

Workers' Compensation Claims for Healthcare Professionals Exposed to COVID-19 in PA – Updated March 17, 2020

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Just a few short weeks ago, the Center for Disease Control's Director of the National Center for Immunization and Respiratory Diseases warned that the spread of coronavirus in the U.S. was "not a question of if, but when." As of this updated posting, the entire country is locked in an unprecedented grip of uncertainty and concern regarding what comes next.

Looking into the not-so-distant future, employers – particularly those in the healthcare industry – should be prepared for liability claims associated with the disease, namely Workers' Compensation claims...it's "not a question of if, but when."

Right now, the Governor's shutdown of non-essential state government offices does NOT include the Bureau of Workers' Compensation. That means, an employee with a medically-documented, extended leave of absence, related to the coronavirus can file a claim (online) and seek to recover wage loss benefits, and reimbursement for medical care, including out-of-pocket expenditures. This is not a "rubber-stamp" process – the filing of a claim merely starts the process of litigation, that could (for reasons explained below) result in liability for the employer (via its Workers' Compensation carrier). The extent of liability for such a claim would be for wage loss and medical benefits associated with the disease...and does extend to the extreme circumstance of a death/survivor benefit.

The remainder of this post explains the basis upon which a worker can submit a claim and recover wage loss and medical benefits through the Workers' Compensation system.

Focusing on employer liability, specifically PA Workers' Compensation claims for those in the healthcare industry, there is a basic framework for determining whether COVID-19 cases would fall within the category of recoverable "occupational disease" claims in PA.

By way of basic background – the PA Workers' Compensation Act recognizes certain occupational disease claims as compensable. There are four specifically recognized and compensable "occupational disease" related Workers' Compensation claims in PA. These are:

- Heart and lung disease for fireman who have four or more years of service;
- Pneumoconiosis and silicosis for any occupation that involves direct contact with or exposure to coal dust;
- Specific types of chemical poisoning (i.e. lead, arsenic, mercury) for occupations that involve direct contact or exposure, or to the preparation of compounds; and
- Tuberculosis and hepatitis for health care workers, blood processors, lab techs and related professionals who are exposed to these diseases.

www.dli.gov/businesses Focusing on healthcare professionals, claims involving tuberculosis and hepatitis require proof of causal connection, via expert medical report/testimony. This expert medical evidence is often coupled with additional evidence to support the connection or establish the basic premise that the disease was present in some form (patient, blood/tissue sample, equipment/surface, or visitor) in the workplace.

COVID-19 is not a listed/recognized disease according to the PA Department of Labor & Industry, as it was a virtually unknown threat until late 2019. It is however interesting to note that the Bureau of Workers' Compensation website

already has a page devoted to COVID-19 claims – and a basic blueprint for claims associated with the disease. See link

For reasons explained below, it is likely that PA Courts will award benefits for COVID-19, as a compensable Workers' Compensation claim, if/when a causal connection can be established between the onset of the disease and some exposure in the workplace, particularly for healthcare professionals. In this context, causal connection evidence in the form of expert medical testimony would be required to establish the link between the disease and the workplace. For healthcare workers, it appears the burden of proof will be lowered if it turns out that the spread of the disease "is substantially greater in that industry or occupation than it is in the general population." (Id.).

Given the early spread of the disease in the U.S., at a nursing home near Seattle, and the heightened risks of exposure to healthcare industry workers nationwide, it becomes clearer that a future PA Workers' Compensation claim – for a healthcare worker whose exposure occurred in the workplace – would likely be awarded in favor of the worker and/or surviving family members (in the event the worker dies from the disease). The Court's basis/justification for such an award would likely be based on this premise that the spread of the disease is "substantially greater in that industry or occupation than it is in the general population." Now, an employer could likely "rebut the presumption" of a compensable claim by offering proof that the disease has not spread through the workplace in any form, or by offering evidence to create another causal connection link (evidence that the employee traveled to places where the disease has spread, or the employee was exposed to the disease at home or elsewhere in the community).

Looking at a basic "incident" analysis, and a claimant's burden of proving contact and exposure, there is some precedent in PA for an award of Workers' Compensation benefits to a worker who contracted a rare disease as a result of exposure via workplace contact. 30 years ago, the PA Commonwealth Court awarded benefits to the family of a City of New Castle Public Works Department employee who died from exposure to meningococcal septicemia that was determined to have been contracted at an office party. In *City of New Castle v. W.C.A.B. (Sallie)*, 546 A.2d 132 (Pa. Commw. Ct. 1988), the Commonwealth Court upheld a determination that a fatal Workers' Compensation claim was compensable where a causal link between onset of the disease, and exposure at work, was established.

In *Sallie*, the Court relied on the medical expert testimony from two infectious disease specialist physicians who provided emergency medical care to the Claimant/decedent during the short period between onset of symptoms and death. In reviewing the expert medical testimony, the Commonwealth Court utilized the PA standard that, "in Workers' Compensation cases in which there is no obvious causal connection between a claimant's condition and a work injury, unequivocal medical testimony must be produced to establish that connection; the testimony of the expert must be considered as a whole, and complete medical certainty is not required." (Id. at 135). In *Sallie*, the testimony of the medical experts, combined with eyewitness testimony regarding the Claimant/decedent's exposure, was sufficient to affirm the award of survivor death benefits to Mr. Sallie's family. It is worth noting that the eyewitness testimony, from co-workers, was determined to prove that Mr. Sallie contracted the disease from giving a co-worker a farewell kiss on the cheek at a maternity leave office party. The medical expert testimony established the connection between that kiss, and the onset of the disease that ultimately killed Mr. Sallie.

The *Sallie* case illustrates the point that COVID-19 Workers' Compensation claims, based on workplace exposure, will only require evidence of causal connection. Combining the Court's analysis in *Sallie*, with the basic framework of occupational disease claims in PA, there is a high likelihood that PA Courts would award Workers' Compensation benefits to individuals who contract COVID-19 from workplace exposure, regardless of whether the worker is a healthcare professional.

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