



The Compensability of 2019 Coronavirus Claims Under Workers' Compensation

**If you have any questions regarding COVID-19,
please do not hesitate to contact our
Carr Allison COVID-19 Response Team.**

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With employees returning to work during the COVID-19 pandemic, the spread of the disease is expected to increase significantly. While there are many measures employers can take to help decrease the spread, some amount of communication among the workforce is seemingly impossible to avoid. When that happens, the question of whether COVID-19 is compensable under workers' compensation comes to the forefront.

The rule in most states is that, in order to be compensable, an illness or disease must be occupational, meaning that it arose out of and in the course and scope of employment. The "arising out of" standard generally requires that there be a causal connection between a worker's injury and his or her employment. For an injury or illness to have occurred "in the course of" employment, there must be a causal connection to the actual workplace. Consideration is usually given to the time, place and circumstances surrounding the accident, illness or injury.

Workers' compensation would generally cover a claim for an occupational disease in most states if the disease is due to hazards above those ordinarily present in and particular to an occupation. It does not, however, cover illness from general diseases. The flu, for example, would not be considered a covered illness since the flu is a threat to the health of the general population, not just for those employed in a particular occupation. Further, the mere possibility that a worker suffered an injury or occupational disease would not result in an employer's obligation to pay workers' compensation benefits to an employee.

Healthcare providers, first responders and other workers who have been deemed "essential" are particularly vulnerable to COVID-19 and other similar diseases due to the nature of their work. Some states have recently implemented changes to their workers' compensation laws and regulations to assist these employees. The new laws and regulations typically provide a rebuttable presumption that COVID-19 was contracted at work if the employee has been in contact with an individual known to be infected with COVID-19. To date, Alabama, Florida, Georgia, Tennessee and Mississippi are not among those states. In these and other states, the question of whether COVID-19 is a compensable claim is sure to be the subject of a significant amount of litigation in coming months.

Even though most non-essential workers' COVID-19 claims would not likely be covered under workers' compensation in most states, employers should still implement as many measures as possible to reduce the spread of COVID-19. Such measures include requiring face coverings, taking employee temperatures, mandating social distancing and hygiene procedures, reducing contact between employees and frequently sanitizing the workplace.

In addition, employers must be aware that employees may still be entitled to pay for a period of time under the Families First Coronavirus Response Act related to COVID-19. Employees do not have to prove that they contracted the disease at work to be entitled to pay under this Act.

Further, employers must be aware of the recent changes regarding OSHA record-keeping requirements. Employers are now required to keep records of employees who are diagnosed with COVID-19.

As businesses evolve into the new normal and more employees return to the workplace, the state of workers' compensation laws is likely to also evolve with regard to COVID-19, whether by legislation or case law. We will continue to follow this issue and keep our clients advised. In the meantime, if you have any questions or concerns, please feel free to contact us. We will be happy to help.