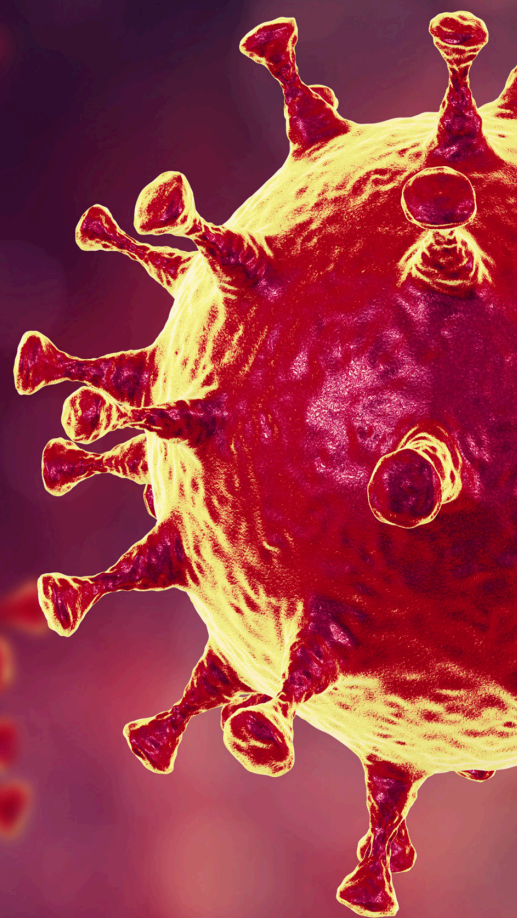


The workers compensation impacts of 2019 Coronavirus (COVID-19)

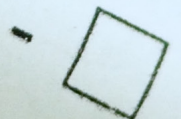


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Coronavirus :



An overview of the 2019 Coronavirus (COVID-19)

The primary Coronavirus disease 2019 (COVID-19) infection, which can result in pneumonia and even death, originated from a seafood market in Wuhan City, Hubei Province of China. Subsequently, person-to-person transmission has occurred, primarily to health workers who had contact with those initially infected. This has led to widespread infections in China with hundreds of new confirmed infections daily across the globe. At the time of writing (February 28, 2020), travel from Wuhan and the surrounding provinces has been banned, as Chinese authorities seek to limit spread of the infection. Prior to this lockdown by Wuhan officials, which began on January 23, 2020, people affected by the virus travelled worldwide with the possibility of further infections arising from person-to-person contact in the places they visited. Some (but not all) sources suggest that the symptoms of the virus may take about fourteen days to manifest, and the carrier may unwittingly infect others during this non-symptomatic period. The implications for those who travel, especially overseas, are significant. This is compounded by the time of occurrence, bridging the Lunar New Year, when travelers from around the world are enjoying family celebrations in

China. Incidents of COVID-19 have now been found globally, with the World Health Organization (WHO) declaring COVID-19 a global health emergency.

Coronaviruses are a family of RNA viruses, including the common cold, SARS and MERS, according to the WHO. While causing seasonal influenza-like symptoms, they differ. This has implications for hosts, transmissibility, susceptibility, antiviral therapy, immunity, vaccines, etc. Multiple strains of COVID-19 have been identified, but the impacts on humans, even within a specific strain, are inconsistent. The described symptoms of COVID-19 vary between a mild upper respiratory infection and severe pneumonia, which could lead to death. The websites of the relevant Government Health Authority in each country/state and the WHO offer useful guidance on dealing with the virus. Regularly updated guidance from the WHO can be found here:

<https://www.who.int/emergencies/diseases/novelcoronavirus-2019>

The impact of COVID-19 on employees

Each day, employees come in contact with customers, clients and coworkers, with each interaction increasing the risk of transmission of a cold, the flu or other common illness. However, those same employees also interact with people outside of the workplace. And with the onset of symptoms or infection coming on at an indeterminable period of time after initial contact, the lines pointing to where exposure to the illness occurred are blurry, at best.

In some workers compensation claims, medical professionals, first responders and others in

hands-on occupations are able to identify the exact interaction or moment of exposure to a disease. Needle sticks, bites, cuts and other acute transmission of bodily fluids can make that determination very simple from a workers compensation perspective. Unfortunately, exposure to COVID-19 is not as simple to pinpoint, and with the disease actively spreading across the globe, many questions are being raised as employers and employees survey the landscape.

“Usually, the flu and other infectious diseases are not covered or accepted under workers compensation.”

Is COVID-19 a compensable workers compensation disease?

First, it is important to understand the groundwork in place today when it comes to compensability of flu and other diseases. Usually, the flu and other infectious diseases are not covered or accepted under workers compensation, and many states specifically exclude diseases from workers compensation coverage.

However, there are exceptions for occupations where the exposure can be considered an occupational disease. In these exceptions, the employee must first prove that the disease was contracted within the scope of their employment and then as a direct result of their employment, which can be very hard to do in most cases. While each state applies their own jurisdictional statutes to occupational illness/disease and

should be consulted for specifics, many apply the two prong test which must be satisfied before any illness or disease, including COVID-19, qualifies as occupational and thus compensable under workers compensation:

1. The illness or disease must be “occupational,” meaning that it arose out of and was in the course and scope of the employment; and
2. The illness or disease must arise out of or be caused by conditions particular to the work.

The definition of occupational illnesses/diseases varies from state to state. According to workerscompensation.com, California defines them as, “Diseases that, under other circumstances, may have occurred without a

relationship to work”. Labor Code §6409(b) provides physicians reporting duties for occupational injuries and illnesses arising in a healthcare setting. These guidelines provide the following:

“As used in this section, “occupational illness” means any abnormal condition or disorder caused by exposure to environmental factors associated with employment, including acute and chronic illnesses or diseases which may be caused by inhalation, absorption, ingestion, or direct contact.

The state of Florida¹ defines occupational disease in a slightly different way:

“...the term ‘occupational disease’ shall be construed to mean only a disease which is due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation, process or employment, and to exclude all ordinary diseases of life to which the general public is exposed, unless the incidence of the disease is substantially higher in the particular trade, occupation,

process, or employment than for the general public. “Occupational disease” means only a disease for which there are epidemiological studies showing that exposure to the specific substance involved, at the levels to which the employee was exposed, may cause the precise disease sustained by the employee.”

A key term in the definition above is the word “peculiar,” meaning the risk is inherent to the employment itself. For example, if a nurse who is poked with a needle while cleaning up supplies of a patient who has Hepatitis-C, the hazard may have a higher likelihood of being considered “peculiar” to the occupation and therefore an occupational disease by the courts since the employee would be able to point to the specific incident, which shows the direct and natural exposure to the hazard.

An additional point of consideration is “patient zero” in a non-healthcare workplace which, despite where they originally contracted the disease, may spread it to other employees. Depending on the jurisdiction, there is a chance coworkers infected by the singular source

¹ Fla. Stat. §440.151(2)



employee may have a claim. These claims would be difficult to prove, but less so than the initial case. Again, specific state statutes come into play here as well. South Carolina² law states a series of conditions under which a disease may not be considered an occupational disease, including “a contagious disease resulting from exposure to fellow employees or from a hazard to which the workman would have been equally exposed outside of his employment”. While it’s a small state, the line highlights the intricacies

around a situation similar to the current spread of COVID-19.

Taking the above excerpts into account, claims for airborne diseases such as COVID-19 are layered and complex. The ability to assess where the exposure took place is difficult, and as the disease spreads the exposure outside of employment, the burden of proof is placed on the employee.

“An additional point of consideration is “patient zero” in a non-healthcare workplace which, despite where they originally contracted the disease, may spread it to other employees.”

How does workers compensation overlap with the general liability implications of occupational diseases?

When general liability is brought into the equation, the opportunity for claims, valid or not, expands greatly. One potential scenario in a business-to-business context is if a client or supplier contracts COVID-19 when interacting with infected employees of another company. In cases like this, workers compensation would still be the primary insurance for the exposed employee. The claims manager would then have the opportunity to subrogate against the employer of the original sick employee.

Generally speaking, a general liability claim filed by a customer, client or supplier would be difficult to prove. A key element in determining liability would be if an employee knew they were sick with COVID-19 when knowingly coming into contact with other individuals.

² S.C. Code §42-11-10(A)

How employers are responding – a focus on employee safety

From encouraging remote work to implementing travel restrictions to certain parts of Asia and Europe, employers across the country are taking precautionary measures against putting their employees in hazardous conditions. The CDC has issued guidance and recommended strategies for employers, available on their website at <https://www.cdc.gov/coronavirus/COVID-19/specific-groups/guidance-business-response.html>. These strategies include:

- Encouraging sick employees to stay home and maintaining flexible policies so employees do not feel pressured to return to work too soon
- Separating sick employees who appear to have acute respiratory symptoms
- Emphasizing staying home when sick, respiratory etiquette and appropriate hygiene

- Performing active environmental cleaning of all frequently touched surfaces
- Advisory before travel in accordance with the CDC's travel guidance

To respond to sporadic importations of COVID-19, the CDC advises employees and employers to take specific precautions when an employee who is well has an infected family member at home. Additionally, if an employee is confirmed to have COVID-19, employers are asked to inform fellow employees while maintaining confidentiality. In each of these situations, it is advised that employers perform a risk assessment of potential exposure.

The overall impact on workers compensation

Given the nature of the disease and the means by which it is transmitted, we expect to see limited claim activity related to COVID-19, especially for employers outside a medical setting. While this does mean there shouldn't be a large-scale impact on workers compensation costs, it does not mean employers are immune to the logistical symptoms caused by the disease. Employee wellness, productivity and the subsequent economic conditions of a widespread health emergency can have negative implications for employers across the globe.

As with any shift in the market, Broadspire's data and analytics team will collect and analyze key information to uncover trends and insights impacting our clients and their businesses. We will continue to provide updates as the situation unfolds.



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