



# STATE OF COLORADO WORKERS' COMPENSATION COVID-19 QUICK GUIDE

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## GENERAL PROVISIONS

**When must an Employer's First Report of injury to be filed?** An Employer's First Report of injury must be filed within 10 days, no matter how minor the injury.

**What is the statute of limitations for the filing of an Employee's Claim form?** Two years.

**When must an Employer/Insurer file contesting issues?** An employer or insurer must admit or contest an occupational injury or death claim within 20 days after notice or knowledge of an alleged compensable claim.

## COMPENSABILITY

**Under Colorado law, could COVID-19 be compensable as an occupational disease?** Possibly. Under § 8-40-201 of the Colorado Worker's Compensation Act, an occupational disease is one which "results directly from the employment or the conditions under which work was performed, which can be seen to have followed as a natural incident of the work and as a result of the exposure occasioned by the nature of the employment, and which can be fairly traced to the employment as a proximate cause and which does not come from a hazard to which the worker would have been equally exposed outside of the employment." An "occupational disease might be said to 'occur' when the worker is injuriously exposed to the disease, when the disease is first diagnosed, when symptoms first appear, or when the disease becomes disabling . . ." *Union Carbide Corp. v. Indus. Claim Appeals Office of State of Colorado*, 128 P.3d 319, 321 (Colo. App. 2005) (internal citations and quotations omitted). Thus, COVID-19 could potentially be compensable as an occupational injury if it was determined that it the elements of the statute are met.

**Could COVID-19 be compensable as an accidental injury?** Possibly. Under § 8-40-201 of the Colorado Worker's Compensation Act, an "'Accident' means an unforeseen event occurring without the will or design of the person whose mere act causes it; an unexpected, unusual, or undesigned occurrence; or the effect of an unknown cause or, the cause, being known, an unprecedented consequence of it." The main determination would be whether an employee who contracts COVID-19 does so arising out of and during the course of his or her employment.

**If a person contracted COVID-19 while traveling on business, would that result in a compensable claim?** Possibly. Generally, a claimant who is injured while going to or coming from work does not qualify for recovery because such travel is not considered to be performance of services arising out of and in the course of employment. However, courts look to certain factors for exceptions, including: (1) whether the travel occurred during working hours, (2) whether the travel occurred on or off the employer's premises, (3) whether the travel was contemplated by the employment contract, and (4) whether the obligations or conditions of employment created a "zone of special danger" out of which the injury arose.

**If a person is injured while teleworking, would those injuries be compensable?** Likely yes, so long as the injuries arose within the course of his or her employment, proven when the injury occurred within the time and place limits of the employment relation and during an activity that had some connection with the employee's job-related functions.

**Are psychiatric claims compensable for a person that has actually contracted COVID-19?** Possibly. A claim may be compensable if the emotional or mental stress which is the basis of the claim has arisen primarily from the claimant's occupation and place of employment.

**If a person were merely fearful of contracting COVID-19 at work, could the person have a valid psychiatric claim?** Likely not, as a claim of mental impairment cannot be based, in whole or in part, upon facts and circumstances that are common to all fields of employment. Currently the fear of contracting COVID-19 is likely common to all fields of employment.

## **BENEFITS**

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

No. Preventative measures such as quarantines are not compensable under Colorado Worker's Compensation Act. However, the Colorado Health Emergency Leave with Pay ("Colorado HELP") Rules, effective as amended on April 27, 2020, require employers across a range of industries to provide up to two weeks paid sick leave at two-thirds of the employee's normal pay for any employee under instructions from a health care provider or government official to quarantine due to risk of COVID-19 infection. The emergency rules remain in effect for the longer of: (a) 30 days from the date of adoption; or (b) the duration of the State of Disaster Emergency declared by the Governor, up to a maximum of 120 days from adoption.

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

An employee with a compensable COVID-19 condition would be entitled to medical benefits and temporary disability benefits (either total or partial depending on whether the employee may return to regular work). The employee could also be entitled to permanent partial or total disability benefits in the event the COVID-19 condition results in permanent impairment.

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

Generally, no. An employer or insurer is not required under Colorado Worker's Compensation Act to pay for preventative measures, such as testing, before a compensable injury has occurred. However, if an employee is exposed to COVID-19 as the result of an accident in the workplace, testing may be compensable.

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

Yes, an employer or insurer may make voluntary medical payments without prejudicing its rights to otherwise deny the claim.

**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?**

Likely yes. The key fact is that the employee lost their light duty position through no fault of his own. See *Schlage Lock v. Lahr*, 870 P.2d 615 (Colo. App. 1993); *Lunsford v. Sawatsky*, 780 P.2d 76, 78 (Colo. App. 1989). If the partial disability which resulted in the light duty role impairs the employee's opportunities for employment on the open labor market after being laid off, the employee would likely be entitled to TTD.

### **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?**

Likely not. A claimant's failure to appear at consecutive medical appointments provides grounds to suspend payment of temporary disability benefits if the conditions of C.R.S. § 8-42-105(2)(c) are met. C.R.S. 8-43-404(3) also authorizes suspension of compensation for refusal to submit to medical examination. In these circumstances, termination of benefits may be sought under C.R.S. § 8-43-207(1)(n) for failure to prosecute. However, fear of infection by a highly contagious disease during a pandemic is likely to qualify as "good cause shown" under C.R.S. § 8-43-207(1)(n), rendering termination of benefits inappropriate.

### **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](#)
- [Colorado Dept. of Labor and Employment: COVID-19 Updates](#)
- [Colorado HELP Rules \(Adopted and Effective April 27, 2020\)](#)
- [OSHA's COVID-19 Page](#)
- [OSHA's Guidance on Preparing Workplaces for COVID-19](#)
- [World Health Organization COVID-19 Updates](#)

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