



STATE OF WASHINGTON WORKERS' COMPENSATION COVID-19 QUICK GUIDE

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GENERAL PROVISIONS

When must an Employer's First Report of injury be filed? As soon as possible. The employer is required to report within 8 hours for the death or in-patient hospitalization of any worker.

What is the statute of limitations for the filing of an Employee's Claim form? One year for most claims, two years from the date of a doctor's diagnosis for occupational disease claims. The two-year limit would apply to COVID-19 contracted on the job.

When must an Employer/Insurer file contesting issues? 60 calendar days from the date the employer receives the decision. That time limit is reduced to 15 days for decisions about vocational benefits.

COMPENSABILITY

Under Washington law, could COVID-19 be compensable as an occupational disease? Depending on the nature of the work. Under RCW 51.08.140, "Occupational disease" means "such disease or infection as arises naturally and proximately out of employment under the mandatory or elective adoption provisions of this title." COVID-19 therefore is unlikely to qualify as an occupational disease, as it does not "arise[] naturally" out of most types of employment. Moreover, it would be difficult for an employee to prove proximate cause, as the employee could have contracted the disease outside of the workplace.

However, for health care workers and first responders and some other essential workers, Governor Inslee has clarified that coverage will be provided for time loss due to either illness or quarantine. It is not necessary that the worker actually contract the disease. On March 5, 2020 the governor stated that health care workers and first responders would receive coverage if they become sick or quarantined. This coverage includes medical testing, treatment expenses if a worker becomes ill or injured and time-loss payments for those who cannot work if they are sick or quarantined.

On April 10, 2020, Governor Inslee expanded this coverage to essential workers who may be exposed to COVID-19. Again, this coverage applies to illness and quarantine from exposure, regardless of whether the individual actually becomes ill. Governor Inslee stated, "I want to make clear that when **any** work-based exposure is deemed allowable, it is our policy to pay for medical and time loss costs associated with the quarantine period – whether or not the individual ultimately contracts COVID-19." Given the broad language of this memorandum, most essential workers would likely receive workers compensation coverage, as any workplace that remains open is arguably subject to some potential exposure.

Notably, the Washington Department of Labor and Industries has declared that the costs of allowed claims related to COVID-19 shall not be used to calculate the employer's future worker's compensation premium.

Could COVID-19 be compensable as an accidental injury? Likely no. "Injury" means a sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result, and occurring from without, and such physical conditions as result therefrom. RCW 51.08.100. It is unlikely that an employee contracting COVID-19 would be considered a "sudden and tangible happening."

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

Depending on the work. For health care workers, first responders, and essential workers, the answer is likely yes, per Governor Inslee's March 5 and April 10 memoranda.

If a person is injured while teleworking, would those injuries be compensable? Yes. In general, an employee injury or illness is compensable under workers' compensation if it arises out of and in the course of employment, regardless of the location the injury occurs. With regard to the scope of coverage, RCW 51.12.010 states in part, "This title shall be liberally construed for the purpose of reducing to a minimum the suffering and economic loss arising from injuries and/or death occurring *in the course of employment.*" (Emphasis added). If the employee was acting in the scope of employment – i.e.: for the benefit of the employer – when the injury occurred, the injuries will be compensable.

Are psychiatric claims compensable for a person that has actually contracted COVID-19? Yes, if the mental health condition is caused or aggravated by a compensable COVID-19 claim. The treatment must be focused on helping the worker return to work. Conditions caused by stress alone do not constitute an occupational disease. WAC 296-14-300; RCW 51.08.142. Mental health conditions that are preexisting will not be covered unless the covered COVID-19 claim aggravated the preexisting condition, or the preexisting condition prevents recovery of the covered COVID-19 claim.

If a person were merely fearful of contracting COVID-19 at work, could the person have a valid psychiatric claim? No. Fear (i.e.: stress) of contracting COVID-19 is precluded from coverage. WAC 296-14-300. ("Fear of exposure to chemicals, radiation biohazards, or other perceived hazards" is not a covered occupational disease.)

BENEFITS

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

In some cases. Health care workers, first responders, and essential workers with "any work-based exposure" would be eligible for benefits per Governor Inslee's March 5 and April 10 guidance to the Washington Department of L&I.

If COVID-19 were to be found compensable, what benefits might be due? Medical testing, treatment expenses if a worker becomes ill or injured and time-loss payments for those who cannot continue to work.

Must an employer/insurer pay for medical testing to rule out COVID-19? Generally, No. The employer/insurer's responsibility arises when a covered injury/condition arises. However, employers should be aware of guidance from OSHA

May an employer/insurer make voluntary medical payments without prejudice? Yes, payments can be made and the claim denied at a later date.

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 time loss benefits? Yes. Assuming there are no other changes to the claim, the employee's claim manager will verify

information and the employee will be eligible for time-loss benefits. The employer may alternatively choose to keep the employee on salary.

May medical benefits be terminated due to non-compliance with treatment as a result of fear of going to a health care provider during the pandemic? Possibly, but unlikely. The employee must contact their claim manager prior to the scheduled treatment (and at least 5 days prior to an IME in the case of an IME) to determine whether a reasonable solution exists, and whether the anticipated non-compliance is reasonable. For example, an employee who is at high risk may have medical treatments or examination postponed, as would an employee who may have to travel to a high-risk area. It is possible that an unreasonable and unfounded fear of contracting COVID-19 (in light of the possible accommodations provided) may be grounds for termination of medical benefits. For example, if a provider is offering “telehealth,” there would be no reasonable COVID-19-related fear for refusing a telehealth appointment. Generally, however, it is unlikely that medical benefits would be terminated given the unprecedented and largely unknown circumstances surrounding COVID-19, should an employee have a remotely rational fear of contracting the virus.

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

- <https://lni.wa.gov/agency/outreach/novel-coronavirus-outbreak-covid-19-resources>
- <https://www.williamskastner.com/practice-areas/covid-19-resource-center/>
- <https://lni.wa.gov/agency/outreach/workers-compensation-coverage-and-coronavirus-covid-19-common-questions>
- [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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