

COVID-19 claims and public employers



Margaret A. O'Bryon | Monday, April 13, 2020

Public employers are beginning to receive workers' compensation claims for COVID-19. These claims should not be automatically certified or approved by the public employer and/or the public employer's third party administrator ("TPA") without a thorough examination of the facts reviewed by an attorney.

In Ohio, employees who are disabled due to the contraction of an occupational disease or are the dependents of an employee whose death is caused by an occupational disease are entitled to compensation under Ohio's Workers' Compensation system. In light of the current pandemic, an issue of concern for public employers is whether an employee has contracted COVID-19 in the performance of their work duties.

For an employee who has tested positive for COVID-19 to have a compensable non-scheduled occupational workers' compensation claim, all three of the following criteria must exist:

1. The disease is contracted in the course of employment.
2. The disease is peculiar to the employee's employment by its causes and the characteristics of its manifestation or the conditions of employment result in a hazard which distinguishes the employment in character from employment generally.
3. The employment creates a risk of contracting the disease in a greater degree and in a different manner than the public generally.

Generally, communicable diseases like COVID-19 are not compensable workers' compensation claims because people are exposed in a variety of ways, and few jobs have a hazard or a risk of getting the disease in a greater degree or a different manner than the general public. However, there are certain positions or circumstances where a claim may be allowed. For example, health care providers, first responders, or

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employees who are required to travel for their job may be in positions that do create a special hazard or risk. If those employees were to contract COVID-19 from work exposure, it is possible that the Ohio Bureau of Workers' Compensation could allow their claims.

The Ohio Bureau of Workers' Compensation has developed a list of questions directed to the claimant to help in making a determination as to whether or not to process a claim application for a COVID-19 claim. These questions include:

1. What are your normal work activities?
2. Are you a peace officer; firefighter; emergency medical worker?
3. Were you required to work outside of your home by your employer from 03/09/2020 and ongoing?
4. How do you believe you were exposed to the coronavirus?
5. When was the exposure?
6. What symptoms have you experienced?
7. How long have experienced the symptoms?
8. Were you tested for coronavirus?
 - If yes:
 - What hospital or medical establishment performed the test?
 - When was the test administered?
 - Do you have the results?
 - If yes, what are the results?
 - If no, when do you expect the results?
9. Have you received any medical treatment?
 - If yes:
 - Where did you receive the treatment?
 - When did you receive the treatment?
 - What was the treatment?
 - If no:
 - Do you anticipate treatment in the future?
10. Have you traveled outside of the country within the last three months?
 - If yes, where did you travel?
11. Do you know anyone in your personal life who has the coronavirus or who has been exposed to the coronavirus?
 - Have any of your friends, family or acquaintances been exposed to coronavirus or have a diagnosis of coronavirus?
 - Have you resided with or been in physical contact with these individuals (close or remote) prior to the onset of your symptoms or testing?
12. Have you attended or been associated with meetings or gatherings of groups of 10 or more individuals, including work conferences, school classes, church services or church meetings, trade shows, athletic events, etc.?
 - If so, where were these meetings or gatherings?
 - Do you have any knowledge that these individuals have been exposed or been diagnosed with coronavirus?

Based upon the above questions, a public employee filing a claim for coronavirus must be able to demonstrate their work activities, that their employer required them to work outside their home after March 9, 2020, a medical test, treatment, whether they have traveled outside of the country in the last three

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months, have personal friends or family with the virus and if they had close contact them or other groups of 10 or more.

A coronavirus claim should not automatically be certified as a workers' compensation claim by the public employer. Instead, the facts surrounding the claim should be examined by the public employer with the assistance of their workers' compensation specialist attorney at McDonald Hopkins.



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