



COVID-19 and Workers' Compensation Claims

Ohio Law's Requirements

Can an employee make a workers' compensation claim for benefits for contracting COVID-19?

According to the Ohio Bureau of Workers' Compensation, whether an employee can make a claim for workers' compensation "[...] depends on how [the employee] contract[s] it and the nature of [the] occupation." Because people are exposed in a variety of ways and few jobs have a "hazard or risk" of getting the disease that is greater than the public in general, communicable diseases (like the COVID-19 virus) are not typically workers' compensation claims. However, the Ohio BWC indicated that it may allow a claim where the job poses a "special hazard or risk" to contract COVID-19.

Think health care workers and first responders. Still, because COVID-19 infections are widespread throughout the general public, it will be difficult to link the infection to employment.

Workers' Compensation Law in Ohio

Ohio law requires a "causal relationship" between the medical condition and employment. Ohio courts, such as the court in *Werden v. Ohio Bureau Of Workers' Compensation*, have used a three-part test to determine whether a sufficient causal relationship exists between an injury and employment for the purposes of workers' compensation:

- The proximity of the scene of the accident to the place of employment,
- The degree of control the employer had over the scene of the accident and
- The benefit the employer received from the injured employee's presence at the scene of the accident.

The court in *Werden* further noted, "[i]f a claimant fails under the three-part test to determine whether a sufficient causal relationship exists between an injury and employment, for purposes of workers' compensation, he may still prevail if under the totality of the circumstances he demonstrates a sufficient causal connection between injury and employment."

This "casual relationship" is necessary for any workers' compensation claim but may be particularly difficult for a worker infected with COVID-19 because the employee must prove that he or she contracted the virus while acting within the course and scope of employment. Under Ohio law, the burden is on the employee to prove the claim, including eliminating other sources for the condition. Each case, even those in which an employee can demonstrate a "special hazard or risk," will necessarily be evaluated on a case-by-case basis.

State Response

Despite prior virus outbreaks such as SARS, H1N1, Ebola and Zika, the National Council on Compensation Insurance stated, "[y]ou would be hard pressed to find meaningful information on how or even if the workers' compensation system was effected." Moreover, because workers' compensation benefits are regulated state-by-state, outcomes may vary. At least two states have taken steps to guarantee some benefits for health care workers and first responders.



Kentucky Employers Mutual Insurance Co. announced Friday that, effective immediately, it will pay wage-replacement benefits for any first responder or employee in the medical field who is quarantined because of direct exposure to a person diagnosed with COVID-19. KEMI's announcement follows a decision on March 5 by the Washington State Department of Labor and Industries to pay wage-loss and medical treatment expenses for any health care worker or first responder who is quarantined because of coronavirus exposure. It is possible other states will take similar action.

What to do if an Employee Has Been Exposed?

First and foremost, the employee should be instructed to remain at home and not come to work. The employee should be advised to contact their health care professional if they have developed symptoms or have been in close contact with a person known to have COVID-19, or if the employee has recently traveled from an area with widespread or ongoing community spread of COVID-19. Finally, if the employee reasonably believes the COVID-19 exposure could be work related, an employer should report the claim to its workers' compensation insurer.

Importantly, employers should exercise caution before taking an adverse employment action against an employee for contracting the virus or exercising labor rights such as using paid sick leave or making a workers' compensation claim. Such actions may give rise to potential employer liability, attract unwanted public attention and negatively impact an employer's goodwill.

Should you have any questions about your workers' compensation insurance or a pending claim related to COVID-19, contact your legal advisors.



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