MEMO: To all interested parties

FROM: Jack A. Nolish, Director

DATE: 3/24/2020

This certainly is a challenging time to start serving as the Director of the Michigan Workers’ Disability Compensation Agency. I will be working hard to keep the agency functioning and serving the people of our state. Your cooperation during this difficult time will be greatly appreciated. As announced by the Governor’s office on 3/23/20:

Today, Governor Gretchen Whitmer signed the “Stay Home, Stay Safe” Executive Order (EO 2020-21), directing all Michigan businesses and operations to temporarily suspend in-person operations that are not necessary to sustain or protect life. The order also directs Michiganders to stay in their homes unless they’re a part of that critical infrastructure workforce, engaged in an outdoor activity, or performing tasks necessary to the health and safety of themselves or their family, like going to the hospital or grocery store.

Effective at 12:01 am on March 24, 2020, for at least the next three weeks, individuals may only leave their home or place of residence under very limited circumstances, and they must adhere to social distancing measures recommended by the Centers for Disease Control and Prevention when they do so, including remaining at least six feet from people from outside the individual’s household to the extent feasible under the circumstances. (the orders may be found on the Governor’s website: www.michigan.gov/gov)

EO 2020-21 comes after and must be read with prior EO 2020-20 which imposes “Temporary Restrictions on the use of places of public accommodation” closing places of public accommodation that specifically indicates in the definitions used in the order, Section 3(a): “Non-essential personal care services” includes but is not limited to hair, nail, tanning, massage, traditional spa, tattoo, body art, and piercing services, and similar personal care services that require individuals to be within six feet of each other. This does not include services necessary for medical treatment as determined by a licensed medical provider.” (emphasis added)

There have been many questions raised about the impact of the Executive Orders dealing with Covid-19 on the Worker’s Disability Compensation Agency, the hearing operations and our various stakeholders including injured workers, employers and insurance carriers.

1. The Workers’ Disability Compensation Agency is continuing in operation. Although staff is working remotely where possible, claims, insurance coverage, and other filings are being handled routinely. Time sensitive filings should be accomplished in the usual fashion and in accord with existing requirements. Requests for extensions or alternative means of compliance will be considered on a case-by-case basis.
2. The hearings offices will continue to operate but hearings, meetings, conferences or other matters shall be conducted by teleconference unless specifically arranged with the magistrate and only for the most severe of circumstances. Redemptions must be pre-scheduled with specific date and time. All such hearings shall be conducted by teleconference with all necessary documents provided to the magistrate in advance of the call. Staff at the hearing site will handle incoming papers and send out the signed redemption orders by electronic means (email, fax, etc.)

3. The restrictions on individual activities specified in the orders will impact on an injured worker's ability to attend scheduled medical evaluations as well as continue to do job search activities. Since medical evaluations typically require the examiner to be in close proximity to the examinee (2020-19 paragraph 3a) and since "independent medical evaluations" are by definition not for purposes of treatment, facilities where such examinations take place are likely to be "closed to ingress, use and occupancy by members of the public" (2020-20 paragraph 1). Also, potential employment that might have been found by job search efforts, are shut down or severely restricted with unemployment rapidly increasing. During the effective period of the orders, and any extensions, related additional orders or expansion, failure to attend such evaluations or conduct job searches, should not adversely impact on the entitlement to benefits. It is recommended that any scheduled evaluations during this time be canceled or delayed in order to avoid "no show" fees/costs. Demands or threats made to injured workers relative to attending evaluations or conducting job searches may be considered a violation of the Executive Orders. In addition to sanctions that may apply under the Act, be aware of the provision in 2020-19, paragraph 7 and 2020-21 paragraph 14 "Consistent with MCL 10.33 and MCL 30.405(3), a willful violation of this order is a misdemeanor." As reported in the Detroit Free Press, 3/23:

"Businesses who don't heed this order, I anticipate there will be fines," Whitmer said. "At this point in time, this is an order they must comply with for their own and their employees' health. Any businesses that don't comply, there will be ramifications."

It will be up to local law enforcement to investigate businesses that continue to operate when they should be closed, Rossman-McKinney said, and those complaints will be forward to the Attorney General's Office for prosecution.