



# **STATE OF NEBRASKA WORKERS' COMPENSATION COVID-19 QUICK GUIDE**

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## GENERAL PROVISIONS

**When must an Employer's First Report of injury be filed?** Within ten days after the employer or insurer has been given notice of or has knowledge of the injury.

**What is the statute of limitations for the filing of an Employee's Claim form?** All claims for compensation must be filed within two years after the accident or last payment of compensation. The employer's failure to file a First Report of Injury tolls the statute of limitations until the Report is filed.

**When must an Employer/Insurer file contesting issues?** N/A.

## COMPENSABILITY

**Under Nebraska law, could COVID-19 be compensable as an occupational disease?** Possibly. Under Neb. Rev. Stat. § 48-151(3), an "occupational disease," means "only a disease which is due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation, process, or employment and excludes all ordinary diseases of life to which the general public is exposed." Thus, for a disease to be compensable under the Act, the unique condition of the employment must result in a hazard that distinguishes it in character from employment generally. *Jordan v. Morrill Cty.*, 258 Neb. 380, 603 N.W.2d 411 (1999). The most likely category of worker to successfully bring a COVID-19 claim under the occupational disease statute are healthcare workers, or more specifically, healthcare workers directly treating COVID-19 patients. However, it is unclear whether the Court would treat COVID-19 as an "ordinary disease of life to which the general public is exposed."

**Could COVID-19 be compensable as an accidental injury?** Possibly. Under Neb. Rev. Stat. § 48-151(2), an "accident" means an "unexpected or unforeseen injury happening suddenly and violently, with or without human fault, and producing objective symptoms of an injury." To prove they contracted the virus in an accident, a claimant would need to prove that they were exposed to the virus in the course of their employment and that that exposure, rather than any other potential exposure in their daily life, most likely caused their illness. The worker would also need to prove that the accident involved violence to the physical structure of their body and produced at the time objective symptoms of an injury. *Ludwick v. TriWest Healthcare All.*, 267 Neb. 887, 678 N.W.2d 517 (2004). Employees in other states have successfully brought claims for workers' compensation benefits under an accident theory where they sustained cuts from needles or other sharp objects and contracted a contagious disease as a result. *See Sprague v City of Lafayette*, 635 So 2d 603 (1994, La App 3d Cir). It is far less likely that a worker could successfully meet this difficult burden of proof in the case of a disease contracted via an airborne virus. Thus, employees who contract COVID-19 from simple contact with customers, vendors, or co-workers in the regular course of their employment will not likely be entitled to workers' compensation benefits.

**If a person contracted COVID-19 while traveling on business, would that result in a compensable claim?** Injuries occurring during travel that is required by the employer are generally compensable, though a deviation exception would apply if the employee departs from where their duties are performed for personal reasons. The same analysis regarding a compensable occupational illness or accident would still apply.

**If a person is injured while teleworking, would those injuries be compensable?** Most likely, yes. So long as the injuries arise out of and in the course of employment they would be compensable. An employee who is required to work remotely may have a valid claim if the injury occurs while the employee is carrying out work duties and responsibilities required by their employer.

**Are psychiatric claims compensable for a person that has actually contracted COVID-19?** Potentially, yes. If an employee has a compensable COVID-19 claim and is able to further establish a causally related psychological condition as a result of contracting the virus, any causally related psychological treatment or disability would also be compensable.

**If a person were merely fearful of contracting COVID-19 at work, could the person have a valid psychiatric claim?** No. An injured worker must produce evidence of a physical injury (internal or external injury to the physical structure of the body) that arose out of and in the course of employment to establish a psychiatric claim.

## **BENEFITS**

**If an employee is forced to quarantine as a result of a possible exposure at work, must TTD benefits be paid?** No. The employee is only entitled to TTD benefits if they can prove that their COVID-19 infection is compensable. Preventative or precautionary measures taken as the result of a possible exposure would not entitle the worker to workers' compensation benefits.

**If COVID-19 were to be found compensable, what benefits might be due?** An employee would be entitled to reasonable and necessary medical treatment, temporary total or partial disability benefits to the extent the illness prevents the employee from working, permanent disability benefits to compensate the employee's permanent loss of earning capacity, if any, and vocational rehabilitation benefits, if the employee is unable to return to suitable work as a result of the illness.

**Must an employer/insurer pay for medical testing to rule out COVID-19?** Generally, no. An employer is only responsible for reasonable and necessary medical treatment that results from a compensable accident or occupational illness.

**May an employer/insurer make voluntary medical payments without prejudice?** Yes. An employer is responsible to pay for all authorized treatment, but is not precluded from later denying the employee's workers' compensation claim if they authorize treatment.

**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?** Most likely, yes. A worker's disability depends on the extent of diminished employability or impairment of earning capacity and does not directly correlate to current wages. Thus, the employee's ability to perform some light duty work does not preclude a finding that the employee is temporarily totally disabled. Further, an economic downturn and layoff makes such a finding even more likely.

**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?** The Court may suspend, reduce, or limit the compensation otherwise payable under the Nebraska Workers' Compensation Act where an injured employee unreasonably refuses or neglects to avail himself of medical treatment furnished by the employer or refuses to undertake or fails to cooperate with a physical, medical, or vocational rehabilitation program determined by the Court to be suitable for him. Further, the employer is not liable for an aggravation of such injury due to such refusal. However, a Court may very likely find that the injured worker's refusal or non-compliance is reasonable given the extraordinary circumstances presented by the virus. This determination will be very fact-specific.

#### **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](#)
- [Nebraska Department of Health](#)
- [Nebraska Workers' Compensation Court](#)
- [Baird Holm COVID-19 Information Hub](#)
- [OSHA's COVID-19 Page](#)
- [OSHA's Guidance on Preparing Workplaces for COVID-19](#)
- [World Health Organization COVID-19 Updates](#)

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