



STATE OF INDIANA WORKERS' COMPENSATION COVID-19 QUICK GUIDE

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GENERAL PROVISIONS

When must an Employer's First Report of injury to be filed? In Indiana, it is the duty of the employee to provide written notice of their injury to their employer. Within seven (7) days after the employer's knowledge of the injury, either actual, alleged, or reported under IC 22-3-3-1 that causes an employee's death or the need for medical care beyond first aid, a report concerning the injury shall be made in writing and mailed, or submitted electronically by the employer, to the employer's insurance carrier or, if the employer is self insured, the employer shall report the information using electronic data interchange standards prescribed by the worker's compensation board.

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? Disputes not resolved through the Informal Dispute Resolution process may only move forward if an Application for Adjustment of Claim (SF 29109) is filed. The case is then assigned to a Single Hearing Member of the Worker's Compensation Board for determination of all unresolved issues. The Application for Adjustment of Claim must be filed with the Board within two years of the date of injury.

COMPENSABILITY

Under Indiana law, could COVID-19 be compensable as an occupational disease? Yes. Under IC 22-3-7-10 COVID-19 might qualify as an "occupational disease". An occupational disease is defined as a disease arising out of and in the course of employment. Ordinary diseases of life to which the general public are exposed outside of the employment shall not be compensable, except where such diseases follow as an incident of an occupational disease. A disease arises out of the employment only if there is apparent to the rational mind, upon consideration of all circumstances, a direct causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment, and which can be fairly traced to the employment as the proximate cause, and which does not come from a hazard to which workers would have been equally exposed outside of the employment. The disease must be incidental to the character of the business and not independent of the relation of the employer and employee. The disease need not have been foreseen or expected but after its contraction it must appear to have its origin in a risk connected with the employment and to have flowed from that source as a rational consequence. As such, COVID-19 might qualify as an occupational disease in Indiana if the employee can demonstrate a work-related exposure.

Could COVID-19 be compensable as an accidental injury? Possibly. Accidental injuries must arise out of and in the course of employment. If COVID-19 is contracted while an employee is engaged in work activities, the condition may be compensable. The key issue, as with the majority of states, remains causation. If the employee is unable to prove that there is a causal nexus between the employment and the condition, the claim is not compensable. As COVID-19 is widespread amongst the general population, causation will be a difficult hurdle for employees to prove in most instances.

Having said that, the Indiana Workers' Compensation Board has issued the following statement in response to COVID-19:

Under our laws, the State cannot tell employers they must automatically cover employees who contract Covid-19. Whether an individual contracts the virus in the course and scope of their employment is a determination that must initially be made by the employer. This decision is routinely made at the time the employee notifies the employer of the injury, or in this case, contraction of the virus.

It is well accepted that first responders, as defined in P.L.113-2020, and health care providers, as defined at IC 16-18-2-163, as well as others directly involved in the provision of services to those exhibiting symptoms of Covid-19 are more susceptible to contraction of the disease as a direct result of their work duties. Others whose jobs necessarily entail close interaction with many people in a public setting are also more vulnerable to exposure and possible infection than those working remotely or in a limited office setting.

Employers are urged to consider making a prospective decision as to whether any vulnerable segment of their workforce will be presumptively covered under the provisions of the Indiana Worker's Compensation Act should they:

- a.) Be quarantined at the direction of the employer due to a confirmed or suspected Covid-19 exposure,
- b.) Receive a Covid-19 diagnosis from a physician without a test,
- c.) Receive a presumptive positive Covid-19 test, or
- d.) Receive a laboratory-confirmed Covid-19 diagnosis.

Based on the above, there is no presumption in Indiana that COVID-19 was contracted in the course of and arising out of employment, however, first responders and health care providers are considered to be more susceptible" to contraction of COVID-19. In addition, employees whose jobs necessarily entail close interaction with many people in a public setting are also "more vulnerable" to exposure and possible infection than those working remotely or in a limited office setting. Thus, it would appear the above types of employee claims for COVID-19 will be treated more liberally in determining compensability than employee claims who work remotely or in a limited office setting.

If a person contracted COVID-19 while traveling on business, would that result in a compensable claim? Possibly. The Indiana Workers Compensation Board will determine whether the contraction of COVID-19 by the employee arose out of and in the course of the business travel. If the business travel requires the employee to go into an area with a higher degree of risk or hazard of contracting COVID-19 and which does not come from a hazard to which workers would have been equally exposed outside of the employment then the contraction of COVID-19 would be determined to be compensable. The employee will still have the burden to prove they contracted the COVID-19 as a direct result of the business travel and that the business travel placed them at an increased risk of contraction of COVID-19 than the employee would have been equally exposed outside of the business travel.

If a person is injured while teleworking, would those injuries be compensable? Yes, so long as the injuries arose out of and in the course of employment, and the employee's home is regarded as a worksite. Factors used in that determination are: 1) the quantity and regularity of work performed at home; 2) the presence of work equipment at home; 3) the special circumstances of the employment rendering it necessary and not personally convenient to work at home; and, 4) whether the employer acquiesced to the employee's regular use of the home as a work site or reasonably should have known the employee was working from home.

Are psychiatric claims compensable for a person that has actually contracted COVID-19? Yes. If an employee has a compensable claim for their contraction of COVID-19, psychiatric claims are compensable if the psychiatric condition was caused by the employee's contraction of COVID-19.

If a person were merely fearful of contracting COVID-19 at work, could the person have a valid psychiatric claim? No. Given that the fear of COVID-19 is not unique to the work environment, a person's subjective fear of exposure is not 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 or she contracted COVID-19 at work requiring disability, preventive 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 benefits, medical treatment, permanent partial impairment benefits, and, potentially, dependency benefits. It is unknown to what extent COVID-19 will result in benefits, and, to the extent that there is psychiatric overlay, there exists the potential for additional benefits as a result of psychiatric impairment.

Must an employer/insurer pay for medical testing to rule out COVID-19? No. The employer is only responsible for payment of medical treatment once a compensable injury occurs. Preventive measures, such as testing, would not be the employer's responsibility.

May an employer/insurer make voluntary medical payments without prejudice? No.

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? Not necessarily. Indiana law allows for the termination of temporary total disability compensation if the employee is unable or unavailable to work for reasons unrelated to the industrial injury. If an economic layoff or government-mandated closure occurs, it can be argued the reason the employee is unable to work is due to reasons unrelated to the employee's industrial injury.

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? Yes. Indiana has not provided any special protection for injured worker's during the COVID-19 pandemic. In addition, temporary total disability compensation may be terminated if the injured worker has refused to undergo a medical examination and/or medical treatment scheduled by the employer. However, if the Workers' Compensation Board finds the circumstances justified the employee's refusal or obstruction with treatment or attendance at a medical examination scheduled by the employer then compensation may be found to be payable over this period of time.

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](#)
- [OSHA's COVID-19 Page](#)
- [OSHA's Guidance on Preparing Workplaces for COVID-19](#)
- [World Health Organization COVID-19 Updates](#)
- <https://www.in.gov/wcb/>

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