

Coronavirus – Workers’ Compensation Concerns for Employers

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Over the past two weeks of non-stop news coverage, featuring medical expert reports on the spread of the coronavirus, we have all learned the risks associated with human contact, and contact with things upon which the virus can live for hours or days. On a personal level, this global health crisis has seemingly turned every door handle, gas pump and grocery cart into an ominous threat of potentially fatal consequence. According to infectious disease experts, the latency period associated with exposure to the virus is at least 14 days. So, we have found ourselves retracing our steps – thinking of whom we’ve interacted with, places we have gone, and even things we have touched. None of the experts can tell us when this will end. With the number of cases in the U.S. expected to peak sometime in April, and to perhaps spike again next winter (before a vaccine is available), employers – regardless of what sector or industry – must be prepared for the **likelihood** of defending Workers’ Compensation claims from employees who are infected.

Pennsylvania has some of the most employee-friendly Workers’ Compensation laws in America. This includes provisions of the Workers’ Compensation Act that are designed to provide compensation for employees who contract “occupational disease.” But, before coronavirus, there was a clear delineation between “compensable” occupational disease, and temporary but common illnesses. Black lung disease for coal miners, and communicable diseases contracted by healthcare professionals, are compensable by law. Seasonal illnesses like the common cold, even the flu, spread among office workers, are not.

Early indications strongly suggest that COVID-19 is going to fall into the category of compensable, occupational disease. Beginning earlier this month, the PA Bureau of Workers’ Compensation website already has a page devoted to COVID-19 claims – and a basic blueprint for claims associated with the disease. There is some precedent for this approach. Thirty 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 when he gave a kiss on the cheek to a co-worker, who was infected, at an office party. In *City of New Castle v. W.C.A.B. (Sallie)*, 546 A.2d 132 (Pa. Commw. Ct. 1988), the Court decided that this fatal Workers’ Compensation claim was compensable because a clear causal link between onset of the disease, and exposure at work, was established.

For COVID-19, it appears the door is open to claims for wage loss, medical care – and, when applicable, claims for death benefits by the widowed spouses of workers who succumb to the disease following exposure at work. Death benefits in PA include ongoing wage loss payments to surviving spouses for the duration of their lifetime (provided they do not remarry or cohabitate with a significant other). If the family has school-aged children, the “survivor benefits” are increased.

As we are learning, the fatality rate for COVID-19 thus far is less than 5%. For the other 95% of individuals who are infected, many experience mild or no symptoms. Regardless, any positive test will require an extended period of time off work – up to 14 days, or more. That period of wage loss, and any/all medical bills for care related to infection as a result of exposure at work, is compensable through Workers’ Compensation. For the few who succumb to the infection, their surviving spouse will have a viable claim for recovery of Workers’ Compensation wage loss benefits based on the lifetime earnings of the deceased.

For example, a self-insured employer has a salesperson who earns \$70,000/yr. – and that person contracts coronavirus through some exposure in the workplace (including travel to/from a meeting), and dies from the disease. In that scenario, the employer would be facing the prospect of paying the employee’s surviving spouse \$47,000/yr. for the rest of the

spouse's life. It makes no difference whether the employee had a pre-existing condition such as diabetes or high blood pressure, that experts indicate can increase the likelihood of fatality. If the causal connection is established, the claim is compensable.

So, what should an employer do when an employee reports a positive test for COVID-19? It is critical for employers to gather as much information as possible regarding an employee's whereabouts in/out of the workplace, for a look back period of at least two weeks from the date of the positive test. Preventing the spread of the virus, protecting co-workers, family members and the general public, obviously takes priority over "gathering evidence" to defend a Workers' Comp claim – but ultimately, that information, gathered in the first day or two of investigating the claim, will prove to be the determining factor in whether a claim is deemed compensable.

For more information on this topic, or questions regarding preparedness for employers, please call or email Ken Scholtz (412) 445-3563(c),