



STATE OF DELAWARE WORKERS' COMPENSATION COVID-19 QUICK GUIDE

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GENERAL PROVISIONS

When must an Employer's First Report of injury to be filed? Within 10 days after knowledge of the occurrence of an accident resulting in personal injury, a report shall be filed pursuant to 19 Del. C. §2313. This provision of the statute would likely apply if an employer is informed that an employee has tested positive for Covid-19 and has been advised to quarantine and not return to work.

What is the statute of limitations for the filing of an Employee's Claim form? Two (2) years from the date of injury for a work-related injury. There is a notice requirement that provides that an employee must provide notice of a claim to the employer in 90 days and failure to do so will result in disqualification for benefits until notice is provided to the employer. For a compensable occupational disease, the statute of limitations is one year from the time the claimant had knowledge that his disease was triggered by his employment.

When must an Employer/Insurer file contesting issues? Within 15 days of receipt of the First Report of Injury. In a compensable case, the Employer/Insurer must either pay or deny medical expenses within 30 days of receipt of the medical bills with supporting documentation.

COMPENSABILITY

Under Delaware law, could COVID-19 be compensable as an occupational disease? Highly unlikely. Under 19 Del. C. §2301 of the Delaware Worker's Compensation Act, a compensable occupational disease must arise out of the employment and the exposure must occur in the course and scope of the employment, i.e. but for the disease-causing agent in the work place, there would be no disease. A compensable occupational disease is one resulting from the peculiar nature of the employment, i.e. from working conditions which produce the disease as a natural incident of the particular occupation, attaching to that occupation a hazard different from, and in excess of, the hazards attending employment in general. As such, COVID-19 should not qualify as an occupational disease in Delaware since the infection/disease likely did not arise out of the employment or occur in the course and scope of employment, except where an employee's job made the likelihood of exposure significantly higher, just as health care workers and first responders.

Could COVID-19 be compensable as an accidental injury? Possibly. An accident is defined as an occurrence which proceeds from an unknown cause or which is an unusual effect of a known cause and therefore unexpected and unforeseen. It is defined as an event happening at a certain time or place or fixed by a certain circumstance. Such an injury must arise out of and in the course of employment. If COVID-19 is contracted while an employee is engaged in work-related activities, the condition may be compensable. The key issue, as with a majority of states, is causation. The employee must be able to prove by substantial evidence that there is a causal nexus between the employment and the condition, otherwise the claim is not compensable. Since COVID-19 is now widespread amongst the general population, causation will be a difficult hurdle for employees to prove in most cases. However, there are certain professions, e.g. health care providers, caregivers, first responders, or employees handling materials known to have come from areas with high levels of infection, where the likelihood of contracting the virus is significantly higher than the average worker. Therefore, claims by those workers are more likely to be

found to be compensable. Similarly, if an employee has been exposed to a co-worker, patient, or another known carrier of COVID-19, the chances of compensability are markedly higher. The Act will be liberally construed in favor of the claimant.

If a person contracted COVID-19 while traveling on business, would that result in a compensable claim? A compensated trip business trip is considered within the course and scope of employment and Delaware courts would likely find that if the exposure was causally linked to that travel, there is a compensable claim. Again, the employee has the burden to prove that the exposure was specifically linked to the travel and that the travel put the employee as a greater risk than the general public.

If a person is injured while teleworking, would those injuries be compensable? If the employer instructed the employee to work from home and controlled how the employee worked i.e. set the hours, provided the computer/software and directed how the work was to be done, an injury while teleworking could be compensable. As set forth above the employee would still have to prove a causal link between the exposure to the virus and his employment related activities in the home.

Are psychiatric claims compensable for a person that has actually contracted COVID-19? Yes. If an employee has a compensable COVID-19 claim, psychological illnesses associated with COVID -19 can be compensable if a claimant can further establish with objective evidence that the psychological condition/illness was caused by contracting the virus. Delaware recognizes a compensable mental injury absent any physical trauma.

If a person were merely fearful of contracting COVID-19 at work, could the person have a valid psychiatric claim? Not likely. Given that the fear of COVID-19 is not unique to the work environment, a person's subjective fear of exposure is not likely to result in a compensable claim.

BENEFITS

If an employee is forced to quarantine as a result of a possible exposure at work, must TTD benefits be paid? No. Unless the employee can prove that he/she contracted COVID-19 during the course and scope of his/her employment resulting in disability, preventative measures such as quarantines would not be compensable.

If COVID-19 were to be found compensable, what benefits might be due? An employee would be entitled to temporary total disability (TTD); temporary partial disability (TPD); medical treatment and ; permanent partial disability (PPD) to the extent it can be proven that COVID-19 results in any permanent impairment to a body part, i.e. the lungs. There is also the possibility of a permanent impairment as a result of any psychiatric impairment. Vocational rehabilitation is not considered medical expenses and is not recoverable by a claimant. However, the Board may order vocational rehabilitation and refusal to attend by the claimant may result in forfeiture of benefits. A claimant who is successful in prosecuting a Petition to Determine Compensation Due or Additional Compensation Due is generally entitled to attorney's fees and medical witness fees.

Must an employer/insurer pay for medical testing to rule out COVID-19? Generally, no. An employer/insurer is only responsible for treatment once a compensable injury occurs. Preventative measures, such as testing, should not be owed under the Act.

May an employer/insurer make voluntary medical payments without prejudice? Yes, an employer/insurer may make voluntary medical payments without prejudicing its rights to otherwise deny the claim subject to the clear guidelines set forth in 19 Del. C. §2322(h).

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 no. TTD is available to an employee who is unable to work at all due to the injuries sustained in the work accident. A claimant that can RTW with restrictions may suffer a loss of earning capacity and receive Temporary Partial Disability (TPD) for up to 300 weeks. A carrier may use a vocational expert to conduct a Labor Market Survey to determine job availability within the claimant's restrictions and to estimate the wage loss in order to calculate the TPD rate.

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?

An employer/insurer may terminate medical benefits due to non-compliance with medical care. It is possible and even likely that the Board could find that a person's fear of attending treatment visits due to COVID-19 is justifiable depending on the timing of the treatment in relationship to the height of the pandemic. The Board would likely be sympathetic to an employee who refuses to attend a DME during the height of the pandemic as well.

Once an employee is on an open agreement for disability benefits, the disability continues until terminated by agreement or by Order of the Board. That would be true even if the employee is non-compliant with medical treatment during the pandemic. If an employer/insurer stops disability payments without having a Receipt signed by the claimant or without filing a Petition to Review (Terminate), the employer/insurer may be subject to penalties.

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](#)
- [Coronavirus.delaware.gov](https://www.coronavirus.delaware.gov)
- [Dia.delawareworks.com](https://www.dia.delawareworks.com)
- [Firststep.delaware.gov](https://www.firststep.delaware.gov)
- [DOL.delaware.gov](https://www.dol.delaware.gov)
- [OSHA's COVID-19 Page](#)
- [OSHA's Guidance on Preparing Workplaces for COVID-19](#)
- [World Health Organization COVID-19 Updates](#)

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