



GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF RISK MANAGEMENT



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Notice Number: PSWCP 2020-01

Subject: Public Sector Workers' Compensation Claims Arising out of the 2019 Novel Coronavirus (COVID-19)

Purpose: Pursuant to authority provided under Reorganization Plan No. 1 of 2003 and Section 2302a of Subchapter 23 of the Comprehensive Merit Personnel Act, the Office of Risk Management (ORM), through this issuance, provides guidance for adjudicating COVID-19 PSWCP claims.

Date: June 15, 2020

Citation: D.C. Code § 1-1518.01; § 1-623.02a

Background: An injury or disease is compensable under Chapter 23 of the Comprehensive Merit Personnel Act (CMPA), D.C. Code § 1-623.01 *et seq.*, if it arises out of and in the course of employment. For an employee's injury to have arisen out of the employment, the obligations or conditions of employment must have exposed the employee to the risks or dangers connected with the injury.¹ For an injury to occur in the course of employment, the injury must occur "within the period of employment, at a place where the employee may reasonably be expected to be, and while [the employee] is reasonably fulfilling duties of his or her employment or doing something reasonably incidental thereto."²

The nature of COVID-19 presents a unique challenge to determining compensability. Because COVID-19 exists in the community outside of an employee's work environment, it is difficult to determine the precise moment and method of virus transmission. Furthermore, while an employee's exposure to the virus that causes COVID-19 may not always

¹ *Grayson v. D.C. Dept. of Emp. Services*, 516 A.2d 909, 911 (D.C. 1986).

² *Bentt v. District of Columbia Dept. of Employment Servs.*, 979 A.2d 1226, 1235 (D.C. 2009) (citations omitted).

result in a positive test for the disease, exposure will subject employees to quarantine that may result in wage-loss without an actual injury.

These circumstances necessitate the issuance of this guidance to address COVID-19 claims and explain COVID-19 workers' compensation coverage under the CMPA and applicable law.

Guidance:

Overview of Coverage for Communicable Diseases

In determining compensability for contraction of a communicable disease that is circulating in the community generally, the issue turns on whether the conditions of employment created an increased or aggravated risk of contracting the disease under particular conditions or in a particular place that the employment took the claimant.³ “[C]ourts agree that injury due to ... exposure to contagious diseases arises out of the employment if the employment increases the risk of this kind of harm.”⁴ If an employee has an increased or aggravated risk of exposure to an infectious or communicable disease while at work, resulting directly from the duties and obligations of employment, contracting the disease has been found to have arisen out of the employment rather than as a result of exposure in the community at large.⁵ Conversely, workers' compensation coverage has been denied for employees who contract a contagion, illness, or disease when any individual in the general population has the same risk of exposure.⁶

Requirements for Establishing a PSWCP COVID-19 CLAIM

COVID-19 is classified by the World Health Organization as a global pandemic.⁷ There is widespread infection of COVID-19 in the District of

³ 1 Larson's Workers' Compensation Law § 5.05(2).

⁴ *Id.*

⁵ See, e.g., *Edwards v. D.C. Youth and Rehab. Servs.*, AHD PBL No. 07-007, 2008 DC Wrk. Comp LEXIS 203 (January 28, 2008) (affirmed by the Compensation Review Board on November 4, 2009 in CRB No. 08-106) (contraction of tuberculosis while at a correctional facility was held compensable as a correctional facility was held to be one that increased exposure risk to TB due to residents of the correctional facility having tuberculosis); *Traveler's Ins. Co. v. Donovan*, 125 F. Supp. 261 (D.D.C. 1954) (contraction of tuberculosis on a work assignment in Japan was held compensable because prevalence of the disease was five times greater in Japan than in the District of Columbia).

⁶ *Neil v. D.C. Dep't of Fire and Emergency Med. Servs.*, OHA No. PBL 97-48, 2000 DC Wrk. Comp LEXIS 63 (February 11, 2000) (An employee may have experienced symptoms of influenza, unrelated to his employment duties, but since any individual in the general populace might become infected by those germs, to place such a burden upon an employer to pay workers' compensation benefits would be both onerous and unfair).

⁷ See <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-coronaviruses>.

Columbia and adjoining jurisdictions.⁸ Consistent with the analysis for evaluating claims involving the transmission of contagious diseases, compensability for a COVID-19 related disability or death must consider whether the employment creates a heightened or aggravated risk of exposure to the COVID-19 contagion, as compared to the background exposure risk attendant to routine involvement and interaction in the greater community. To aid this analysis, the federal Occupational Safety and Health Administration (OSHA) has established risk categories for employees based on their potential exposure at work to known or suspected sources of COVID-19.⁹ The Department of Human Resources (DCHR), through its guidance document, “Return to Work Guide,” adopts these same risk categories for all District employees, ranging from Very High to Low Risk. Evaluation of a COVID-19 PSWCP claim should begin by identifying the employee’s applicable risk category.

Very High and High Risk Category Employees—Rebuttable Presumption of Exposure at Work

Employees who work in jobs with high potential for exposure to known or suspected sources of COVID-19 are placed in Very High and High Risk Categories. Employees in the High and Very High risk categories shall have a rebuttable presumption that they contracted COVID-19 from the work place, provided that they have been diagnosed with COVID-19 and confirmed by a positive test within at least 14 days of performing service at a place of work. This presumption may be overcome by producing sufficient evidence to establish that the employee more likely than not contracted the virus from a source outside of work. In evaluating a claim by an employee in these categories, consideration must be given to whether the requisite personal protective equipment (PPE) mandated by OSHA for the type of employment involved was available and afforded to the employee in accordance with applicable work place safety standards. If not, it is unlikely that the presumption of compensability can be rebutted.

Medium and Low Risk Employees

The Return to Work Guide defines Medium Risk Category employees as those in jobs that require frequent and/or close contact with people (i.e. within 6 feet of) who may be infected with, but who are not known or suspected sources of COVID-19. Low Risk identifies those jobs that neither require contact with people known to be, or suspected of being infected

⁸ See e.g., <https://wtop.com/local/2020/06/coronavirus-test-results-in-dc-maryland-and-virginia/>; <https://thehill.com/homenews/administration/499195-birx-says-dc-has-highest-positivity-rate-for-coronavirus>.

⁹ See <https://www.osha.gov/Publications/OSHA3993.pdf>.

with COVID-19, nor frequent close contact with (i.e. within 6 feet of) the general public. This latter category describes exposure risks that are generally lower than are readily observed from a routine level of interaction with the greater community in the execution of necessary daily and periodic activities (e.g., shopping for groceries or medications, commuting to work and home, attending a medical or dental appointment, etc.) or limited civic engagement (e.g., voting, public demonstrations). Employees categorized as medium risk may have only a slightly greater exposure risk than the risk attendant to everyday life outside of work, but this minimally heightened risk, if any, does not necessitate an initial presumption that the employment was the cause of illness. With respect to employees in both categories, for compensability to obtain, these employees are required to establish (1) a *direct causal connection* between the *work conditions* and *the exposure*, and (2) circumstances of employment that *aggravate the risk* of contracting COVID-19, as compared to the exposure risks attendant routine interactions in the broader society in a time of widespread community infection.

Employees exposed to COVID-19 at the workplace, who test negative for COVID-19, but are temporarily unable to work¹⁰ due to quarantine.

An employee, who may have been exposed to COVID-19 at the work place, but does not in fact test positive for COVID-19, has not sustained a predicate injury that could entitle the employee to workers' compensation coverage. For coverage to obtain, there must be an unexpected traumatic event that produces objective symptoms of an injury, actual occupational disease, or actual infection sustained while in the performance of the employment duties.¹¹ Employees in this category are eligible for initial medical treatment – i.e. coverage for COVID-19 testing to determine whether the employee tests positive for COVID-19. Employees in this category may be eligible for up to 80-hours of paid leave under the Families First Coronavirus Response Act (FFCRA), Pub. L. No. 116-127, 134 Stat. 178 (2020), in addition to such other leave accommodations as provided in accordance with DCHR guidance related to this issue.

¹⁰ Including telework.

¹¹ See D.C. Code § 1-623.01(5); 1-623.01(22); 1-623.02(a).