

## Maryland Workers' Compensation COVID-19 Quick Guide



### General Provisions:

**When must an Employer's First Report of injury to be filed?** As soon as possible, after a notice of illness.

**What is the statute of limitations for the filing of an Employee's Claim form?** Two years.

**When must an Employer/Insurer file contesting issues?** By the consideration date listed on the Notice of Employee's Claim form.

### Compensability:

**Under Maryland law, could COVID-19 be compensable as an occupational disease?** Highly unlikely. Under § 9-502 of the Maryland Workers' Compensation Act, an occupational disease is an ailment, disorder, or illness, which is the expected result of working under conditions naturally inherent in the employment and which is ordinarily slow and insidious in its approach. As such, COVID-19 should not qualify as an occupational disease in Maryland as it is neither an "expected result" nor is the disease's approach "slow and insidious" as Maryland has defined those terms previously.

**Could COVID-19 be compensable as an accidental injury?** Possibly. Accidental injuries must "arise out of and in the course of employment." If COVID-19 is contracted while an employee is engaged in work activities, the condition may be compensable. The key issue, as with the majority of states, remains causation. If the employee is unable to prove that there is a causal nexus between the employment and the condition, the claim is not compensable. As COVID-19 is widespread amongst the general population, causation will be a difficult hurdle for employees to prove in most instances. Having said that, there are some professions, *e.g.*, health care providers and first responders, where the likelihood of contracting the virus is significantly higher than the average worker; therefore, we expect that those workers' claims are more likely to be found compensable. Similarly, if an employee has been exposed to a co-worker, patient, or another known carrier of COVID-19, the chances of compensability are markedly higher.

**If a person contracted COVID-19 while traveling on business, would that result in a compensable claim?** The Maryland courts will likely apply the positional risk test in this situation, meaning that if the work travel placed the employee at risk for contracting the virus, the claim would be compensable if the employee is otherwise able to prove causation.

**If a person is injured while teleworking, would those injuries be compensable?** Yes, so long as the injuries arose out of and in the course of employment, and the employee's home is regarded as a worksite. Factors used in that determination are: 1) the quantity and regularity of work performed at home; 2) the presence of work equipment at home; 3) the special circumstances of the employment rendering it necessary and not personally convenient to work at home; and, 4) whether the employer acquiesced to the employee's regular use of the home as a work site or reasonably should have known the employee was working from home.

**Are psychiatric claims compensable for a person that has actually contracted COVID-19?** Yes, if an employee has a compensable COVID-19 claim and is able to further establish a causally related psychological condition as a result of contracting the virus, any causally related psychological treatment or disability would also be compensable.

**If a person were merely fearful of contracting COVID-19 at work, could the person have a valid psychiatric claim?** Likely not. Given that the fear of COVID-19 is not unique to the work environment, a person's subjective fear of exposure is not likely to result in a compensable claim.

## Benefits:

### **If an employee is forced to quarantine as a result of a possible exposure at work, must TTD benefits be paid?**

No. Unless the employee can prove that he or she contracted COVID-19 at work requiring disability, preventive measures such as quarantines would not be compensable.

**If COVID-19 were to be found compensable, what benefits might be due?** An employee would be entitled to temporary disability benefits, either total or partial, medical treatment, permanent partial disability benefits, and, potentially, dependency benefits. It is unknown to what extent COVID-19 will result in permanent disability benefits, but there is some early suggestion that the disease may result in diminished lung capacity which could yield a permanency finding, and, to the extent that there is psychiatric overlay, there exists the potential for permanency as a result of psychiatric impairment. Should an employee be unable to return to work as a result of permanent symptoms, vocational rehabilitation may be awarded as well.

**Must an employer/insurer pay for medical testing to rule out COVID-19?** Generally, no. An employer/insurer should only be responsible for treatment once a compensable injury occurs. Preventive measures, such as testing, should not be owed under the Act.

**May an employer/insurer make voluntary medical payments without prejudice?** Yes, an employer/insurer may make voluntary medical payments without prejudicing its rights to otherwise deny the claim.

**If an employee is working on light duty as a result of a workers' compensation claim and there is a layoff due to the economic downturn or government-mandated closure, is the employee entitled to TTD?** Most likely, yes. Maryland typically views temporary disability as a "medical" status. As such, even when employees are out of the workforce, *e.g.*, retired or incarcerated, they may be eligible for TTD if they are medically incapable of work. Under these circumstances, employees remain medically restricted from full duty and would not be able to seek jobs at their pre-injury level, and, therefore, we presume that most Commissioners will award temporary disability benefits even where the reason for the unavailability of modified duty is economical and not personal in nature.

**May an employer terminate medical benefits due to non-compliance with treatment as a result of fear of going to a health care provider during the pandemic?** An employer/insurer may terminate benefits due to non-compliance with medical care, but a person's fear of attending treatment visits due to COVID-19 is likely justifiable, and it is highly unlikely that a termination of benefits would be upheld under these extraordinary circumstances. Similarly, a Commissioner would likely be sympathetic to an employee that refuses to go to an IME appointment for similar reasons.

### **Areas of Inquiry During COVID-19 Investigations:**

- Employee's job duties/length of employment
- Employee's symptoms/diagnosis/treatment/test results
- Employee's allegation regarding exposure (*i.e.*, have co-workers/vendors/clients/patients tested positively?)
- Other possible sources of exposure (*i.e.*, roommates/family/friends?)
- Recent travel (personal and/or business) – what/when/where/for how long/purpose
- Secondary employment
- Use of mass transit/public transportation/carpools
- Hobbies/recent events prior to diagnosis (*e.g.*, concerts/sporting events/rallies)
- Social media activity
- Medical canvasses
- Experts (*e.g.*, epidemiologists/infectious disease specialists/industrial hygienists)
- Results of governmental investigations (OSHA/CDC/local health authorities)
- Employer precautions (*e.g.*, did the employer follow CDC guidelines, what other measures did employer take to prevent spread?)

### **Helpful Links:**

- [CDC Workplace Guidance](#)
- [Centers for Disease Control and Prevention – COVID-19](#)
- [EEOC's COVID-19 Page](#)
- [Maryland Business Express – Coronavirus \(COVID-19\) Information for Businesses](#)
- [Maryland Department of Health](#)
- [Maryland Workers' Compensation Commission](#)
- [OSHA's COVID-19 Page](#)
- [OSHA's Guidance on Preparing Workplaces for COVID-19](#)
- [World Health Organization COVID-19 Updates](#)