



COVID-19 Workers' Compensation Legislation: Time To Revisit Occupational Diseases

Insights

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Due to the risk of COVID-19 exposure at the workplace, many states have enacted legislation to include the contraction of COVID-19 as a compensable workers' compensation "occupational disease." Just what is an "occupational disease," how does it differ from other types of workplace injuries, and what do employers need to know about this development?

For starters, we must understand what a workplace *injury* is. While the definition of what constitutes an injury varies by state, there are a few universal concepts. A compensable workers' compensation injury is one which: (1) occurred in the course of employment, meaning that it happened at work; and (2) arose out of, or was proximately caused by, the injured worker's employment. Lifting and falling injuries, such as muscle strains and sprains, broken bones, and herniated discs, are all typical workers' compensation injuries. However, not all injuries that occurred at work are compensable. For instance, an injury that occurred at work but was the result of horseplay is not considered to have been proximately caused by work and is therefore not compensable.

Occupational disease claims are analyzed differently. An occupational disease is not normally the result of a single event. Rather, it normally results from an exposure that occurs over time to a specific hazard. The work-related exposure must have a harmful effect on the employee and there must be a causal relationship between the exposure and the harmful effect that is confirmed by a medical diagnosis.

However, one of the key determinations is whether the conditions of the employment created a greater hazard to the worker than to the general public. Routinely recognized occupational diseases include exposure to chemicals, toxic substances, fumes, noise, physical vibration, and radiation. These conditions of employment can create a greater hazard to the worker than to the general public. Because of this, many states have medical diagnoses listing officially recognized occupational diseases, such as exposure to anthrax and various forms of poisoning like lead, mercury, and arsenic poisoning.

Many states have also created a "rebuttable presumption" standard for firefighters and police officers. This means the law concludes that any such public servants who contract cardiovascular, pulmonary, or respiratory diseases are presumed to have contracted such diseases at work given they are regularly exposed to heat, smoke, toxic gases, chemical fumes, and other toxic substances as part of their jobs. This means that while their employers can attempt to rebut such a

as part of their job. This means that, while their employers can attempt to rebut such a presumption and prove that the disease was not work related, it is likely that such conditions will be found to be compensable. [This is where COVID-19 legislation comes in.](#)

While many states already recognize exposure to bloodborne pathogens as an occupational disease, other exposures – particularly to infectious diseases contracted through close contact with an infected individual such as influenza – are often denied, as the exposure is typically not seen as a greater hazard to the worker than to the general public. However, with the rapid spread of COVID-19, and the increased risk of exposure and contraction of this disease, many states have enacted rebuttable presumption legislation for first responders who contract COVID-19, similar to the rebuttable presumption laws for firefighters, police officers and healthcare workers. In these states, certain types of frontline workers who contract COVID-19 are automatically “presumed” to have a work-related condition without having to provide any further proof. Although this presumption is rebuttable – meaning employers can controvert this position with evidence – it is likely to be a high burden for employers to meet.

Some states have expanded this rebuttable presumption to other classifications of workers who have a higher risk of exposure to COVID-19. Thus far, over two dozen states have either issued executive orders, passed legislation, or proposed laws that would provide a rebuttable presumption for workers who contract COVID-19. Expect the number of states enacting COVID-19 occupational disease claims to increase, as we are living through a resurgence of increased infection – which will undoubtedly increase the risk of exposure to first responders and related worker classifications.

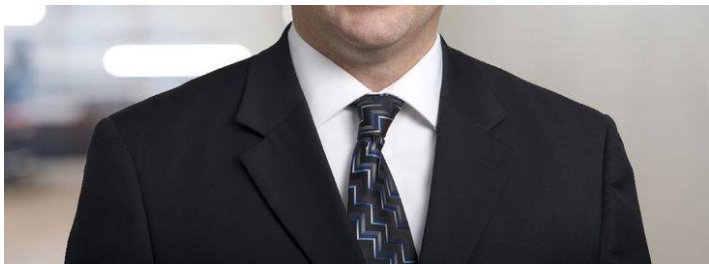
We recommend that you follow CDC Workplace Guidelines to help keep your employees safe:

- Conduct daily health checks;
- Conduct a hazard assessment of your workplace;
- Where not mandatory, encourage employees to wear face masks if appropriate;
- Implement policies and practices for social distancing in the workplace; and
- Improve the building ventilation system.

Following these and other guidelines from the CDC and appropriate state departments of health will help to keep your employees and customers safe.

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Jerry P. Cline

Partner

440.740.2142

Email

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Workplace Safety and Catastrophe Management