



STATE OF OKLAHOMA WORKERS' COMPENSATION COVID-19 QUICK GUIDE

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COMPENSABILITY

Under Oklahoma law could COVID-19 be compensable as an occupational disease?

Possibly. There are no statutory provisions pertaining to COVID-19, so each case is entirely fact specific.

Under 85A O.S. §65(D)(1), an “occupational disease” is any disease that results in disability or death and arises out of and in the course of the occupation or employment of the employee or naturally follows or unavoidably results from an injury.

For an employer to owe benefits for COVID-19, the claimant must establish by a preponderance of the evidence (more likely than not) the disease is due to the nature of an employment in which the hazards of the disease actually exist and is actually incurred in the course and scope of his or her employment. 85A O.S. § 65(F)(1)(a).

Generally, no compensation must be paid for an ordinary disease of life to which the generally public is exposed. 85A O.S. § 65(D)(3).

Under Oklahoma law could COVID-19 be compensable as an accidental injury?

Possibly. As with occupational disease, the key issue remains causation and each case is fact specific. If the employee is unable to prove by a preponderance of the evidence the causal nexus between employment and the condition, the claim is not compensable. That said, compensability is more likely to be found when the employee works in a profession where the likelihood of contracting the virus is significantly higher than the average worker, e.g., EMSA driver, doctor, nurse.

Under Oklahoma law could COVID-19 be compensable if it arose while working remotely?

Possibly, if claimant establishes that the injury arose out of and in the course of employment, and the claimant’s home is regarded as a worksite. Relevant factors include: 1) quantity and regularity of work performed at home; 2) presence of work equipment at home; 3) the special circumstances of the employment rendering it necessary and not personally convenient to work from home, and 4) whether the employer acquiesced to the employee’s regular use of the home as a work site, mandated work from home, or reasonably should have known the employee was working from home.

Under Oklahoma law could mental injury claims related to COVID-19 be compensable?

It depends.

If an employee actually 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 be compensable.

If an employee is merely fearful of contracting COVID-19 at work, their subjective fear is not a compensable claim. The fear of COVID-19 is not unique to the workplace and 85A O.S. § 13(A)(1) requires a physical injury to have occurred for the mental injury to be compensable.

Under Oklahoma law is there a presumption that “first responders” are exposed to the virus on the job?

Not at this time. Other jurisdictions have implemented rebuttable presumptions of compensability for “first responders”, but Oklahoma has not. Oklahoma has no statutory definition for “first responder”.

BENEFITS

If COVID-19 were compensable, what benefits might be due?

As with all compensable claims, an employee would be entitled to Temporary Total Disability benefits as indicated, reasonable and necessary medical treatment, Permanent Partial Disability benefits, vocational rehabilitation should the employee be unable to return to work because of the injury, and death benefits should the compensable injury result in death.

Temporary Total Disability may be offset by any period of unemployment benefits.

The extent of Permanent Partial Disability from COVID-19 is unknown at this time.

If an employee is forced to quarantine as a result of possible exposure at work, must Temporary Total Disability benefits be paid?

No. Temporary Total Disability is not owed, except in the case of a compensable claim. Preventative measures such as quarantines would not be compensable.

Must an employer/insurer pay for medical testing to rule out COVID-19?

No. The obligation to pay for reasonable and necessary medical treatment, including testing, exists only after a compensable claim arises. Preventative measures, such as testing, should not be owed.

May an employer/insurer make voluntary medical payments without prejudice?

Voluntary provision of any benefit is not an admission of liability in Oklahoma. However, be aware that voluntary provision of benefits can extend the statute of limitations.

If an employee is working light duty as a result of a workers’ compensation claim and then a layoff occurs due to economic downturn or government-mandated closure, is the employee entitled to Temporary Total Disability?

Likely. In Oklahoma, temporary disability is considered a “medical” status. Even when employees are out of the workforce, e.g., retired, they may be eligible for Temporary Total

Disability benefits if they are medically incapable of work. Under these circumstances, employees remain medically restricted from full duty and would not be able to seek jobs at their pre-injury level. Therefore, we anticipate the Administrative Law Judges will award Temporary Total Disability benefits even where the reason for the unavailability of modified duty is economical and not person in nature.

Temporary Total Disability may be offset by any unemployment benefits received by the employee.

AREAS OF INQUIRY DURING COVID-19 INVESTIGATIONS

In analyzing compensability of a COVID-19 claim, and potential benefits owed attendant thereto, we recommend investigating the following:

- Employer precautions (e.g., did the Employer follow CDC guidelines, what specific measures did Employer take to prevent spread?)
- Results of any governmental investigations that may have been performed (OSHA, CDC, local health authorities)
- Employee's job duties and length of employment
- Employee's symptoms, diagnosis, test results, and treatment
- Employee's allegations regarding exposure (i.e., have co-workers, vendors, clients, patients tested positively?)
- Other possible sources of exposure (i.e., have roommates, family, friends tested positively?)
- Recent travel (personal and/or business – what, when, where, for how long, purpose of travel)
- Secondary employment
- Use of mass transit, public transportation, or carpools
- Hobbies and activities prior to diagnosis (e.g., concerts, sporting events, rallies)
- Social media activity
- Medical canvas

This Quick Guide provides an overview of Oklahoma Law topics which may be helpful to analyze existing and potential COVID-19 claims. This overview does not, nor is it intended to, provide an authoritative or exhaustive guide to a particular fact situation. The unique facts of each case will affect how Oklahoma Courts will apply the law. The law is constantly changing via legislative action or Court decisions.

Please do not hesitate to contact us to discuss any questions that may arise.