the battle and left behind her four daughters, Ruth (16) Sara (15) Soliana (12) and Mahalet (10).

Eden was the pillar and rock of her family. She was also very committed to her patients. She missed every Thanksgiving and every Christmas with her family to work with her patients, and she lost her life serving others. Eden was a devout Orthodox Christian and raised her girls in the faith. She was very active with the Denver Hamere Noah Kidane-Mehret Ethiopian Orthodox Church. She loved her family deeply, was passionate about her work, and truly loved God.

Eden was one of over 80 infected people at her facility (Julia Temple Nursing Home) and among 18 who lost their lives. We have given our written notice to her employer but heartlessly, still no response.

We are in pain and trying to determine how her girls will continue on the path they were on, with straight A's and a stable, loving home. Her widowed husband is still ill and cannot return to work leaving them in a detrimental financial hardship.

We write this statement in hopes that another family doesnt have to endure what we are currently experiencing in light of this deadly virus.

Thank you for your time.

--

Kind Regards,

Your Favorite Consultant,

Brhan Abraha

BA Consulting

NMLS #1121585

Direct: 720-971-9927

Fax: 763-307-3148

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Julie Gonzales

Senator, District 34

(she/her/hers <<https://www.mypronouns.org/she-her>>)

senatorjuliegonzales@gmail.com

[image: unnamed.png]

Good afternoon,

My name is Dennis Dougherty and I am the Executive Director of the Colorado AFL-CIO. I am sorry I cannot be there today, I have been asked to quarantine due to an exposure to COVID-19. I am asking you to support SB 216, the Workers Compensation Presumption bill.

The Colorado AFL-CIO represents workers in some of the most dangerous jobs in the state and therefore our members have lots of experience with the workers compensation system. Workers Compensation was created to provide pay and medical expenses to workers who are injured on the job, but unfortunately workers find themselves denied coverage for all or part of their injury and end up in months or sometimes years of litigation. During this time, workers lose wages, medical bills pile up and their job security is threatened. Often, when the worker is offered a settlement for their claim, their employer requires they leave their job as a condition of that settlement.

When the state was under a stay at home order, COVID-19 essential workers continued to work everyday while many of us were safe at home. These are our transit operators, our airport and airline workers, our first responders, our healthcare workers, our utility workers and many more. They went to work, some of them got sick, and some of them even died.

These workers have had to take time off work unpaid, get treatment under their own health insurance and pay the deductibles, and get rehabilitation on their own dime. Worst case, some have died, and their families are left with all these costs. These frontline workers are often communities of color, who are also most at risk of severe consequences from COVID-19. They are also less likely to go to the hospital due to costs or fear of law enforcement/immigration. We rely on these workers to keep our state running and we believe it is okay to force them into litigation while they are fighting a deadly virus?

Workers Compensation presumption will help workers get the benefits they deserve for risks they took on their job every day. This bill does not create a new category of coverage, it simply shifts the burden to the employer to prove the worker, despite being extraordinarily exposed to COVID-19, cannot deny their claim for workers compensation without showing they got it somewhere else. This is the least we can do for those getting seriously ill and dying to keep our state running.



Colorado Retail Council
1580 Lincoln Street, Suite 970 / Denver, CO 80203
Phone (303) 246-5753

June 8, 2020

The Honorable Julie Gonzales
Chair
Senate Finance Committee
Colorado General Assembly

Dear Senator Gonzales,

On behalf of the Board of Governors of the Colorado Retail Council, I write to you and the members of Finance Committee members today to register our association's strong opposition to **Senate Bill 216** concerning **Workers' Compensation For COVID-19**.

This bill would make a very significant change to our state's workcomp system by essentially eliminating the requirement that a worker prove that his or her injury arose out of and in the course of employment as is required for other worker's compensation claims.

A great many of our retail members were deemed "essential" by the State of Colorado during this COVID-19 virus emergency. Indeed, by providing to our Colorado customers life-sustaining items such as food, medicine, and water, there are simply no companies in our state that are more essential than our members. They stayed open for their customers, and their employees did the work of heroes during extremely difficult times. Requiring an employer to prove that an employee did **not** contract the corona virus at their place of work is unreasonable.

Respectfully, this bill simply goes too far and undermines the strength of Colorado's longstanding worker's compensation system.

Sincerely,

Christopher D. Howes
President

CC: Ms. Kris Staaf, Albertsons/Safeway
Chairwoman the Board of Governors



June 8, 2020

Senate Finance Committee
200 E Colfax Avenue
Denver, Colorado 80203
Via Email: RE: Senate Bill 20-216

Honorable Members of the Senate Finance Committee:

The Colorado Hospital Association (CHA) represents more than 100 hospitals and health systems in the state of Colorado and, since 1983 has housed the CHA Workers' Compensation Trust (WCT) which provides workers' compensation coverage to 30 rural hospitals and covers 8500 lives across Colorado. On behalf of our member hospitals and health systems, and the WCT, CHA respectfully submits written testimony in opposition of Senate Bill (SB) 20-216, Workers' Compensation For COVID-19.

As introduced, the bill would create a presumption for essential workers who contract COVID-19 that the diagnosis is a direct result of employment. Presumptive eligibility as proposed in SB 20-216 would have devastating financial impacts on the WCT and the premiums for the Association's self-insured members. Historically, the WCT has been able to provider premium rates that are 15-20 percent lower than competing carriers. Using an actuarial analysis from Willis Towers Watson, CHA estimates that SB 20-216 could raise workers' compensation rates as much as 30 percent.

Colorado hospitals take the health and safety of their staff seriously and CHA continues to work with hospitals to ensure they are covered by a plan that meets their staffs' unique needs. In response to COVID-19, a policy was established within the WCT to cover all medically required testing and provider wage replacement for up to 14-day quarantine period. The WCT has paid out all COVID-19 claims, including testing and wage replacement.

CHA is appreciative of the sponsors' continued efforts on behalf of Colorado's health care workforce. However, the Association must urge the Senate Finance Committee members to oppose SB 20-216 due to the potentially devastating cost and impact it would place on Colorado's workers' compensation plans.

Respectfully,

A handwritten signature in black ink, appearing to read 'J. Ewing', is written over a light gray rectangular background.

Joshua Ewing
Associate Vice President of Legislative Affairs

Written Testimony Supporting “Workers’ Compensation for COVID-19)

My name is Alma Burciaga. I am an immigrant who is a child care worker in a facility in Denver and have worked there for almost thirteen years.

I strongly urge you to support Workers’ Compensation for COVID-19 to support all essential workers including child care workers as they have one of the most important and underpaid jobs. Child care workers hold major responsibilities of not only just taking care of a child, but also having the responsibility to help them learn, discover and develop skills. In the facility I work in, the majority of these children come from low income and immigrant backgrounds where more resources are needed to support these communities. As stated in the bill, essential workers are one of the most vulnerable people to be exposed to the coronavirus. I am one of those workers who unfortunately got exposed at my job site the third week of April of 2020. At first I was not aware of any major symptoms like coughing or difficulty breathing, however, I noticed I lost my sense of taste and smell. I reached out to my doctor because I was not sure what was happening with my body and decided to take a COVID test. The moment I found out positive, a wave of fear and anxiety passed me as I had immediate thoughts about my safety, the safety of my family members, and children I take care of. It was one of the most difficult moments in my life because I was sure I was potentially exposed at my jobsite and frustrated because my body was put at risk compared to my other coworkers. Not only did COVID-19 have a physical toll on my body but, mostly a mental toll on me. The mental and emotional toll is not something talked about when someone is exposed to the virus. I was thankful that my jobsite paid me during my quarantine time because of the position I have as it allowed me to continue to pay the essentials such as rent, food, utilities and more. I strongly believe that all essential workers deserve worker’s compensation because most immigrant workers and low income workers are at risk. I urge you all to support this bill to ensure the safety and well being of others especially towards the most marginalized communities. Thank you.



I am writing to submit my story to the legislature to shine some light on a broken link between the company and employees. SB20-216 is the bill I would like to testify on behalf of.

Good afternoon Madam Chair,

I am here today to testify on behalf of my brothers and sisters of UFCW, and share my personal experience being sick with COVID19.

My story begins with a turbulent start as I began to work at the 1615 Safeway in Boulder, a month after I started I was brutally attacked and left to die.

The company didn't care, but my coworkers did and they were very supportive as I healed from those traumatic injuries. As you can see my jaw is no longer naturally aligned and I have metal holding this right side of my jaw together.

I returned to work, rather quickly and with the help of my manager, I was plugged back into the team before the start of the new year.

Loyally, I worked hard for my team. I wanted to reciprocate the love they showed me.

So with my jaw wired shut, I plodded forth.

Eventually, as vacations began to pop up I took on extra hours and put in a few long weeks, including a few 7 day weeks. No problem, I got a chance to reciprocate.

In March 2020, the pandemic hit, and Boulder, like most cities, turned on survival mode. Buying in bulk and rushing to the grocery stores. Patrons packed the store, without masks, exposing all there to the virus.

One such patron infected me.

It was the end of March, I was speaking to my coworker Fabio about health concerns when I pointed out my allergies were acting up.

The next day, I called in feeling sick. I had headaches, diarrhea, and my body ached. My manager said to stay home and to focus on getting better.

Later that week, she was instructed to have me talk with HR about returning and sick pay. I continually updated both of them about my symptoms and how my fatigue continued to get worse. Along with the fatigue, breathing became harder and shallower.

I couldn't breathe, I feel like I was suffocating.

I knew something was seriously wrong. I couldn't go for a lap around the block outside without stopping to catch my breath.

It scared me, so I asked HR about the 2 weeks sick-pay, knowing I contracted COVID19.

I was instructed to get a doctor's note and that day, I walked to Boulder Medical Center, mask on, to get what was needed.

I was sent to the western side of the building and was checked in by registered nurses stationed outside and upon my examination, the respiratory expert confirmed I had COVID19, but without proper testing, they wrote a note confirming I was indeed sick.

I got the note and faxed it in.

Not good enough.

Later in April, I began to feel better. I could take fuller breaths and so I asked again about the 2 weeks pay and learned the returning procedure of 72 hours being symptom-free.

I was told the note didn't have the right language, so I returned to Boulder Medical Center to fix what was on there and to emphasize the need for me to be quarantined.

I got the note and faxed it in.

Not good enough.

By the third week of April, I had reached the 72 hours of being symptom-free. I waited till I was absolutely sure I had beaten the virus. During this whole time, the company never talked to me about Workers Compensation and having it covered even though I followed the law and reported it to my manager as soon as I was sick and then when I was diagnosed. I went without pay for 20 days. I get paid \$14 per hour and living without this income is extremely difficult with the cost of housing and food.

I returned to my closing role for the Deli and continued to work hard but I had to file a grievance through my union to have a chance to be heard.

I followed every instruction to a T.

I listened, I proved that I was sick, I proved I needed to be quarantined, I proved that I was told to stay home and I still was denied the sick-pay promised for those who acted as I had and never received documents to file Workers Compensation.

We work hard to ensure our citizens can get food during a crisis, in unsafe conditions. We should not have to fight our employers for months or pay for catching a disease at work. I did my job, I got sick because of my job, I should be covered for my time off work because I acted correctly to the pandemic, listened to those places in authority positions, and prevented others from getting sick. Why not?

Thank you,
Ian Cameron



Fwd: testimony for SB20-216

Julie Gonzales

to:

Elizabeth Burger, matt.becker

06/08/2020 07:44 AM

Hide Details

From: Julie Gonzales <senatorjuliegonzales@gmail.com>

To: Elizabeth Burger <elizabeth.burger@state.co.us>, matt.becker@state.co.us

History: This message has been replied to.

Good morning Elizabeth,

I am forwarding Jamie Simpson's written testimony for SB20-216 in Finance today.

Thank you,

Jessica Martinez Vasquez

----- Forwarded message -----

From: **jamie simpson** <simpsonjamie@gmail.com>

Date: Mon, Jun 8, 2020 at 2:25 AM

Subject: testimony for SB20-216

To: Gonzales <senatorjuliegonzales@gmail.com>

Thank you for taking the time to read my testimony. My name is Jamie Simpson and I am a flight attendant for Southwest Airlines and a union representative for TWU 556. In my line of work it is impossible to social distance. My airline has not disclosed the amount of workers that have been infected by COVID-19 but I'm sure the number is in the thousands.

In my work as a union representative I assisted one member that wishes to remain anonymous. He contracted COVID-19 in early March and was admitted to the hospital and placed on a ventilator. My company introduced a new policy for those that test positive for COVID-19 that we will be paid for 14 days. His 14 days of pay was used and he was beginning to heal but still tested positive. He is the main earner in his family and the proud father of two. He was unable to return to work and reached out to me for help. I advised that he file for worker's compensation. His potential exposure was on March 5th but he was unable to be tested until 10 days later at the point he was admitted to the hospital. Because he was not working during those 10 days the workers compensation claimed he may have been exposed during those days and he was denied. He finally tested negative at the beginning of April and returned to work but did not earn any income for the second half of the month and will be required to pay all hospital fees.

This is one of many stories I have heard from my work group, all of whom have been denied any worker's compensation. We are required to continue to work through this pandemic as we are first responders and deemed essential. While we are putting our lives on the line we should not have to be in fear of financial ruin if we do contract COVID-19. I urge you to vote yes on SB20-216. Thank you

In Solidarity,

Jamie Simpson

Colorado Pride @ Work, Vice President

702-556-8249

--

Julie Gonzales

Senator, District 34

(she/her/hers <<https://www.mypronouns.org/she-her>>)

senatorjuliegonzales@gmail.com

[image: unnamed.png]

To: Members of the Senate Finance Committee:

From: Meghan Dollar, Colorado Municipal League

Re: Proposed Legislation on Workers Compensation Presumption

Thank you for the opportunity to submit written testimony. CML would like to convey our opposition to SB 20-216. We have concerns about the broadness of the proposed legislation, the increased burdens it will place on employers, and the costs to local governments who are already suffering significant budget impacts.

We appreciate the policy goals intended by this proposal; we greatly value our health care, first responder, and frontline employees. Without our employees' dedication during this emergency, we could not have maintained public health, welfare, and safety. Please, do not mistake our concerns about this legislation with a failure to care about our employees. Local governments work hard to provide necessary health, leave, and worker's compensation benefits for our employees. Indeed, COVID-19 workers' compensation claims are currently being filed, and, like any other workplace acquired infection, are compensable. But, for the reasons below, we ask that you consider not introducing this piece of legislation. First, the scope of the legislation goes beyond what has been considered first responders. An employee can receive benefits without having had direct contact with individuals that may have symptoms for COVID-19. For example, the legislation currently includes utility workers; the term is not defined in the legislation, therefore this presumption could apply to many local workers from public works to water/wastewater. Additionally, the bill does not require proof of a positive COVID-19 test. An individual claiming the presumption should be asked to submit a test result.

The bill also does not provide an end date to the presumption. If the bill is only to apply to COVID-19, it must sunset. Second, the current draft legislation requires the employer to prove by clear and convincing evidence that the employee did not receive COVID-19 due to the nature of their job. Not only does the employer have the burden of proof, but the requirement of proof is virtually impossible to meet: the employer must show, by clear and convincing evidence, that the employee's COVID-19 sickness was due to a specific cause outside of work. This increased burden on the employer will drive up costs for local government employers to do their due diligence to ensure that claims were fairly paid as compensable in order to maintain the integrity of the public's dollar. Any legislation with a presumption needs to be consistent and require preponderance of the evidence. The "clear and convincing" standard in this proposal sets an unlevel playing field.

Finally, the proposed legislation will result in increased costs to local governments. The draft legislation for workers' compensation coverage for employees in certain categories who contract COVID-19, whether they were exposed on the job or not, creates a significant unfunded mandate on our workers compensation program. Without funds from the state of Colorado to offset this proposed unfunded state mandate, as was included as part of the heart and cardiac presumption program, local governments do not have the ability to pay for additional premiums that our experts predict to would necessarily follow. Below you will see numbers received by the municipal insurance pool, Colorado Intergovernmental Risk Sharing Agency (CIRSA).

We've done some analysis and would estimate a fiscal impact range for the CIRSA workers' compensation pool of \$1.4m to \$3.5m for first responders depending on the exposure rate and the number of mild, moderate, severe, and catastrophic cases, and a range of \$2.6m to \$4.7m with the other classes of employees included. A portion of that impact would be borne by our reinsurer but only within the catastrophic claim category, and we expect the presumption would affect the rates charges by our reinsurer.

Based on these numbers, we assert that local governments cannot afford increased costs at a time when tax revenues are jeopardized by one of the greatest health and financial disaster of our time.

CML urges you to vote NO on 216.

Thank you for your time and attention



Testimony in Strong Support of SB 216: Supporting the Essential Workers Who Support Us

My name is Karla Gonzales Garcia. I am the Policy Director for the Colorado Organization for Latina Opportunity and Reproductive Rights (COLOR). COLOR works to engage and empower the Latino community to speak out about the policies that impacts our community. We are committed to ensuring that Latinas and our families are able to make personal decisions about health, have access to affordable health services and that we are each able to live our lives with dignity.

COLOR strongly supports Senate Bill 216, which would support essential workers facing COVID-19 by presuming that it was contracted at work for the purpose of workers' compensation.

Many employees that are called essential are doing their work at great risk with low wages - people who clean the floors, provide childcare, serve fast food, and work in the meat plants. They have jobs that keep our state running, but it comes with a heavy price.

Black people, Indigenous people and people in the Latinx community have borne the brunt of the COVID-19 pandemic. We have been infected and died at disproportionately high rates. Public health experts have noted that one of the main reasons the Latinx community is especially vulnerable to COVID-19 is because we are overrepresented in low-paying jobs that required us to interact with the public and to work in close quarters.

In one study looking across the west, Latinos comprised about 40% of the population, but 53% of positive cases. A recent poll also found that Latinx people were nearly three times more likely than white people to be concerned about their jobs placing them in close proximity to others. This was a particular problem in the first weeks of the pandemic, when masks and other protective gear were in shorter supply and many businesses were still trying to implement social distancing policies.

Workers compensation was designed to take care of people who are hurt or killed on the job. Employers also provide insurance to cover medical treatment, partial payment of lost wages and death benefits for workers who are injured while completing their job.

It is a system that has flaws, but has also made a big difference to many families by providing basic benefits and support to workers.

When it comes to people contracting and illness at work or a complication as a result of the work, it can be more challenging for people to get the support they deserve. This bill would create a presumption, so if a frontline worker gets the coronavirus, it would be presumed they got it at work and they would be able to seek benefits through workers compensation.

Colorado continues to try to improve safety measures, access to testing and across the country work is being done to help improve best practices to keep the infection rate down. The fact is that essential workers deserve far safer workplaces. That is a critical priority, but for those who are ill, we need to make sure they have support to get well and care for themselves and their families. We need to make sure they get it. This bill is a huge step forward and will make a big difference to the Latinx community. We urge you to swiftly pass Senate Bill 216. Thank you.

Submitted by: Karla Gonzales Garcia, Policy Director, Colorado Organization for Latina Opportunity and Reproductive Rights (COLOR), 303-393-0382

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June 8, 2020

My name is Michael Kaplan, I have been representing injured workers for two decades. I am the co-founder of Kaplan Morrell, LLC., one of the largest WC firms in Northern Colorado. I have devoted my entire professional life improving the Colorado Workers' Compensation system for all parties, not just injured workers. My efforts of improving the system have been focused legislatively as well as taking a leadership role in the WC community.

The Teamsters local 455 (Cargill), as well as Commercial Workers Local 7 (JBS), has called upon us to assist their workers who have been exposed to COVID-19. In the wake of the pandemic, we are on the front lines in triage mode doing all that we can to help those who have been injured and who have died due to COVID-19. Many of those who we are serving need immediate help. The proposed legislation fulfills the General Assembly's intent of providing injured workers benefits timely and efficiently. Without the proposed legislation, that intent will be thwarted and will jeopardize the lives of those who are sick and not take care of those who have become widowed.

Sincerely,

A stylized, handwritten electronic signature in black ink, consisting of a series of loops and a long horizontal stroke.

Michael H. Kaplan, Esq.
(Electronic Signature)

Michael H. Kaplan, Esq.

Testimony of Lance Longenbohn, in support of Senate Bill 20-216

Thank you, Madam Chair, and Senators, for the opportunity to testify in favor of Senate Bill 20-216. I live at 10641 Holland Street in Westminster, in Senate District 19.

For the past 11 years, I have been a Bus Operator for the Regional Transportation District, and for the past 5 months I have been privileged to serve as President and Business Agent of Amalgamated Transit Union, Local 1001. ATU 1001 represents over 2,000 RTD employees and another 530 First Transit employees who operate fixed route bus service for RTD. Those of us who operate (and who clean and disinfect) RTD's fleet have suddenly found their jobs to be both a dangerous and scary place to go each day.

I have attached a copy of a Fox 31 news story about how a local veteran named Brion Jefferson successfully battled COVID-19 for 7 weeks before being released from the hospital two weeks ago. It is a heart-warming story of a man's faith in God and his battle with the Novel Coronavirus.

What the story did not mention is how my friend Brion almost certainly got COVID-19. Mr. Jefferson is an RTD Bus Operator who, like hundreds of his colleagues, has had a much, much higher chance of coming down with the virus—all because of the job he has proudly performed for over 15 years. It damn near killed him.

The luckiest among us have been able to work online from home and their most dangerous venture in recent months might have been an occasional trip to the grocery store. This bill recognizes that the dangers found in grocery stores are omnipresent for the people who work there.

The same is true for Bus and Train Operators who take thousands of citizens each day on their risky trips to get groceries, get to their own essential employment or to seek out health care. When we finally convinced RTD to quit collecting fares and switch to back door boarding, our bus and train fleet became a source of shelter to the area's homeless population—another group at high risk of catching such an easily transmittable virus.

For my friends and colleagues who provide public transit, every trip is now a risky one.

This bill makes the entirely logical presumption that a public transit operator who contracted COVID-19 did so at work. It recognizes not just us but the other essential workers who put themselves at risk daily, in service to others. Given the exposure that we face every day, this bill makes sense.

I urge you to join me in supporting SB 20-216. Thank you.

SERVING THOSE WHO SERVE

Local veteran released from hospital after battling COVID-19 for 7 weeks



by: [Dan Daru](#)

Posted: May 19, 2020 / 11:03 PM MDT / Updated: May 19, 2020 / 11:03 PM MDT

DENVER (KDVR) — Sixty-one-year-old Brion Jefferson's first realized he had COVID-19 symptoms when his wife touched him.

"She was telling me I was hot, and 'You got a fever,'" said Jefferson. The eight-year United States Army veteran wasted no time and got to the hospital.

Eighteen days later, he woke up on a ventilator in the intensive care unit.

He was in disbelief.

"I was like, 'I don't believe them,' I tell my wife, 'Stop lying,'" said Jefferson.

Once the diagnosis sunk in, Jefferson realized he was alive.

Jefferson thanks Rose Medical Center and Aviva at Fitzsimons for his seven-week journey through COVID-19. But God, he says, tops the list.

"Lord, please walk with me, wherever you want to take me, I am willing to go, as long as you are by my side, I won't fear," said Jefferson.

"Best day ever, like giving birth to a child, for his life to be restored," said JaNiece Jefferson, his wife.

Brion Jefferson has diabetes and high blood pressure, he beat the odds. His wife says this happy day wasn't promised, but was given.

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John P. Maroney
Robert Kitzinger
Matthew A. Weidinger
Marianella M. Medelius

++ Also admitted in NC
Also admitted in FL
+ Also admitted in TN
-- Also admitted in WA
^ Also admitted in MO
>Also admitted in VA

June 8, 2020

My name is Katie McClure and I am a partner at The Sawaya Law Firm. I am a Workers Compensation attorney and I represent Covid victims, and family members of workers killed by Covid. This letter is being submitted in support of SB 20-216.

In the last three months we have had multiple people call our law firm requesting assistance in their Covid cases. They have been frustrated that the employer and the workers compensation insurance carrier have not filed a workers compensation claim and provided no assistance in sending them benefits. We currently are assisting families on two death cases, and two individuals that have been, or are on ventilators, and two clients suffering from serious complications due to contracting Covid at work.

We currently represent three clients that contracted Covid while working at Walmart. One woman was a cashier who died from contracting Covid at Walmart. Another woman worked at Walmart for 28 years and currently has a tracheotomy due to her ventilator from Covid. The last client is a 69 year old gentleman who died from Covid while working at Walmart.

We also represent two clients that contracted Covid while working at the JBS Meat Packing Plant. These two individuals have serious complications due to Covid.

The last individual was a CNA working at a Long Term Health Care facility. She also has been trying to navigate on how to file a claim and getting benefits through the workers compensation insurance carrier.

Therefore, we request that SB 20-216 goes into effect immediately. Thank you

Katie McClure

The Sawaya Law Firm
1600 Ogden Street
Denver, Co 80218

My name is Olivier Avila. I am one of five surviving children of Daniel Avila along with my mother, Adelia Avila and 16 grandchildren and one great grandson. My father contracted COVID-19 as a result of continuing to work as an “essential employee” at the JBS meat processing plant during Colorado’s state-wide stay at home orders.” I am here in support of Bill SB20-216.

Daniel Avila Loma died April 29th, 2020 just 3 months short of his 66th Birthdate. My father had been a loyal employee for over 30 years and had recently attended a ceremony presented by JBS to recognize his 30 years of service.

March 25th, 2020 my father was sent home sick after experiencing cold and Flu like symptoms. My father was not known for missing work other than for seasonal flu’s and colds. He was punctual and attendance was never an issue. We believe he contracted Covid-19 while working at JBS, his title of Sharpen Straight Knives is a position in which he contacted many of his team members and became vulnerable to Covid 19 exposure.

I contacted Tanya, Occupational Health rep, on April 15th and she noted that I was attempting to open a workman’s comp claim, Tanya only took my information down for this and included me on a email requesting her team members to follow-up. I contacted Tanya once again on the 28th of April and requested an update and she transferred me over to Debra Rodriguez. Debra stated that JBS would not be complying with a Workers comp claim as it was JBS position per Debra that he contracted Covid 19 outside of their facilities. I requested she send me an email recapping our conversation and she refused my request.

My father was tested for Covid 19 March 28th and spent the night at NCMC before being released and being quarantined for 14 days. My mother called the ambulance the evening of April 7th as his breathing deteriorated and he was rushed to the hospital and needed to be placed on a ventilator. April 7th was the last day my mother had verbal communication with my father. From here on out, Facetime was our only means of communication. We were informed that my father incurred 3 brain stokes during his time at the hospital and ultimately ended with four before he died. Two times the doctors called and informed us that my father would not survive 24 hours. Two times that our family defied the quarantine orders to be with one each other. 72 hours of little to no sleep for many of us. Decision to bring home for hospice was finally made, came home Tuesday April 28th, 24 hours later my Father Daniel Avila Loma died

My father was the sole provider for the household my mother and youngest brother are both disabled. My four siblings and I have been assisting with financials, during this time frame, we had no support from JBS and only through the union and I calling did we get Short Term disability.

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++ Also admitted in NC

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^ Also admitted in MO

>Also admitted in VA

June 8, 2020

Hi my name is Lacey Crosser and I am the granddaughter of Sandra Kunz who died of COVID19 on April 20, 2020. This written testimony is being submitted in support of SB 20-216.

Sandra Kunz worked at the Walmart in Aurora as a cashier for 5 years. She continued working at Walmart in March 2020 and developed COVID symptoms and had to be put on a ventilator at the beginning of April 2020. She was on a ventilator for three weeks and then passed away at the hospital. The majority of our family was unable to say goodbye due to the COVID restrictions. Sadly her husband, my grandfather, then contracted COVID in mid-April from her and passed away at the end of April.

When I called Walmart her employer told me a worker compensation claim had not been filed. I continued trying to call Walmart to see what to do. And then finally the workers compensation claim was filed. The employer told me I need to prove that my grandmother contracted COVID while working at Walmart to pay any benefits. I told her she had been working 5 days a week, 40 hours at Walmart during COVID.

I have not received any further information from them since then.

Lacey Crosser

My name is Kevin Abels. I am the Denver Chapter President of UNITE HERE Local 23, the hospitality workers union. We represent 2,000 hotel, food service and airport workers in metro Denver. Our members are at high risk for contracting COVID-19 at work. Some of our members work in restaurants; there customers cannot wear masks while eating and drinking.

Probably the most at risk workers amongst our membership are 700 airline catering workers at DIA. They work for United Catering and SkyChefs in two large industrial kitchens in DIA's cargo area. Our members prepare and deliver the food and beverages served to airplane passengers on outbound flights, and also remove and dispose of trash from incoming flights.

Before COVID, these jobs were some of the toughest jobs at the airport. Now they are even more challenging. The working conditions, in large refrigerated coolers and on food and beverage cart assembly lines, are nearly identical to some of the worksites in Colorado with high-profile outbreaks: the JBS meatpacking plant and Stevens Roberts industrial bakery. Social distancing is challenging in these workspaces; hundreds of workers may be close to one another at a given time in order to do their assigned work. There are known cases amongst the workforce at both locations at DIA.

Indeed, the New York Times profiled these worksites in the NYC-area airports, reporting 4 COVID-related deaths at SkyChefs/JFK and 2 at United/Newark.

<https://www.nytimes.com/2020/04/28/nyregion/coronavirus-nyc-airports-workers.html>

Just like their New York counterparts, the Denver airport workers make less than \$20 an hour and lack health insurance because the cost of coverage is more than they can afford on their salaries. The majority of the employees at both locations are people of color and immigrants; at least 15 languages are spoken there. At United Catering, a plurality of the workforce are from Micronesia and other Pacific Islands. The systemic racism within the healthcare system only compounds the risks to these workers' health.

For all these reasons, our union strongly supports SB 216. Essential workers exposed to COVID while working and subsequently sickened should more easily receive coverage through the workers compensation system. It is truly a matter of life and death for essential workers like our members.

June 8, 2020

Philip Sanchez
727-667-0501

Your Honors,

My name is Philip Sanchez and I am the brother of Sara Gallegos, an LPN who has been on life support in the ICU for over one month due to Covid-19. This written testimony is being submitted in support of SB20-216.

Sara has not been able to work since being sent to the hospital by her employer 39 days ago for symptoms of the corona virus. Sara's oxygen and mental status crashed a day after arriving at the hospital causing her to be intubated and put on advanced life support. She is lucky to be alive today. She has a long road ahead of her, including physical therapy, occupational therapy, speech therapy, and home health care, as well as doctors' appointments and the cost of equipment that will be needed to assist in her care such as Hoyer lifts, wheelchair, walker, shower chair, etc. At the present time, she has no income and her husband has no income (as he works for the same nursing facility and has not been able to return to work).

Sara has worked with this nursing home for 20+ years. Sara's employer and their insurer have refused to support and/or file a workers' compensation claim on her behalf, and given Sara's incapacitation, she has been unable to pursue benefits on her own, leaving her family in a position of extreme financial hardship. Due to lack of employer support, I have pleaded with family, friends and community through word of mouth and a go-fund-me page to help with the economic stress of this hardship on her family. Please pass SB20-216 for my sister Sara and all healthcare-workers. Let them know we stand by them and that they have a voice and the support they need.

Sincerely,
Philip Sanchez

**Workers' Compensation Coalition
5355 South Camargo Road
Littleton, CO 80123**

May 27, 2020

TO: Members of the Senate Finance Committee

RE: SB20-216

As an association that represents nearly 80 businesses and self-insured entities, we write this letter on behalf of our member-stakeholders, with our concerns regarding this bill. We oppose the bill, in its entirety for a variety of reasons. While we recognize the unique environment that COVID-19 has presented our state, presumptive coverage is in stark opposition with more than 100 years of workers' compensation statute and case precedent in the courts. It will over-burden our court system with disputes and further delay the ability of workers to quickly address costs due to the COVID-19 virus.

The bill includes language that is specific to employee groups that are often migratory and transitory. It exposes our workers' compensation system to fraud by employees who may present claims in Colorado, exclusively because we are providing presumptive COVID coverages, while other states they have worked in, or their own resident state have no presumptive provisions. These workers have the potential to have contracted the COVID strain while working in another state, or nation, but not required to provide evidence of chain of exposure.

The bill also provides presumptive coverage with no burden to prove the employee was exposed to COVID-19 in a private home. This presents an undue burden on employers, insurance carriers and the Colorado workers' compensation system. Such claims in most states would require proof that the home had a positive COVID-19 patient and require evidence. However, Colorado employers are unable to even ask this information, as that would violate Federal HIPPA law. While employers can provide PPE devices in controlled settings, such as hospitals, they are often unable to protect their employees, nor anticipate such exposures, as they are prohibited from asking any health-related questions of the resident. (So neither plaintiff nor respondent will be able to show credible proof of exposure.) Existing law already allows an employee to make a claim but maintains the historic and reasonable standard of proof.

Lastly, the bill proposes that workers' compensation medical benefits be offset by existing life or disability insurance but fails to mention health insurance. These medical treatment and hospitalization costs for patients during the spring of 2020 have already been submitted to health insurance companies for payment of these bills. Trying to retroactively allow these hospitals to then subrogate against workers' compensation carriers for reimbursement results in additional litigation. In addition, passage of this bill would allow health insurance carriers to deny further coverage and cease payment of medical provider billings already in process. Reversal of payments, mid-stream will develop extensive additional delays due to disputes between health care and workers' compensation carriers. These payment delays can result in an encumbrance to a patient's credit, when families are already suffering with the emotional and economic toll of the disease to their family. We must also recognize the potential economic toll that presumptive claims from state and municipal workers will have to budgets that are already crippled.

In conclusion, the Coalition opposes this bill, as it retrospectively allows workers compensation to be presumptive and primary, it limits and compromises an insurance carrier/employer's ability to due process in defending a claim and creates an undue hardship on both our existing healthy Colorado workers' compensation system, a financially stable State Workers' Compensation Fund and a state economy that is already struggling. Furthermore, it creates a precedent for unanticipated costs far into the future of occupational injury claims. These unintended consequences are too great for our workers' compensation system, Colorado business and Colorado residents to bear.

Regards,
Workers' Compensation Coalition Board Members

The Workers' Compensation Coalition recognizes these additional stakeholders who concur with the aforementioned conclusions and also oppose this bill:

[Rusty Plowman](#), Vice President

[Delta Dry Wall, Inc.](#)

Scott S. Deering, President/CEO



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