



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

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## GENERAL PROVISIONS

**NOTE: The following applies to Texas employers who subscribe to worker's compensation only. Please feel free to contact the authors with questions relating to non-subscribers.**

**When must an Employer's First Report of injury to be filed?** The First Report of Injury must be filed with the Worker's Compensation Insurance Carrier not later than the eighth day after: 1) the employee's absence from work for more than one day due to the injury or 2) the receipt of notice that an employee contracted an occupational disease.

**What is the statute of limitations for the filing of an Employee's Claim form?** An employee shall notify the employer of an injury not later than the 30<sup>th</sup> day after 1) the injury occurs or 2) if the injury is an occupational disease, the employee knew or should have known that the injury may be related to employment. However, the deadline for an employee to file with the worker's compensation division is one year after 1) the injury occurs or 2) if the injury is an occupational disease, the employee knew or should have known that the injury may be related to employment.

**When must an Employer/Insurer file contesting issues?** According to the Texas Worker's Compensation Act: Immediately after receiving the notice of injury, the Worker's Compensation Division will send to the employer a description of the right to contest to compensability of an injury if the insurance carrier accepts liability.

## COMPENSABILITY

**Under Texas law, could COVID-19 be compensable as an occupational disease?** Potentially, although the presumption will be the illness was not work-related. An occupational disease is defined by the Texas Workers' Compensation Act to mean a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body. An occupational disease excludes an ordinary disease of life to which the general public is exposed outside of employment, except where that disease is related to a compensable injury or occupational disease. If an employee has an injury that is considered to be an ordinary disease of life, he or she is generally not entitled to receive benefits. An illness or injury is considered an ordinary disease of life, and therefore not compensable, when there is no causal connection between the injury and the work, and the disease is not indigenous to the workplace or present at an increased degree with the employment.

The law in Texas suggests that only employees engaged in jobs that place them at a higher risk than the general public will have viable claims for workers' compensation benefits.

**Could COVID-19 be compensable as an accidental injury?** Not likely.

**If a person contracted COVID-19 while traveling on business, would that result in a compensable claim?** Possibly. The employee will have to overcome the presumption that contracting COVID-19 was not work-related. It will require an analysis of whether the required travel placed the employee at a higher risk than the general public.

**If a person is injured while teleworking, would those injuries be compensable?** Probably not. If they are home, they will not be at a higher risk than the general public.

**Are psychiatric claims compensable for a person that has actually contracted COVID-19?** Probably not. Any mental health and trauma claims must have a clear correlation to a particular incident and the employee must be able to prove a clear link between the psychiatric claim and COVID-19.

**If a person were merely fearful of contracting COVID-19 at work, could the person have a valid psychiatric claim?** Not under current Texas law.

## **BENEFITS**

**If an employee is forced to quarantine as a result of a possible exposure at work, must TTD benefits be paid?** Generally, the answer is no. Just because an employee is potentially exposed to COVID-19 and self-quarantines does not in and of itself meet the threshold of a compensable workers' compensation claim in Texas. Furthermore, only employees who work in occupations that are placed at higher risk than other employees or the general public would be entitled to compensation unless they can overcome the presumption that it is not work-related. Not all employees performing "essential services" will necessarily be placed at a higher risk. The exception is first responders, including police and fire. First responder employees, since they are on the front lines of the virus outbreak, are considered at a greater risk to contract COVID-19 than the ordinary public (and most other employees). Even then the mere exposure will NOT trigger a workers' compensation claim. Exposure to the virus does not mean the first responder has contracted the disease. There must be a positive diagnosis.

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

There are four types of workers' compensation benefits:

- **Income benefits** include:
  - **temporary income benefits** (TIBs);
  - **impairment income benefits** (IIBs);
  - **supplemental income benefits** (SIBs); and
  - **lifetime income benefits** (LIBs).
- **Medical benefits** pay for reasonable and necessary medical care to treat work-related injury or illness.
- **Burial benefits** pay for some of an employee's funeral expenses to the person who paid those expenses.
- **Death benefits** help families replace some of the money lost when an employee dies because of a work-related injury or illness. Spouses of first responders can get death benefits for life even if they remarry (for marriages on or after September 1, 2017).

### **Benefits are paid by Calculating Average Weekly Wage (AWW)**

Average Weekly Wage (AWW) is the average amount of money the employer paid the employee each week in the 13 weeks before the injury or illness. That AWW includes any other things (non-pecuniary benefits) paid by an employer, including:

- Health insurance
- Car allowance
- Dry cleaning

Your AWW determines how much the income benefit will be. To calculate the AWW, the earnings for the 13 weeks before COVID-19 (including overtime or other special pay) are added up and then, divide by 13. If an employee did not work for the employer in the 13 weeks before COVID-19, the employee's AWW may be calculated using earnings of an employee who has the same or similar job:

**AWW calculation for a full-time employee (works at least 30 hours per week):**

13 weeks wage at \$824.23/wk. = **\$10,714.99**

Plus:

Health Insurance Premium:

(\$82 /wk. x 13) = **\$1,066**

\$10,714.99 + \$1,066 = **\$11,780.99**

Average weekly wage = **\$11,780.99 / 13 weeks = \$906.23/wk.**

**Multiple employments:**

If the employee had more than one job when they contracted COVID-19, the employee can report those wages as well. Here are examples of how your AWW would be calculated for multiple employment:

**AWW calculation - multiple employments:**

Claim employer AWW: **\$700**, non-claim employer AWW (can be part-time): **\$300** (other pay for this employer such as health insurance, car allowance, or dry cleaning is not included)

Add all the AWWs together:

**\$700 + \$300 = \$1,000 = multiple employment AWW**

**Important definitions in paying benefits in Texas:**

**Average Weekly Wage (AWW)**

The average amount of money an employer paid each week in the 13 weeks before the injury or illness. Income and death benefit payments are based on the AWW.

**Claim Employer**

The employer that an employee was working for at the time of the illness or injury. It is also the employer that the employee filed the workers' compensation claim through.

**Disability**

When a work-related injury or illness causes an employee to lose the ability to earn weekly wages. "Disability" refers to an employee's inability to earn an income, not to a physical handicap.

**Impairment Rating**

A rating that shows what percent of the work-related injury or illness affects the body as a whole.

### **Maximum Benefit Amount**

The maximum amount of weekly benefits an employee can get. The amount may not be more than the state average weekly wage (SAWW), rounded to the nearest dollar, as follows:

- TIBs = 100% of SAWW
- IIBs = 70% of SAWW
- SIBs = 70% of SAWW
- LIBS = 100% of SAWW for the first year an injured employee gets LIBs
- DBS = 100% of SAWW

DWC computes the maximum weekly income benefit for each year (October 1 to September 30) no later than October 1 of each year.

### **Maximum Medical Improvement (MMI)**

An injured employee reaches MMI when one of the following occurs:

- A work-related injury or illness has improved as much as it is expected to improve, or
- 104 weeks after an employee becomes eligible for TIBs.

### **Minimum Benefit Amount**

The lowest amount of weekly benefits an employee can get. The minimum benefit amount is 15% of the SAWW, rounded to the nearest dollar. DWC sets the minimum weekly income benefit for each year (October 1 to September 30) no later than October 1 of each year.

### **Multiple Employment**

When an employee has more than one employer.

### **Non-Claim Employer**

An employer that the employee worked for at the time of the injury or illness that is NOT the claim employer.

### **Non-pecuniary Wages**

Wages that are not paid in money, such as health insurance premiums, a vehicle or housing allowance, or clothing.

### **Pecuniary Wages**

Wages paid in money, such as salary, commissions, and bonuses. Wages include all forms of payment for a given period. Pecuniary wages include the market value of room and board, laundry, fuel, and any other benefit that can be estimated in money.

**Must an employer/insurer pay for medical testing to rule out COVID-19?** Currently, in Texas, under first responders tests are covered, but medical testing for COVID-19 is still without charge in Texas.

**May an employer/insurer make voluntary medical payments without prejudice?** Yes, since neither the payment of periodic benefits, nor the health provider care shall be considered an admission of liability by

the insurance carrier. Texas allows employers to not carry workers' compensation, therefore, a nonsubscriber who pays medical payments would not be paying them 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?** An employer can lay off an employee on light duty, but cannot lay an employee off for filing a workers' compensation claim; therefore, it is important to make sure that the individual worker is not the only one laid off and that there is a rationale explanation of how that employee was chosen.

**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?** Compensation may not be reduced or suspended solely for abandonment of medical treatment without reasonable notice to the employee and an opportunity to be heard. [Tex. Lab. Code Ann. §502.067\(b\)](#). The Appeals Panel has made similar findings. An employee that abandons medical treatment is typically not dispositive of anything but may trigger an inquiry about whether MMI has been reached. See Appeals Panel Decision No. 001587. However, no statute or rule exists that a worker's disability is to be automatically terminated based solely on the abandonment of medical treatment. See Appeals Panel Decision No. 051731.

#### **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](#)
- [www.tdi.texas.gov](http://www.tdi.texas.gov)
- [OSHA's COVID-19 Page](#)
- [OSHA's Guidance on Preparing Workplaces for COVID-19](#)
- [World Health Organization COVID-19 Updates](#)

- <https://www.friscotexas.gov/DocumentCenter/View/21980/Covid19-and-Workers-Compensation---TML-IRP>
- [https://www.tdi.texas.gov/wc/employee/benefits.html#:~:text=There%20are%20four%20types%20of,work%2Drelated%20injury%20or%20illness.&text=temporary%20income%20benefits%20\(TIBs\)%3B,impairment%20income%20benefits%20\(IIBs\)%3B](https://www.tdi.texas.gov/wc/employee/benefits.html#:~:text=There%20are%20four%20types%20of,work%2Drelated%20injury%20or%20illness.&text=temporary%20income%20benefits%20(TIBs)%3B,impairment%20income%20benefits%20(IIBs)%3B)

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