



STATE OF WEST VIRGINIA WORKERS' COMPENSATION COVID-19 QUICK GUIDE

Prepared by

William J. Hanna and Jeffrey A. Foster
Flaherty Sensabaugh Bonasso PLLC
200 Capitol Street
Charleston, WV 25338
(304) 345-0200
www.flahertylegal.com

GENERAL PROVISIONS

When must an Employer's First Report of injury to be filed? The employer must complete and submit to the carrier the employer's report of injury within five days of the employer's receipt of the employee's notice of injury. The five-day period may not be extended, but the employer has the right to file a supplemental report at a later date.

What is the statute of limitations for the filing of an Employee's Claim form? In West Virginia, there are different statutes of limitations for the filing of an employee's claim. Each deadline depends upon the nature of the claim involved. First, for traumatic injuries, claims must be filed within six months of the date of injury. Second, claims for occupational disease other than occupational pneumoconiosis must be filed within three years of the date of last harmful occupational exposure, or three years from the date the claimant was told by his physician that he had an occupational disease or should have reasonably known his condition was occupationally related, whichever occurs last. Third, for occupational pneumoconiosis claims, the employee must file "within three years from and after the last day of the last continuous period of sixty days or more during which the employee was exposed to the hazards of occupational pneumoconiosis or within three years from and after a diagnosed impairment due to occupational pneumoconiosis was made known to the employee by a physician."

For claims seeking death benefits, dependents (defined at W. Va. Code §23-4-10) of deceased employees whose deaths were as a result of an occupational injury or disease must file within six months of the date of death for traumatic injuries, one year of the date of death for occupational diseases other than, or within two years of the date of death for occupational pneumoconiosis claims.

When must an Employer/Insurer file contesting issues? The employer's report of injury, referenced above, shall include a statement as to whether or not, on the basis of the information available, the employer disputes the compensability of the injury or objects to the payment of temporary total disability benefits in connection with the injury. See W. Va. Code Ann. § 23-4-1b.

COMPENSABILITY

Under West Virginia law, could COVID-19 be compensable as an occupational disease? In West Virginia, occupational disease means a disease incurred in the course of and resulting from employment. No ordinary disease of life to which the general public is exposed outside of the employment is compensable except when it follows as an incident of occupational disease as defined in this chapter. W. Va. Code Ann. § 23-4-1(f). Thus, in order for Covid-19 to be compensable as an occupational disease, the employee must prove by a preponderance of the evidence that the employee contracted Covid-19 as a result in the course of and resulting from their employment, rather than from general public exposure.

Could COVID-19 be compensable as an accidental injury? If an employee contracts COVID-19 in the course of and resulting from employment while the employee is engaged in work activities, it could be compensable as an occupational injury. The employee must prove a causal nexus between the employment and contracting the disease.

If a person contracted COVID-19 while traveling on business, would that result in a compensable claim? If the employee can prove he or she was exposed to COVID-19 while engaged in the business of the employer while traveling, the injury may be compensable. That is unless that employee engaged in a “major deviation from the business purpose” of the employment—then it may not be compensable.

If a person is injured while teleworking, would those injuries be compensable? Yes, if the employee’s home is considered the worksite, and the employee contracted Covid-19 in the course of and resulting from employment while the employee was engaged in work activities.

Are psychiatric claims compensable for a person that has actually contracted COVID-19? Per W. Va. Code § 23-4-1f, “no alleged injury or disease shall be recognized as a compensable injury or disease which was solely caused by nonphysical means and which did not result in any physical injury or disease to the person claiming benefits.” The “purpose of this section to clarify that so-called mental-mental claims are not compensable under this chapter.” Psychological injuries that result from physical injuries are compensable, if the condition is manifested by demonstrable physical symptoms.

If a person were merely fearful of contracting COVID-19 at work, could the person have a valid psychiatric claim? No. The employee must actually contract the disease. By way of example, the Supreme Court of Appeals of West Virginia held, in *Marlin v. Bill Rich Const., Inc.*, 198 W. Va. 635, 649, 482 S.E.2d 620, 634 (1996), that a construction workers’ “fear” of contracting asbestos-related disease as result of inhaling asbestos at workplace, together with physical manifestations of that fear, were not compensable under workers’ compensation law as mental-physical or mental-mental claim.

BENEFITS

If an employee is forced to quarantine as a result of a possible exposure at work, must TTD benefits be paid? No. The employee must actually have a compensable disease/injury resulting in a disability lasting longer than three days in order to be eligible for TTD benefits.

If COVID-19 were to be found compensable, what benefits might be due? If compensable, an employee would be eligible for medical benefits, including healthcare services, rehabilitation services, and medical supplies. See W. Va. Code § 23-4-3(a). Other benefits that might be due are disability benefits, including temporary total disability, temporary partial rehabilitation, permanent partial disability, and permanent total disability, and possibly, death benefits and funeral expenses. Employees may also be entitled to vocational rehabilitation services.

Must an employer/insurer pay for medical testing to rule out COVID-19? No, it would be within the employer/insurer’s discretion.

May an employer/insurer make voluntary medical payments without prejudice? Yes. “When an injury has been reported to the commission by the employer without protest, the commission or self-insured employer may pay, within the maximum amount provided by schedule established under this section, bills for health care services without requiring the injured employee to file an application for benefits.” W. Va. Code Ann. § 23-4-3(c).

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? If an employee is receiving temporary partial rehabilitation benefits because the light duty job pays less than the pre-injury job, and the job ends due to a layoff due to Covid-19, the employee’s temporary partial rehabilitation benefits would end, and temporary total disability benefits would not be reopened. This is because the employee was laid off as part of a COVID-19 full workforce layoff and not due to the compensable injury.

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? No. The West Virginia Insurance Commissioner in Emergency Order 20-EO-03, entered March 23, 2020, prohibited workers’ compensation insurers and other regulated entities from terminating or suspending a claimant’s temporary total disability benefits for failure to undergo examinations or needed treatment during this insurance emergency.

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](#)
- [West Virginia Office of the Insurance Commissioner](#)
- [West Virginia Office of the Governor](#)

- [West Virginia DHHR Covid-19 Resources](#)
- [OSHA's COVID-19 Page](#)
- [OSHA's Guidance on Preparing Workplaces for COVID-19](#)
- [World Health Organization COVID-19 Updates](#)

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