



# COVID-19 and Workers' Compensation Coverage

With the increasing spread of COVID-19, employers will inevitably have at least one of their employees report a positive test for the virus. The question is how will workers' compensation coverage be applied? There has been much uncertainty surrounding the best course of action in regards to workers' compensation coverage, reporting, acceptance, benefits and programs to address the employment issues.

The responses related to workers' compensation coverage are changing rapidly and differ on a state by state basis. Workers' compensation coverage, definitions and case law vary significantly from state to state, as each state is responsible for its own statute and governance regarding the coverage. This has caused a significant variance in response.

Several states have temporarily shut down their workers' compensation boards, so any decisions, hearings, responses to filings and information regarding workers' compensation response to COVID-19 are being delayed. There are also several states currently considering blanket approvals for healthcare workers and other groups of workers deemed essential who are placed in areas of higher risk of exposure to the virus.

Along with the varying responses by the states, employers are dealing with many changes in their workforce in a short amount of time, due to:

- + Government-mandated shelter in place
- + The loss of business due to the closings of many businesses, customer closures or supply chain interruptions
- + Lay-offs in their workforce
- + Fear, unanswered questions, and an unsettled feeling in the employees that are continuing to report to work

All these issues create what would typically be a workers' compensation "Claim Rich Environment." Employees who fear for their jobs look for ways to secure some type of guaranteed income, and a claim would do that for them. Having a clear plan in place that outlines the company's position and policies in response to COVID-19 will help combat some of the fear, as will impressing upon your employees a culture of care. Companies should communicate how they will care for employees to the best of the company's ability, given the circumstances. Include information to your employees on local and professional resources available to the them,





such as Unemployment, FMLA, short term disability (STD), Paid Sick and Leave Time and any additional programs implemented by the local and state governments.

Not only has COVID-19 raised questions and concerns for those testing positive for the virus, but for those employees with existing workers' compensation claims. There have been delays in processing current workers' compensation claims due to Workers' Compensation Board closures, county court closures, medical professionals not currently treating non-critical patients, hearings cancellations, independent medical examination (IME) cancellations and business closures. These delays and changes are leading to higher claim costs in many cases.

Some of the solutions being brought forward to help with the existing claims include virtual MD and nurse triage programs so employees can get treatment from a professional without entering a health care clinic or hospital and wage continuation programs. State-specific statutes may dictate the ability of a company to implement wage continuation on a workers' compensation claim, so this would be a question for the handling adjuster.

Once a claim has been reported to the employer by an employee testing positive for COVID-19, our recommendation is to report these claims to your carrier/TPA as you would any other claim reported to you by an employee. The workers' compensation claims adjuster specializes in the jurisdictions where they regularly manage claims. The adjusters will complete a thorough investigation of the facts surrounding the claim, including the suspected contact, what the jurisdictional definitions are surrounding "Occupational Diseases" for their state, any additional information that may point to potential

exposure to the virus outside of work and any updated workers' compensation laws in each jurisdiction specifically addressing the virus. The decision to accept or deny the claim will be based on the facts uncovered in the investigation and the applicable jurisdictional statute and case law.

As previously noted, salary continuation has been recommended to employers for their employees, if possible. This too, differs by jurisdiction, as to whether it is legal in the applicable jurisdiction, given the reporting of a workers' compensation claim.



**Hays Companies has many avenues** to use in obtaining up-to-date information on the current status of COVID-19, regulations, responses and programs in place to help manage the questions surrounding workers' compensation coverages.

We are happy to provide any information we have regarding specific questions, concerns or problems in your workers' compensation program.

Reach out to your Hays representative or contact us via our website at [hayscompanies.com](https://hayscompanies.com)

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