



STATE OF ALABAMA WORKERS' COMPENSATION COVID-19 QUICK GUIDE

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GENERAL PROVISIONS

When must an Employer's First Report of injury be filed?

Within 15 days after the employer receives notice of the injury. Ala. Code § 25-5-4.

What is the statute of limitations for the filing of an Employee's Claim form?

There is not a statute of limitations for filing an Employee's Claim form. Rather, the employee has a statute of limitations for filing a lawsuit. The statute of limitations is different for injuries that result from an accident and injuries that result from cumulative trauma:

- For injuries that result from an accident, the statute of limitations expires two years from the date of the accident unless TTD is paid. If TTD is paid, the statute of limitations expires two years from the date of the last payment.
- In cumulative trauma cases, the statute of limitations expires two years from the date of the employee's last exposure to the job duties that caused the injury unless TTD is paid. If TTD is paid, the statute of limitations expires two years from the date of the last payment.

When must an Employer/Insurer file contesting issues?

If compensation has already been paid, the employer must file a supplementary report within 10 days of terminating compensation for any reason. If compensation has not been paid within 30 days after the employer receives notice of a claim, the employer must file a report within 10 days of the expiration of the 30-day period and set out the reason for such nonpayment. § 25-5-7.

COMPENSABILITY

Could COVID-19 be compensable as an occupational disease?

To prove compensability of an occupational disease, the disease must: (1) arise out of and in the course of the employee's employment; (2) be due to hazards in excess of those ordinarily incident to employment in general; and (3) be peculiar to the occupation in which the employee is engaged.

The question has not been addressed by Alabama courts, and arguments can be made for both sides. We believe the issue will depend on how close the employee is to the front lines of COVID-19 given that the disease is highly contagious and can be contracted anywhere. For example, a nurse probably has a better chance of proving that COVID-19 is compensable as an occupational disease than someone who works in a typical office setting.

However, a disease has generally been defined as a serious disorder that has impaired the constitution or left in its wake some organic or chronic effort that has undermined an employee's general health. The Courts have likewise found that the term "disease" excludes temporary disorders that do not leave a chronic effect

on the employee's health. That said, COVID-19 could satisfy the definition of disease if an employee dies. Ultimately, the answer is going to depend on the facts of each case.

Could COVID-19 be compensable as an accidental injury?

That seems unlikely. It would be difficult for an employee to prove that contracting of a disease satisfies the definition of an accident under the Act.

If a person contracted COVID-19 while traveling on business, would that result in a compensable claim?

Again, the answer will depend on the facts of each case and whether the employee can satisfy his or her burden of proof for legal and medical causation, which will likely be governed by the standard for an occupational disease. We believe the primary question is how close the employee is to the front lines of COVID-19. On its face, it would appear that an employee who is required to travel would be closer to the front lines by way of increased exposure from traveling, however, the means of travel would also be relevant. For example, traveling by airplane or other means of public transport would appear to make it more likely that the employee can prove compensability than traveling by car. Likewise, staying in a hotel probably would make it more likely that the claim is compensable than travel that does not require staying overnight.

If a person is injured while teleworking, would those injuries be compensable?

In a case where an employee is injured by an accident that occurs at home, the question is whether the accident occurred during and arose out of the employment. The answer depends on what the employee was doing. For example, if the employee was lifting boxes of files for work, the injury probably would be compensable. If the employee was injured as a result of conditions that exist in their home which are completely unrelated to work, the injury probably would not be compensable.

Are psychiatric claims compensable for a person that has actually contracted COVID-19?

A mental injury is not compensable unless it is proximately caused by a physical injury to the body. In the case of COVID-19, there would not be a physical injury to the body. However, the Act also states that an injury "shall not include a disease of any form, *except for an occupational disease.*" This implies that it is possible for a psychiatric claim to be compensable if it is proximately caused by COVID-19.

If a person were merely fearful of contracting COVID-19 at work, could the person have a valid psychiatric claim?

The simple answer is no. A mental injury is not compensable unless it is proximately caused by a physical injury to the body. Even assuming COVID-19 constitutes a physical injury, in this situation, the employee does not yet have an injury. Rather, the employee has a mere fear of an injury.

BENEFITS

If an employee is forced to quarantine as a result of a possible exposure at work, must TTD benefits be paid?

No. The issue of whether COVID-19 itself is compensable aside, the employee still must prove a compensable injury to recover TTD benefits. In this situation, the employee does not yet have an injury.

If COVID-19 were to be found compensable, what benefits might be due?

If COVID-19 were to be found compensable, the employee would be entitled to all benefits an employee is entitled to for any other compensable injury under the Act.

Must an employer/insurer pay for medical testing to rule out COVID-19?

If the employee is positive for COVID-19 and the claim is later deemed compensable, the employer might have to reimburse the cost of testing. In general, the employer is responsible for medical expenses that accrue during the first five days after an injury even if the employee did not seek prior authorization for the treatment. If the employee does not provide notice within five days of the injury, the employer is not required to reimburse medical expenses that accrue between the date of the accident and the date notice is actually provided.

May an employer/insurer make voluntary medical payments without prejudice?

Yes. Payment of medical expenses is not an admission of liability.

If an employee is working on light duty as a result of a workers' compensation claim and there is a layoff due to the economic downturn or government-mandated closure, is the employee entitled to TTD?

The answer is most likely yes. This is similar to a situation where the employer cannot accommodate an employee's permanent restrictions. If work is not available that fits the employee's restrictions and the employee is terminated, the employee is entitled to TTD benefits.

May an employer terminate medical benefits due to non-compliance with treatment as a result of fear of going to a health care provider during the pandemic?

The Act does not explicitly provide the employer with a right to terminate medical benefits based on non-compliance with treatment. If the employee's non-compliance with treatment worsened the injury, the employer might be able to argue that future benefits are not owed if the employee's non-compliance was unreasonable. On the other hand, the Act does explicitly state that an employer may terminate temporary indemnity benefits during a period of non-compliance *unless* the employee's reason for non-compliance is reasonable. The key question is whether the non-compliance is reasonable. A court could easily find that it is reasonable for someone who does not have the virus to fear going to a health care provider based on

concern of contracting the virus, but with every case, the answer depends on the surrounding circumstances, such as the nature of the injury and treatment at issue.

AREAS OF INQUIRY DURING COVID-19 INVESTIGATIONS

- Employee's job duties/length of employment
- Employee's symptoms/diagnosis/treatment/test results
- Employee's allegation regarding exposure (i.e., have co-workers/vendors/clients/patients tested positively?)
- Other possible sources of exposure (i.e., roommates/family/friends?)
- Recent travel (personal and/or business) – what/when/where/for how long/purpose
- Secondary employment
- Use of mass transit/public transportation/carpools
- Hobbies/recent events prior to diagnosis (e.g., concerts/sporting events/rallies)
- Social media activity
- Medical canvasses
- Experts (e.g., epidemiologists/infectious disease specialists/industrial hygienists)
- Results of governmental investigations (OSHA/CDC/local health authorities)
- Employer precautions (e.g., did the employer follow CDC guidelines, what other measures did employer take to prevent spread?)

HELPFUL LINKS

- [CDC Workplace Guidance](#)
- [Centers for Disease Control and Prevention – COVID-19](#)
- [EEOC's COVID-19 Page](#)
- <https://www.carrallison.com/carr-allison-update-on-covid-19-pandemic/>
- <https://www.carrallison.com/covid-19-response-team-and-resources/>
- [OSHA's COVID-19 Page](#)
- [OSHA's Guidance on Preparing Workplaces for COVID-19](#)
- [World Health Organization COVID-19 Updates](#)

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