

- **COVID-19 Causation Issues: IL, IA, OH, MI**

Businesses should consider several factors of a workers' compensation claim to prepare for potential claims, should a member of their workforce contract the virus.

Generally, claims of exposure to viruses or other potentially dangerous substances are not covered by workers' compensation, unless an injury or occupational disease (OD) results from such exposure. Therefore, a claim of exposure to COVID-19 at work is not, in itself, a compensable injury or disease. Each claim will need to be evaluated on a case-by-case basis.

In order to prevail on a COVID-19 claim, an employee would need to show that:

- they were exposed to COVID-19 in the course and scope of their employment;
- the exposure at work caused them to contract COVID-19; and
- the employee's employment involved a peculiar risk of exposure to COVID-19 different from that which the public and employees in general face.

Due to the fact that COVID-19 is now prevalent and widespread in the public, employees will have difficulty specifically linking the condition to their employment, as mere exposure to or contact with the virus is insufficient for the allowance an OD claim.

Consider a health care employee working around patients that could likely be infected with COVID-19 on a daily basis versus an office employee that is unknowingly working around individuals that could be infected with the virus.

The health care employee expected to work with or around patients that could likely be infected with the virus is more likely to have a compensable claim, assuming the test above is met, versus an employee working in an office where no other COVID-19 cases were identified. This is because the risk of contracting the virus is higher for the health care employee who is expected to engage individuals with the virus versus the office employee who is not expected to engage individuals with the virus. In other words, the health care employee's employment involved a peculiar risk, different from that which the public and employees in general face.

****OTHER CONSIDERATIONS:**

- **WISCONSIN:**

Wisconsin is a positional risk State. In order to prevail on a COVID-19 claim, an employee would need to show that:

- they were exposed to the corona virus in the course and scope of their employment;
- the exposure at work caused them to contract COVID-19; and

- the employee's employment involved a peculiar risk of exposure to COVID-19 different from that which the public and employees in general face.

The last element is not entirely applicable, since, if the claimant can show exposure to the virus in the course and scope, followed by development of COVID-19, there is no additional risk analysis.

That said, petitioner still has the burden of proof on workplace exposure, so the example of a health care worker treating COVID-19 patients versus an office worker unknowingly working around non-symptomatic co-workers is similar, in that the office EE will still have to show how he or she was exposed within the work environment, which will be an easier thing to prove for the health care worker.

- **MISSOURI:**

General causation/exposure issues - The legal issues that have arisen with COVID-19 are unprecedented and only time and multiple cases proceeding through the legal system will provide appropriate direction. By looking at the existing Missouri law, we are able to provide some guidance on how we expect the anticipated future litigation to develop.

In Missouri, a compensable workers' compensation case is either an occurrence of an accident or an occupational disease involving repeated traumatic exposure or prolonged exposure to toxic chemical or biologic agents. Section 287.020.2 describes an accident as "an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift." Furthermore, a sudden exposure to some caustic substance or toxic fumes can be found to be an accident. With COVID-19, it may or may not be possible to point to one single event. If one event can be found, this will likely be found to be an accident. If a single event can not be described, this would more likely be an occupational disease. Section 287.067.1 describes an occupational disease as "an identifiable disease arising with or without human fault out of and in the course of the employment" It further states that "ordinary diseases of life to which the general public is exposed outside of the employee shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section." The occupational exposure must satisfy the prevailing factor test in that the exposure must be the prevailing factor causing the medical condition and disability.

From what we know about COVID-19, it appears to be an ordinary disease of life to which the general public is exposed and therefore, the development of COVID-19 would not likely to be found to be compensable. But if the employment increases the risk of exposure, Section 287.067.7 states that "Any employee who is exposed to and contracts any contagious or communicable disease arising out and in the course of his or her employment shall be eligible for benefits under this chapter as an occupational disease." This would likely be relevant with claimants working as first responders or in the medical field.

Therefore, it appears that a claimant may pursue an accident theory if a single event can be alleged or an occupational disease if the employment increases the possibility of exposure and no single event can be alleged. The burden of showing a prevailing factor remains.

- **INDIANA:**

When the cause of injury is not one which is apparent to a lay person and multiple factors may have contributed to causation, expert evidence on the subject is required. *Triplett v. USX Corp.*, 893 N.E.2d 1107, 1118 (Ind. Ct. App. 2008) (citing *Muncie Indiana Transit Authority v. Smith*, 743 N.E.2d 1214, 1217). Pursuant to *Obetkovski v. Inland Steel Indust.*, 911 N.E.2d 1257, 1263 (Ind. Ct. App. 2009), evidence that merely mentions a workplace injury as part of a patient's medical history is insufficient to establish causation for purposes of obtaining worker's compensation benefits. As it relates specifically to COVID-19, causation may be apparent in some cases, and may require expert evidence in others.