



STATE OF UTAH WORKERS' COMPENSATION COVID-19 QUICK GUIDE

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GENERAL PROVISIONS

When must an Employer's First Report of injury to be filed?

Once an injury or illness has been reported to the employer, the employer has 7 days to report the claim "Employers First Report of Injury or Illness" (Form 122e) to its insurance carrier and the insurance carrier has 14 days to report the "First Report of Injury" electronically to the Industrial Accidents Division. The employer must provide a copy of the form 122e to the injured worker.

What is the statute of limitations for the filing of an Employee's Claim form?

An employee must report any work-related injury or illness to their employer within 180 days of the injury or illness.

When must an Employer/Insurer file contesting issues?

An employer/insurer must contest any administrative decision within 30 days of their issuance. An employee must file an application for a hearing with the labor commission within six (6) years from the date of the injury when contesting an employer's/insurer's determination.

COMPENSABILITY

Under Utah law, could COVID-19 be compensable as an occupational disease? (answered below)

Could COVID-19 be compensable as an accidental injury?

A compensable occupational disease is any disease or illness which arises out of and in the course of employment and is medically caused or aggravated by that employment. If COVID-19 is contracted while an employee is engaged in work activities, the condition may be compensable. The key issue, as with the majority of states, remains causation. If the employee is unable to prove that there is a causal nexus between the employment and the condition, the claim is not compensable. As COVID-19 is widespread amongst the general population, causation will be a difficult hurdle for employees to prove in most instances. Having said that, there are some professions, e.g., health care providers and first responders, where the likelihood of contracting the virus is significantly higher than the average worker; therefore, we expect that those workers' claims are more likely to be found compensable. Similarly, if an employee has been exposed to a co-worker, patient, or another known carrier of COVID-19, the chances of compensability are markedly higher.

If a person contracted COVID-19 while traveling on business, would that result in a compensable claim?

Yes, if an employee who has been hired or is regularly employed in this state contracts COVID-19 in the course of employment outside of this state, it could result in a compensable claim, assuming the exposure occurs arising out of and within the scope of employment.

If a person is injured while teleworking, would those injuries be compensable?

If COVID-19 is contracted while an employee is engaged in work activities, the condition may be compensable. If the employee is unable to prove that there is a causal nexus between the employment and the condition, the claim is not compensable.

Are psychiatric claims compensable for a person that has actually contracted COVID-19?

Yes, if a person has sudden (1) Physical, mental, or emotional injuries related to mental stress arising out of and in the course of employment shall be compensable only when there is a sufficient legal and medical causal connection between the employee's injury and employment. This requires proof of extraordinary mental stress from a sudden stimulus arising predominantly and directly from employment. Here, it is likely that any psychiatric claims for employee who contracts COVID-19 arising out of and in the course of employment would be compensable.

If a person were merely fearful of contracting COVID-19 at work, could the person have a valid psychiatric claim?

Likely not. Given that the fear of COVID-19 is not unique to the work environment, a person's subjective fear of exposure is not likely to result in a compensable claim.

BENEFITS

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

More than likely, no. Unless the employee can show that he or she contracted COVID-19 at work requiring them to be quarantined resulting in the inability to earn their full wages.

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

An employee would be entitled to both indemnity and medical benefits under the Act. Depending on the facts of the individual illness, indemnity benefits may include temporary total disability, temporary partial disability, permanent partial disability, permanent total disability, and dependent benefits. Should the illness result in death of the worker, funeral benefits would also be awarded. While the long-term effects of COVID-19 are currently unknown, ongoing medical treatment that is found reasonable, necessary, and related to the illness would also be due.

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

Generally, no. An employer/insurer should only be responsible for treatment once a compensable injury occurs. Preventative measures, such as testing, should not be compensable under the Act. However, if testing finds that the Worker has COVID-19 obtained in the course and scope of their employment, it is conceivable that a Workers' Compensation Judge may require the employer/insurer to reimburse the cost of testing.

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

No. An employer who is not a self-insured employer as defined by the Act may not pay a benefit provided for under the Act directly to or for the employee.

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. The Utah Workers' Compensation Act states that if a light duty medical release is obtained before the employee reaches a fixed state of recovery and no light duty employment is available to the employee from the employer, temporary disability benefits shall continue to be paid. Under these circumstances, as no light duty would be available to the employee from the employer, we presume that

most Workers' Compensation Judges will award TTD benefits even where the reason for the unavailability of light duty is economical and not personal or business in nature.

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?

An employer/insurer may terminate benefits due to non-compliance with medical care, but a person's fear of attending treatment visits due to COVID-19 is likely justifiable, and it is highly unlikely that a termination of benefits would be upheld under these extraordinary 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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