



STATE OF WYOMING WORKERS' COMPENSATION COVID-19 QUICK GUIDE

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GENERAL PROVISIONS

When must an Employer's First Report of injury to be filed? An employee must file a report of injury within 72 hours after the general nature of the injury becomes apparent, and the written report must be filed with the Wyoming Department of Workforce Services and the employer within ten (10) days after the injury become apparent. Wyo. Stat. § 27-14-502(a). If the employee is killed, or so injured that he or she cannot file the required injury report, the reporting requirements commence when the personal representative or agent of the employee is advised of the reporting requirements by the Wyoming Department of Workforce Services or the employee. *Id.*

What is the statute of limitations for the filing of an Employee's Claim form? In general, the statute of limitations is one (1) year after the date the injury occurred. Wyo. Stat. § 27-14-503(a). If the injury is not readily apparent, the statute of limitations is within one (1) year after discovery of the injury by the employee.

For an injury that occurs over a substantial period of time, the statute of limitations is one (1) year after a diagnosis of injury is first communicated to the employee, or within three (3) years from the date of last injurious workplace exposure to the condition causing the injury, whichever occurs last. *See* Wyo. Stat. § 27-14-503(b) for exceptions related to injury caused by ionizing radiation.

When must an Employer/Insurer file contesting issues? By the date listed on the Notice of Employee's Claim Form.

COMPENSABILITY

Under WYO. STAT. ANN. § 27-14-101 et seq., could COVID-19 be compensable as an occupational disease? Unlikely. According to Wyo. Stat. § 27-14-102(xi)(A), an injury does not include "[a]ny illness or communicable disease unless the risk of contracting the illness or disease is increased by the nature of the employment."

However, at the time of the writing of this compendium, the Wyoming Legislature is currently considering House Bill No. HB1002, which would change the definition of "injury" under the Wyoming Workers' Compensation Act. If this bill is passed, Wyo. Stat. § 27-14-102(xi)(A) would read as follows: "[a]ny illness or communicable disease unless the risk of contracting the illness or disease is increased by the nature of the employment. For the period beginning January 1, 2020 through December 31, 2020, COVID-19 caused by the novel coronavirus and symptoms consistent with having contracted COVID-19 shall be considered an injury for purposes of this act and the nature of all employment for which coverage is provided by this act shall be presumed to increase the risk of contracting COVID-19." This bill is expected to pass and would make COVID-19 compensable as an occupational disease.

Could COVID-19 be compensable as an accidental injury? Unlikely. According to Wyo. Stat. § 27-14-102(xi)(A), an injury does not include "[a]ny illness or communicable disease unless the risk of contracting the illness or disease is increased by the nature of the employment."

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If a person contracted COVID-19 while traveling on business, would that result in a compensable claim? Possibly. According to Wyo. Stat. § 27-14-102(xi)(A), an injury does not include “[a]ny illness or communicable disease *unless the risk of contracting the illness or disease is increased by the nature of the employment.*” (emphasis added).

As discussed above, at the time of writing this compendium, the Wyoming Legislature is currently considering House Bill No. HB1002, which would change the definition of “injury” under the Wyoming Workers’ Compensation Act. If this bill is passed, Wyo. Stat. § 27-14-102(xi)(A) would read as follows: “[a]ny illness or communicable disease unless the risk of contracting the illness or disease is increased by the nature of the employment. For the period beginning January 1, 2020 through December 31, 2020, COVID-19 caused by the novel coronavirus and symptoms consistent with having contracted COVID-19 shall be considered an injury for purposes of this act and the nature of all employment for which coverage is provided by this act shall be presumed to increase the risk of contracting COVID-19.” This bill is expected to pass and would make COVID-19 a compensable claim.

Even if this bill is not passed, if a person contracted COVID-19 while traveling for business, which travel was required by the person’s employer, the risk of contracting COVID-19 was arguably increased by the nature of that person’s employment.

If a person is injured while teleworking, would those injuries be compensable? It depends. This question does not contemplate a communicable disease like COVID-19. According to Wyo. Stat. § 27-14-102(xi), an injury “means any harmful change in the human organism other than normal aging and includes damage to or loss of any artificial replacement and death, arising out of and in the course of employment while at work in or about the premises occupied, *used or controlled by the employer* and incurred while at work in places where the employer's business requires an employee's presence and which subjects the employee to extrahazardous duties incident to the business.” (emphasis added). Although Wyo. Stat. § 27-14-108 does list types of extrahazardous employment; however, the majority of persons employed in these occupations are not capable of teleworking.

Are psychiatric claims compensable for a person that has actually contracted COVID-19? Unlikely. According to Wyo. Stat. § 27-14-102(xi)(J), an injury does not include “any mental injury unless it is caused by a compensable physical injury, it occurs subsequent to or simultaneously with, the physical injury and it is established by clear and convincing evidence, which shall include a diagnosis by a licensed psychiatrist or

licensed clinical psychologist meeting criteria established in the most recent edition of the diagnostic and statistical manual of mental disorders published by the American Psychiatric Association.”

If a person were merely fearful of contracting COVID-19 at work, could the person have a valid psychiatric claim? Highly unlikely considering the definition of “injury” in Wyoming Workers’ Compensation Act and the overarching exclusion of benefits for a mental injury unless it is caused by a compensable physical injury. See *In re Wheeler v. Wyoming Workers’ Safety and Compensation Division*, 2010 WY 161, 245 P.3d 811 (Wyo. 2010).

BENEFITS

If an employee is forced to quarantine as a result of a possible exposure at work, must TTD benefits be paid? Unlikely. According to Wyo. Stat. § 27-14-404, TTD benefits are paid only after a “compensable injury” is sustained. Again, as stated above, COVID-19 is a communicable disease and does not fall under the definition of injury under the Wyoming Worker’s Compensation Act.

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If COVID-19 were to be found compensable, what benefits might be due? Again, under almost all circumstances, COVID-19 would not be found compensable.

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Must an employer/insurer pay for medical testing to rule out COVID-19? Presumably, no. The Wyoming Workers’ Compensation Act is silent on this issue.

May an employer/insurer make voluntary medical payments without prejudice? Assuming this question contemplates a compensable injury, yes.

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? In Wyoming, if an employee accepts an offer of temporary light duty work, the TTD award shall cease and the employee shall receive a temporary light duty award. See Wyo. Stat. § 27-14-404(j). The remaining portion of this statute dealing with light duty work sets forth terms and conditions for the employee's light duty award, none of which contemplate the scenario presented in this question. Furthermore, the injured employee is entitled to receive a TTD award for the period of temporary total disability. "Temporary total disability" means that period of time an employee is *temporarily and totally incapacitated from performing employment at any gainful employment or occupation* for which he is reasonably suited by experience or training. This statutory language does not contemplate TTD benefits due to economic downturn or government-mandated closure.

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? Arguably, yes. According to Wyo. Stat. § 27-14-407, "if an injured employee knowingly engages or persists in an unsanitary or injurious practice which tends to imperil or retard his recovery, or if he refuses to submit to medical or surgical treatment reasonably essential to promote his recovery, he forfeits all right to compensation under this act."

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](#)

<http://wyomingworkforce.org/data/epidemiology/coronavirus/>

<https://www.wyomingbar.org/wyoming-legislature-address-covid-19-claims-wyoming-workers-compensation-act/>

<https://wyoleg.gov/Legislation/2020/HB1002?specialSessionValue=1>

[OSHA's COVID-19 Page](#)

[OSHA's Guidance on Preparing Workplaces for COVID-19](#)

[World Health Organization COVID-19 Updates](#)

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