



WASHINGTON, D.C. WORKERS' COMPENSATION COVID-19 QUICK GUIDE

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GENERAL PROVISIONS

When must an Employer's First Report be filed? As soon as possible, after a notice of illness, but no later than 10 days from notice of illness.

What is the statute of limitations for the filing of an Employee's Claim form? One year from when the FROI and Notice of Rights and Obligations was sent to the claimant, certified mail, return receipt requested.

When must an Employer/Insurer file contesting issues? Within 14 days after knowledge of the injury or illness.

COMPENSABILITY

Under DC law, could COVID-19 be compensable as an occupational disease? Under D.C. Law, "occupational diseases" are limited to specific slow and insidious diseases of the body, such as silicosis. Cumulative and repetitive traumas are considered accidental injuries under D.C. Law. COVID-19 exposure is unlikely to meet the definition of an occupational disease.

Could COVID-19 be compensable as an accidental injury? The claimant need only allege a work-related injury and make an initial demonstration of an injury and that a work-related activity has the potential of resulting in or contributing to the injury. Once this is met, the claimant is entitled to a statutory presumption of compensability. All that is necessary is for something to go wrong with the human frame. There does not need to be a discrete traumatic event. Under the current law, COVID-19 could be compensable if Claimant can prove that a work-related activity could have given rise to the exposure.

If a person contracted COVID-19 while traveling on business, would that result in a compensable claim? Yes. If the work travel placed the employee at risk for contracting the virus, the claim would be compensable.

If a person is injured while teleworking, would those injuries be compensable? Yes, so long as the injuries arose out of and in the course of employment, and the employee's home is regarded as a worksite. However, if the employee contracts COVID-19 while teleworking, it is likely that they were exposed by a third-party who had no relationship to their employment and/or not within the duties of their employment.

Are psychiatric claims compensable for a person that has actually contracted COVID-19? Yes, if an employee otherwise has a compensable COVID-19 claim and claims psychological impairment 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? Under the current standard, yes. In DC, the court has stated that a person's subjective response to a situation can 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? No. Temporary total disability benefits are due to disability due to a medically documented injury. TTD benefits are not owed if an employee is quarantined. However, if the employee reports that they believe they contracted COVID19 at work and reports a claim, then we recommend filing a Notice of Controversion to avoid the possibility of a penalty being imposed.

If COVID-19 were to be found compensable, what benefits might be due? An employee would be entitled to temporary disability benefits, either total or partial, medical treatment, permanent partial disability benefits and, potentially, death and dependency benefits. It is unknown to what extent COVID-19 will result in permanent disability benefits if any, but any “other cases” permanency partial disability benefits in the District of Columbia would require a showing of wage loss. Should an employee be unable to return to work as a result of permanent symptoms, vocational rehabilitation and/or permanent total disability benefits are also possible.

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. Preventive measures, such as testing, should not be owed under the Act.

May an employer/insurer make voluntary medical payments without prejudice? Yes, an employer/insurer may make voluntary medical payments without prejudicing its rights to otherwise deny the claim.

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. Even when employees are out of the workforce, e.g., retired or incarcerated, they may be eligible for TTD 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, and, therefore, we presume that most Administrative Law Judges will award temporary disability benefits even where the reason for the unavailability of modified duty is economical and not personal 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 if the employee unreasonably refuses to submit to medical treatment. The question of whether the refusal is unreasonable is a fact-specific question. 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. Similarly, an Administrative Law Judge would likely be sympathetic to an employee that refuses to go to an IME appointment for similar reasons.

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

- [Centers for Disease Control and Prevention – COVID-19](#)
- [EEOC's COVID-19 Page](#)
- [DC Department of Health](#)
- [OSHA's COVID-19 Page](#)
- [OSHA's Guidance on Preparing Workplaces for COVID-19](#)
- [World Health Organization COVID-19 Updates](#)

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