



# **STATE OF MISSISSIPPI 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 of a fatality, or for non fatality, within 10 days of satisfaction of the waiting period for disability, or for cases that do not meet the waiting period, within 10 days of when the employer knows or should know that injury will likely result in permanent disability or serious head or facial disfigurement. Miss. Code Ann. 71-3-65.

**What is the statute of limitations for the filing of an Employee's Claim form?** If no payment of indemnity benefits is made, the claimant has 2 years from the date of injury to file a Petition to Controvert after which payment is barred. Miss. Code Ann 71-3-35. If indemnity benefits are paid, the 2-year statute does not apply and a Notice of Final Payment (Form B31) must be filed to initiate a 1-year limitation period. Miss Code Ann. 71-3-53; 71-3-37(7).

**When must an Employer/Insurer file contesting issues?** Within 14 days of when the employer has knowledge of injury or death, employer must file the Employers Notice of Controversion (Form B52). Miss. Code Ann. 71-3-37(4).

## COMPENSABILITY

**Under Mississippi law, could COVID-19 be compensable as an occupational disease?** The Mississippi workers compensation Act does not treat occupational disease significantly different from any other kind of work injury. Miss. Code Ann. 71-3-7(1) provides that: "Compensation shall be payable for disability or death of an employee from injury or occupational disease arising out of and in the course of employment, without regard to fault as to the cause of the injury or occupational disease. An occupational disease shall be deemed to arise out of and in the course of employment when there is evidence that there is a direct causal connection between the work performed and the occupational disease."

**Could COVID-19 be compensable as an accidental injury?** Yes, but while contracting corona virus at work can be a compensable injury under the Mississippi Workers Compensation Act, it is the Claimant's burden of proof to show that exposure/contraction of corona virus occurred during the course and scope of the employment in order for such exposure to be compensable. For most employment settings, exposure to corona virus will be a neutral risk and the claimant must show that the exposure did occur at work to a medical probability. Given the incubation period and the widespread nature of the disease at this point in time, it will be difficult for a claimant to prove that they contracted the virus at work. For certain employers, however, such as health care providers, the claimant could show an increased risk through their employment above and beyond the general public, which would increase the likelihood of the case being compensable. Even in those circumstances, however, medical evidence will be necessary to show that the claimant caught the disease through employment activities.

**If a person contracted COVID-19 while traveling on business, would that result in a compensable claim?** The general rule is that a traveling employee is in the course of employment from the time he departs to the time he returns and thus covered, which includes eating meals. The exception to the general rule is where injury occurs during period of distinct abandonment/deviation. From a practical standpoint, if the

travel necessitated is to a location of higher risk for contracting the disease, the increased risk doctrine would likely apply.

**If a person is injured while teleworking, would those injuries be compensable?** When an employee is working from home with the approval of the employer, regularly works from home and is injured at home while actively engaged in the employer's business, the injury would be covered. For COVID-19 purposes, it would be difficult for a claimant to prove compensability that they contracted the virus at home while actively engaged in the employer's business. If it is just contracted from a family member while the employee was at home, it would likely not be compensable.

**Are psychiatric claims compensable for a person that has actually contracted COVID-19?** If it is shown that the employee has sustained a compensable contraction of COVID-19 (see above discussion), mental injury resulting therefrom can be compensable. However, the burden of proof for the mental claim is an elevated burden of proof, that being "clear and convincing evidence." *Hospital Housekeeping Systems, Inc. v. Townsend*, 933 So.2d 418 (Miss. Ct. App. 2008).

**If a person were merely fearful of contracting COVID-19 at work, could the person have a valid psychiatric claim?** Mental injury unaccompanied by physical trauma must be proven by the heightened burden of proof of "clear and convincing" evidence. The Court has further stated that to be compensable, a mental injury, unaccompanied by physical trauma, must have been caused by something more than ordinary incidents of employment. The Court stated that disability caused by general stress or normal wear and tear for the workplace is not compensable, but where an identifiable and extraordinary stressor occurs, the resulting disability may be compensable. *Fought v. Stuart C. Irby, Co.*, 523 So.2d 314 (Miss. 1988). Typically, compensability of these cases requires a series of untoward and extraordinary events (i.e. repeated verbal abuse by a supervisor in front of co-workers). In sum, to be compensable, there has to be a specific diagnosed psychiatric injury causally related to the employment by medical opinion to reach the standard of clear and convincing evidence – merely being fearful of contracting the virus would not be compensable injury. Further, the Court would have to find that such concern would exceed ordinary incidents of employment.

## **BENEFITS**

**If an employee is forced to quarantine as a result of a possible exposure at work, must TTD benefits be paid?** Under Mississippi law, the claimant must show that they have sustained a compensable injury or occupational disease for benefits to be due.

**If COVID-19 were to be found compensable, what benefits might be due?** Reasonable/necessary medical benefits would be due "for such period as the nature of the injury or the process of recovery may require." Miss. Code Ann. 71-3-15. In addition, subject to the waiting period at Miss. Code Ann. 71-3-11, indemnity benefits would be due for those periods which the employee has incapacity because of the virus from earning wages receiving at time of injury. To the extent that the virus causes death, death benefits would be due as well, the amount of which depends on there being any surviving spouse or dependents. Miss. Code Ann. 71-3-25.

**Must an employer/insurer pay for medical testing to rule out COVID-19?** Miss. Code Ann. 71-3-15 provides that reasonable/necessary medical benefits would be due “for such period as the nature of the injury or the process of recovery may require.” Thus, there must be a compensable injury for any medical benefits, including testing, to be due. For certain employers, however, such as health care providers, there would be an increased risk through their employment above and beyond the general public, which would increase the likelihood of the case being compensable. The Commission may treat such circumstances differently than other employers.

**May an employer/insurer make voluntary medical payments without prejudice?** Yes, voluntary payment of benefits does not waive defenses.

**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?** For an employee working light duty unable to work due to corona related closure, there is a good faith argument that indemnity benefits would not be due. “Disability” is defined as incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or other employment. Miss. Code Ann. 71-3-3(i). If the inability to work is not due to disability, there is a strong argument that TTD is not due. Ultimately, this would turn in large part on the Administrative Judge assigned to the case.

**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?** Termination of benefits for unreasonable refusal to submit to medical treatment can only be done through Order of the Administrative Judge following a Motion. Miss. Code Ann. 71-3-15; MWCC Rule 1.9. The Administrative Judge is tasked with determination of whether the refusal/non-compliance is reasonable under the circumstances.

#### **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](#)

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