



STATE OF MICHIGAN WORKERS' COMPENSATION COVID-19 QUICK GUIDE

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GENERAL PROVISIONS

When must an Employer's First Report of injury to be filed? If an employee reports a disability and it appears the disability will last for more than one week, the Employer must immediately file an Employer's Basic Report of Injury with the Bureau of Workers' Disability Compensation.

What is the statute of limitations for the filing of an Employee's Claim form? Two years. MCL 418.381 states that "(1) [a] proceeding for compensation for an injury under this act shall not be maintained unless a claim for compensation for the injury, which claim may be either oral or in writing, has been made to the [E]mployer or a written claim has been made to the agency either electronically, as prescribed by the director, or on forms prescribed by the director, within two years after the occurrence of the injury."

When must an Employer/Insurer file contesting issues? If an Employer believes the employee's workers' compensation claim is invalid and benefits are denied, the employee can file an Application for Hearing. Once a copy of the Application is received, the Employer has 30 days to file a written response. If the Employer subsequently chooses to accept the claim, it may then file the Employer's Basic Report of Injury. However, if the Employer continues to dispute the claim, it must file Form 107, Notice of Dispute and Form WC-251, Carrier's Response.

COMPENSABILITY

Under Michigan law, could COVID-19 be compensable as an occupational disease? Yes. As a general principle of Michigan Workers' Compensation law, occupational disease (OD) claims typically refer to a disease or disability that is due to causes and conditions that are characteristic of and peculiar to the business of the Employer and that arise out of and in the course of the employment pursuant to MCL 418.401. Several Michigan court decisions have also addressed the issue. The most favorable case for the injured worker was *Gacioch v Stroh Brewery Co.*, 187 Mich 260 (1990).

In that case, the Court of Appeals ruled that "whether this disease was an occupational disease or an ordinary disease of life is irrelevant if the disease was aggravated, accelerated, or contributed to the by the employment, thereby resulting in disability."

A 2011 Amendment to the Michigan Workers Compensation Act expressly made occupational diseases compensable where work caused, aggravate, or contributed to medically distinguishable pathology. As such, COVID-19 may qualify as an occupational disease in Michigan, depending on the occupation.

On March 10, 2020, Michigan Governor Gretchen Whitmer declared a State of Emergency in response to the COVID-19 pandemic. Governor Whitmer determined that employees working in the health field, first responders, and those providing health services during this time are the most susceptible to the exposure to this virus she, in tandem with the Director of the Department of Labor and Economic Opportunity ("Director"), promulgated Emergency Rules ("Rules") to "provide guidance to employers, carriers, or employees on the treatment of exposure to COVID-19 with respect to workers' compensation coverage." These new Rules were enacted pursuant to the Agency Director's rulemaking

authority. Governor Whitmer concurred in the Director's Emergency Rules. Those Emergency Rules were filed with the Secretary of State on Wednesday, March 18, 2020, and "shall remain in effect for six months." Thereafter, they are potentially renewable for another six months.

These Emergency Rules create a new, absolute presumption that certain "first response employee(s)" have sustained a personal injury arising out of and in the course of employment under certain defined circumstances. In this regard, a "first response employee," as set-forth below, is presumed to have suffered a personal injury that arises out of and in the course of employment, if the first response employee meets any one of the following criteria:

- Is quarantined at the direction of the employer due to confirmed or suspected COVID-19 exposure.
- Receives a COVID-19 diagnosis from a physician.
- Receives a presumptive positive COVID-19 test.
- Receives a laboratory-confirmed COVID-19 diagnosis.

As used in the new Emergency Rules, "first response employee" means any of the following:

- A person working in a health facility or agency as defined in the public health code, 1978 PA 368, MCL 333.1101 to 333.25211.
- A person working in a health care organization as defined in R 418.10108(x).
- A person working in an industrial medicine clinic as defined in R 418.10108(bb).
- A person working as a practitioner as defined in R 418.10109(l).
- A person working in a capacity described in section 161(1)(c) to (j) of the Workers' Disability Compensation Act of 1969, 1969 PA 317, MCL 418.161(1)(c) to (j).
- A member of the state police or an officer of the motor carrier enforcement division of the department of the state police.

Notably, these Emergency Rules create an irrebuttable presumption of compensability. A denial of a claim under these Rules presumptively creates non-compliance with the Workers' Disability Compensation Act (citations omitted) and is subject to penalties under section 631 of the Workers' Disability Compensation Act of 1969. The penalties delineated in section 631 are severe. They include revocation of the licensure of an insurer or of an employer's status as a self-insured.

If a person contracted COVID-19 while traveling on business, would that result in a compensable claim? In Michigan, travel to and from a business trip is generally considered to be within the course and scope of employment and would normally come within the protection of the Worker's Disability Compensation Act. However, to the extent a deviation occurs that increases the exposure or likelihood of injury to the worker or departs from nature of the employment, the nature and length of the deviation is relevant in determining whether the injury is compensable. *Bush v. Parmenter, Forsythe, Rude & Dethmers*, 413 Mich. 444, 320 N.W.2d 858 (1982). This of course is also subject to the Emergency Rules Set forth above.

If a person is injured while teleworking, would those injuries be compensable? Yes, however, the employee must first establish that the injuries arose out of and in the course of employment.

Are psychiatric claims compensable for a person that has actually contracted COVID-19? Yes. In Michigan, a psychological injury caused by events that occurred while on the job may be considered a valid work injury, compensable by workers' compensation benefits. Though note, stress-related claims are not allowed if the stress is caused by a lay-off, which is particularly relevant at this time.

If a person were merely fearful of contracting COVID-19 at work, could the person have a valid psychiatric claim? Most likely, no. This is due to the fact 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? Most likely no. A positive test would be required for any benefits.

If COVID-19 were to be found compensable, what benefits might be due? An employee would be entitled to the same benefits as any other work-related injury.

Must an employer/insurer pay for medical testing to rule out COVID-19? As with forced quarantines, preventive measures, such as testing, are likely not the responsibility of the Employer.

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? Possibly. While Michigan typically views temporary disability as a "medical" status, a claimant who is laid-off for economic reasons might not be eligible for TTD. The claimant would need to prove the "disability" was preventing employment and not an economic downturn.

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? No.

AREAS OF INQUIRY DURING COVID-19 INVESTIGATIONS

- Is there a positive test?
- Employee's occupation—if one of the above there is an irrebuttable presumption the virus was contracted at work.
- 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.michigan.gov/leo/0,5863,7-336-78421_95508---,00.html
- https://www.michigan.gov/documents/leo/WDCA_COVID-19_First_Response_ER_686779_7.pdf
- https://www.michigan.gov/leo/0,5863,7-336-78421_95508---,00.html

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