

WORKERS' COMPENSATION IMPLICATIONS FOR CORONAVIRUS IN TENNESSEE

THE COMPENSABILITY OF A WORKERS' COMPENSATION CLAIM AS A RESULT OF CORONAVIRUS.

With the spread of coronavirus to Tennessee, there are many implications for businesses well beyond the scope of Workers' Compensation. However, one of the most common areas of concern has been whether an employer would have liability under workers' compensation if an employee contracts Coronavirus at work.

The Tennessee Workers' Compensation Act defines an "injury" to include an occupational disease arising out of and in the course and scope of employment that causes the need for medical treatment, provided that it is identifiable by a specific incident or series of incidents which are identifiable by time and place of occurrence and must be shown to a reasonable degree of medical certainty as long as it is shown by a preponderance of the evidence or greater than 50% that the work environment contributed more than 50% in causing the injury, considering all causes. *See* T.C.A. 50-6-102(14).

Coronavirus has no known cases that have been defined under workers' compensation in Tennessee or anywhere else at this time. Since Coronavirus is currently spreading via communal health, it will be difficult, if not impossible, to be able to pinpoint the point of transmission for Coronavirus. Cases of traveling employees and those that work directly in the healthcare industry may be treated differently. Since we do not generally see claims for transmission of the disease such as the flu being treated as compensable in Tennessee, Coronavirus cases will be ones of first impression in Tennessee. In the event a claim is made, an employer should treat it as any other claim and immediately file a First Report of Work Injury and allow for their insurance and claims professionals to get involved and handle it according to claim handling standards.

If an employee does seek worker's compensation benefits for Coronavirus and it is deemed to be an occupational disease, the employee must establish that he gave sufficient notice to the employer within thirty (30) days after the first distinct manifestation of the occupational disease. *See* T.C.A. 50-6-305(a). Notice can be tolled if an employee is reasonably unaware that the condition is work-related. Further, the statute of limitations in an occupational disease case begins to run as of the date of incapacity for work resulting from the disease. It is critical to note that a claim for Coronavirus will necessarily be treated somewhat different than the typical acute back strain.

COURT OF WORKERS' COMPENSATION CLAIMS

On March 16, 2020, Chief Judge Kenneth M. Switzer of the Court of Workers' Compensation Claims issued a plan of action for expedited compensation hearings, mediations, and Appeals Board hearings, along with settlements for the near future. Beginning March 23, 2020, all settlements will be scheduled to be approved via telephone. During this temporary action, the requirement of a notarized affidavit from the employee is waived and electronic signatures will be found to be acceptable. Expedited Hearings and Final Compensation Hearings will be maintained to take place in present at the current time with only the parties and attorneys being present for the hearings. Mediations will continue to be scheduled at the Mediator's discretion as to whether or not the mediation will be done in person or by telephone. Current Appeals Boards arguments will be taking place telephonically.

All Court fees will be paid via credit card authorization.

Many of the State employees have the ability to work remotely or work from home and have begun that process. The Court of Workers' Compensation Claims is continuing to update their processes for all of their functions, as those functions are matters of urgency.