



## Is COVID-19 considered a Workers' Compensation issue if one of my employees contracts the disease?

Our workers' compensation act does not provide benefits for contagious diseases. Therefore, most claims would not be compensable under the South Carolina Workers' Compensation Act. However, medical providers may have a claim for benefits for an occupational disease claim. These claims are very fact specific and would be decided on a case by case basis.

To prevail on an occupational disease claim, an injured worker must show that he/she suffers from a disease that (1) the worker was exposed to in the course and scope of his/her employment; (2) that exposure is a result of hazards in excess of those incident to the employment and (3) is specific or peculiar to the workers' job. However, this type of claim specifically excludes exposures that occur outside of South Carolina, occur due to exposure to outside climatic conditions, and contagious diseases that are spread between co-workers.

In occupational disease cases, our courts will look to determine how closely related the exposure to COVID-19 is compared to the employee's workplace and duties. Also, the courts are going to have to address whether a workplace exposure is peculiar to the type of job and workplace environment. Using healthcare workers as an example, a receptionist may have a less convincing case than an intensive care nurse or ER physician.

As you can see, you can make arguments either way for this type of claim. Ultimately, the answer to this question will be determined on a case-by-case basis after an extremely fact intensive analysis of the medical records and work environment but also the personal life of someone who seeks to recover workers' compensation benefits for COVID-19 exposure.

Some states have already tried to direct their legislatures to draft new legislation to cover COVID-19 under the state workers' compensation laws. Thus far, South Carolina has not taken any legislative action.

## If an employee thinks he or she might have early symptoms of COVID-19 or even tests positive, what are my obligations as an employer?

I recommend following the CDC guidance on this issue. In doing so, you must make sure that you maintain the integrity and privacy of your workers and workplace. The CDC recommends that someone with symptoms should avoid the workplace. Additionally, the Equal Employment Opportunity Commission has indicated that asking workers who show symptoms to leave is permissible. The CDC also recommends sending home co-workers for 14 days if they were in close contact with someone who has COVID-19.

## What can I do now to honor my worker's rights but also defend a possible compensation claim resulting from an employee's claim for benefits from COVID-19?

From a defense perspective, we always encourage employers to investigate the claim. We recommend taking witness statements, conducting a site or workplace visit, and monitoring surveillance footage. Make sure that you do those tasks as quickly and as detailed as possible. Whether the claim is denied or admitted, we encourage employers to gather personnel file materials, job descriptions, wages, and other documents since those are very important in assessing exposure. Given that a case involving COVID-19 is fact dependent, the more thorough the investigation the better.

A key factor in whether a COVID-19 exposure will be a compensable work-related injury will depend on whether the employee can prove causation. In other words, the employee

must show that he/she was exposed to and contracted COVID-19 at work. Employees now may have an easier time establishing causation since people aren't going places outside of work.

Another important factor that courts will consider is how employers respond to an employee who tests positive. Employers will want to ensure that they follow CDC and other guidance to protect their employees and maintain the integrity of the work environment. In the case of a workers' compensation claim for COVID-19, an employer who takes precautions and follows appropriate guidance after an exposure will look more favorable to our Workers' Compensation Commissioners than employers who do not.

Unless it's a healthcare worker, the best alternative for employees is to pursue care under their own private health insurance. Based upon our workers' compensation laws, most employees will not have a claim for COVID-19 exposure. In those cases, employers want to avoid starting temporary compensation benefits. The employee may be entitled to unemployment benefits, not workers' compensation benefits.

## What should I do after a claim has been submitted to make sure I am in compliance and can answer any legal questions during and after?

The most important thing to do is initial reporting, especially for employers who are self-insured. Generally, the first task to complete is filling out an initial report of injury, often referred to as a Form 12A. This is an important form for not only your files but also anyone else involved in the claim because it has a lot of useful information.

Once you're dealing with an active claim, the most important step is to monitor the worker's medical treatment, specifically his/her work restrictions. If you've got an employee who has restrictions, I would make certain that employee is staying within those restrictions. We often see injured workers suffer re-injuries or new injuries when they come back to work and do too much too fast. In the case of COVID-19, the biggest concern is someone coming back to soon and spreading the virus to other employees. For cases related to COVID-19, you want to make sure that symptomatic employees remain out of work until they recover fully.

Lastly, stay in touch with your insurance carrier and defense attorney. Sometimes the best information we get is from supervisors and co-workers, but we often don't get enough interaction with those folks. We really value an employer's input in developing and executing our defense strategy. I've had several cases where the employer's input helped us resolve an issue or even the entire claim.

## What medical treatment or benefits are employers required to provide under the South Carolina Workers' Compensation Act claim?

Depending on the nature of the injury, an employer generally must provide a combination of temporary compensation benefits, medical treatment, and permanent disability benefits. Not every claim requires temporary compensation benefits. The purpose of temporary compensation benefits is to provide wages to an employee who is unable to work due to a work-related injury. We focus on day seven and day fourteen. Temporary compensation benefits are triggered when an employee misses seven days of work. The seven days do not have to be consecutive.

Once you hit seven days, you need to start paying temporary compensation benefits. After you reach the fourteenth day, you're responsible for the initial seven-day waiting period.

Medical benefits, especially in the context of COVID-19, might be the most important aspect or benefit involved in a workers' compensation claim. Medical treatment moves a claim forward, and it is often a great indicator of the overall value of a claim.

The law requires that an employer provide medical care that will tend to lessen the period of disability. In terms of COVID-19, the nature, extent, and duration of medical

treatment is unknown. However, treatment for COVID-19 might include costly treatment, including specialty physicians, extensive therapies and monitoring, and designer medications. Treatment for COVID-19 might also take longer than other comparable diseases, which is going to add more costs to the medical care.

Permanent disability is usually the last benefit that we consider because it is paid out at the end of a claim. This benefit is meant to compensate an injured worker for the work-related accident and the lasting impairment resulting from that accident. Our state allows for several different types of permanent disability for losses to a single body part, the whole person, loss of earning capacity, and others. In the case of COVID-19, the most likely permanent impairment would be damage to the lungs or another organ and a claim that involves a fatality. Each body part, including internal organs, is worth a set number of weeks of benefits. A fatality claim is worth up to 500 weeks of benefits.

## If an employee already has a workers' compensation injury unrelated to COVID-19, how will contracting COVID-19 impact the employee's treatment, recovery and return to work?

I think the biggest impact is time. For someone who is already treating for a work-related injury, that employee is going to encounter a lot of delays. This probably includes delays in getting treatment and returning to work. From an employer perspective, you always want to return someone to work as soon as possible after a work-related accident. However, you don't want to introduce someone into your work environment who is suffering from COVID-19. Therefore, a worker with COVID-19 will likely be held out of work for a longer period even if they might be ready to come back from their work-related accident. In those cases, you'll have to extend temporary compensation benefits while that worker remains out of work.

From a medical care perspective, I think the biggest impact for a worker with an ongoing claim relates his or her access to care. We've already seen a lot of providers stop seeing non-emergent patients, which includes outpatient surgeries, follow-up visits, physical therapy sessions, which is the bulk of the medical care involved in a workers' compensation claim. For someone who also suffers from COVID-19, I would expect that several, if not all providers, would ask that individual to avoid contact and interaction with others. This probably would include going to medical visits for workers' compensation claims. Ultimately, a COVID-19 infection will likely prohibit a worker from progressing as quickly.

Overall, COVID-19 has already had a big impact on all our environments and the workers' compensation world is no different. We've had to change our approach to claims in the last few weeks with this issue. Our firm has tried to find ways to be creative and stay head of the issues as they come up, and I feel like that approach has really helped us address the everchanging nature of this crisis.



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