



# STATE OF OREGON WORKERS' COMPENSATION COVID-19 QUICK GUIDE

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## GENERAL PROVISIONS

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**Note: In reviewing the following, please consider that Oregon has not implemented any amendments to the state’s worker’s compensation laws, other authority or particular guidance in response to the COVID-19 pandemic. The Worker’s Compensation Division has affirmatively stated that it is without authority to waive statutory requirements. However, the division will consider the impact of COVID-19 in areas where the director has discretion to penalize or take action against an employer, worker, insurer, self-insured employer, service company, medical provider, or others. The division is encouraging claims processors to communicate with the division ahead of time if it cannot meet statutory timelines, such as providing a timely response to inquiries. Where possible, the division has stated that it will determine whether an extension or procedural waiver should be granted on a case-by-case basis, including whether COVID-19 is considered “good cause” or “reasons beyond a worker’s control,” where applicable.**

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**When must an Employer’s First Report of injury to be filed?** As soon as possible. The employer is required to report (Oregon Form 801) within 5 days of knowledge of the claim.

**What is the statute of limitations for the filing of an Employee’s Claim form?** A worker is required to give written notice to the employer not more than 90 days after an accident occurs. ORS 656.265(1). If the worker fails to provide proper notice within 90 days, the worker may still file a claim within 1 year from the date of injury if the employer has knowledge of the injury, if the worker dies within 180 days of the injury, or if the worker or beneficiary had good cause for late notice. ORS 656.265(4). There is a rebuttable presumption that the worker gave sufficient and timely notice. ORS 656.310(1)(a).

**When must an Employer/Insurer file contesting issues?** The employer has 60 days after notice or knowledge of a claim to issue a written acceptance or denial. ORS 656.262(6)(a). If the attending physician has authorized temporary disability, the insurer or self-insured employer must pay temporary disability (total or partial) benefits no later than the 14th day after the employer has notice or knowledge of the claim, unless the claim has been denied by that date. ORS 656.262(4)(a). Note that interim compensation must be paid to a worker who is missing work due to a claimed injury or disease if the insurer or self-insured employer has not formally accepted or denied the claim within 14 days of notice or knowledge of the claim.

## COMPENSABILITY

**Under Oregon law, could COVID-19 be compensable as an occupational disease?** Under Oregon’s statutory criteria, it is possible that COVID-19 would be considered an occupational disease. The primary distinction between an accidental injury and an occupational disease claim is “time-definiteness.” Generally, an injury has a sudden onset, while an occupational disease develops gradually over time. ORS 656.802 defines an occupational disease as any disease or infection arising out of and in the course of employment caused by substances or activities in which an employee is not ordinarily subjected or exposed

other than during a period of regular actual employment therein, and which requires medical services or results in disability or death, including: any disease or infection caused by ingestion of, absorption of, inhalation of or contact with dust, fumes, vapors, gases, radiation or other substances.

**Could COVID-19 be compensable as an accidental injury?** Likely no. Under ORS 656.005(7)(a), a compensable injury is an accidental injury arising out of and in the course of employment requiring medical services or resulting in disability or death. The two prongs of that compensability test (“arising out of” and “in the course of”) are viewed as two parts of a unitary “work connection” inquiry that asks whether the relationship between the injury and the employment has a sufficient nexus so that the injury should be deemed compensable.”

Under certain circumstances, contracting COVID-19 may be compensable under workers’ compensation if the worker’s employment carries an increased risk of exposure or special hazard of contracting the disease.

**If a person contracted COVID-19 while traveling on business, would that result in a compensable claim?** Possibly, under certain circumstances. As noted above, a compensable injury is an accidental injury arising out of and in the course of employment requiring medical services or resulting in disability or death. ORS 656.005(7)(a). Whether a particular accident arose out of and in the course of employment is very fact specific, with outcomes turning on how the Workers’ Compensation Board or the court weighs the particular set of facts to determine whether the accident was sufficiently connected to work to be compensable.

A traveling employee is considered to be within the course and scope of employment while traveling, except when the employee has engaged in a distinct departure on a personal errand. In determining whether a “distinct departure” occurred, the court considers whether the activity that resulted in the injury was “reasonably related” to the employer’s travel status. A traveling employee is considered to be in the course of employment while engaged in personal activities such as eating and sleeping, but will not be covered for injuries that occur during personal activities that are not reasonably related to the worker’s travel status.

Again, under certain circumstances, contracting COVID-19 may be compensable under workers’ compensation if the traveling worker’s employment carries an increased risk of exposure or special hazard of contracting the disease.

**If a person is injured while teleworking, would those injuries be compensable?** Possibly, under certain circumstances. As noted above, a compensable injury is an accidental injury arising out of and in the course of employment, regardless of the location where the injury occurs.

**Are psychiatric claims compensable for a person that has actually contracted COVID-19?** Possibly, if the condition meets certain specific requirements, discussed below.

In Oregon, the term mental disorder includes “any physical disorder caused or worsened by mental stress.” ORS 656.802(1)(b). The statute outlines four requirements for a mental disorder claim to be

compensable: (1) The employment conditions producing the condition must exist in a real and objective sense; (2) The employment conditions producing the mental disorder must not be conditions generally inherent in every working situation; conditions related to reasonable disciplinary, corrective or job performance evaluation actions; conditions related to the cessation of employment, or conditions related to employment decisions attendant upon ordinary business or financial cycles; (3) There must be a diagnosis for claimant's condition that is generally recognized in the medical or psychological community; and (4) There must be clear and convincing evidence that the mental disorder arose out of and in the course of employment. ORS 656.802(3).

If a person has actually contracted COVID 19, the worker must not only meet the "clear and convincing" standard in showing the consequential disorder arose out of and in the course of employment, but Oregon law further imposes the general compensability standard for occupational disease as the "major contributing cause." ORS 656.802(2)(a).

**If a person were merely fearful of contracting COVID-19 at work, could the person have a valid psychiatric claim?** No. With ORS 656.802(1)(b), the Oregon legislature overruled earlier case law which had allowed workers to file injury claims for the physical consequences of stress. Therefore, "fear" (i.e., stress) is not a covered occupational disease.

## **BENEFITS**

**If an employee is forced to quarantine as a result of a possible exposure at work, must TTD benefits be paid?** No. Quarantine imposed as a preventive measure is not compensable. The employee must prove that he or she contracted COVID-19 at work.

**If COVID-19 were to be found compensable, what benefits might be due?** If compensable, the employee would be entitled to temporary total disability (TTD), which is the benefit paid directly to the worker when the worker is temporarily and completely unable to work due to a compensable injury. TTD continues to be paid until: the worker returns to regular or modified work; the attending physician advises the worker and documents in writing that the worker is released to modified work and such work is offered in writing to the worker and the worker fails to begin employment; or any other event that suspends entitlement to benefits pursuant to ORS chapter 656, including, but not limited to, ORS 656.262(4), which requires attending physician authorization and allows suspension if a worker refuses to treat with an appropriate managed care organization. ORS 656.268(4).

To the extent a worker suffers a permanent injury arising from COVID-19 (e.g., diminished lung capacity), a determination would be made at the time the claim is closed as to the extent of any permanent disability. Permanent total disability means a loss, including preexisting disability, of use or function of any portion of the body which permanently incapacitates the worker from regularly performing work at a gainful and

suitable occupation. ORS 656.206(1)(d). Regularly performing work means the ability of the worker to discharge the essential functions of the job, and essential functions means the primary tasks associated with the job. ORS 656.206(1)(e)(a). Suitable occupation means one that the worker has the ability and the training or experience to perform, or an occupation that the worker is able to perform after rehabilitation. ORS 656.206(1)(f).

Permanent total disability benefits are based on wage replacement. In Oregon, workers' compensation law applies to "workers." A "worker" is defined as one who "engages to furnish services for a remuneration." ORS 656.005(30).

**Must an employer/insurer pay for medical testing to rule out COVID-19?** Generally no. The employer/insurer must pay only for medical care necessary for the compensable injury. The employer/insurer's responsibility arises when a covered injury/condition arises. However, employers are encouraged to seek guidance from OSHA.

**May an employer/insurer make voluntary medical payments without prejudice?** Yes, voluntary medical payments can be made, and thereafter, the employer may deny the claim without prejudice.

**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?** Yes, assuming that the employee would still be able to perform modified duty but for the layoff due to COVID-19.

**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?** Although it is highly unlikely a termination of benefits would be upheld under such extraordinary circumstances, pursuant to ORS 656.262(4), entitlements may be suspended where attending physician authorization is required and a worker refuses to treat with an appropriate managed care organization. ORS 656.268(4).

#### **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

<https://wcd.oregon.gov/Pages/index.aspx>

<https://www.williamskastner.com/practice-areas/covid-19-resource-center/>

OSHA's COVID-19 Page

OSHA's Guidance on Preparing Workplaces for COVID-19

World Health Organization COVID-19 Updates

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