

Delaware Workers' Compensation COVID-19 Quick Guide



General Provisions:

When must an Employer's First Report be filed? Ten days.

What is the statute of limitations for the filing of an Employee's Petition to Determine Compensation due? One year from when they acquired knowledge.

When must an Employer/Insurer file a denial? 15 days.

Compensability:

Under Delaware law, could COVID-19 be compensable as an occupational disease? Possibly. The first step will be proving it was contracted at work, which will be difficult considering the widespread nature of the pandemic. And secondly, the mere fact it was contracted at work does not alone make it compensable. There must be an increased risk of exposure than that to the general public because of the employment. The test is whether "the employer's working conditions produced the ailment as a natural incident of the employee's occupation in such a manner as to attach to that occupation a hazard distinct from and greater than the hazard attending employment in general."

If a person contracted COVID-19 while traveling on business, could that result in a compensable claim? Yes. A claimant traveling on business is considered in the course and scope of their employment from the time they leave their home until they return.

If a person is injured while teleworking, could those injuries be compensable? Yes. Telecommuting from home is considered in the course and scope of one's employment, and the claimant's entire residence is considered the employer's premises.

Could psychiatric claims be compensable for a person that has actually contracted COVID-19? Possibly. Delaware allows for mental stress injuries absent physical trauma. The claimant must establish objective evidence the condition or event was actually stressful and a substantial cause of the mental injury. The stress must be real and objective but need not be unusual or extraordinary.

If a person were merely fearful of contracting COVID-19 at work, could the person have a valid psychiatric claim? Possibly but less likely than if they actually contracted the virus. 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 is able to 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? The more likely exposure would be to wage loss - temporary total and partial disability benefits – and medical expense benefits. If the person died as a result of the virus, there would be exposure to death benefits. There may be exposure to permanency benefits if the claimant does not make a full recovery. 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.

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 required under the Act.

May an employer/insurer make voluntary medical payments without prejudice? Yes. In order to comply with the Payment Without Prejudice requirements, you **must** send the following along with any payment: 1) a written explanation of the specific expenses/treatment being paid to the provider/claimant; and 2) the following boilerplate language below, in at least 14-point font:

This claim is IN DISPUTE and payment is being made without prejudice to the Employer's right to dispute the compensability of the workers' compensation claim generally or the Employer's obligation to pay this bill in particular.

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? Not TTD but rather TPD at a compensation rate equal to that for TTD. Unless there is a specific compensation rate for TPD agreed upon, the claimant would be considered in an Open Agreement for TPD based upon their actual loss in wages. If they have no wages, they would be considered to have a total loss of earning capacity, and the compensation rate for TPD would be equal to that of TTD.

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 may file a Petition for Review for forfeiture of benefits if a claimant fails to accept reasonable medical services. However, fear of attending treatment visits due to COVID-19 is likely justifiable and highly unlikely that a termination of benefits would be upheld under these extraordinary circumstances. Similarly, the Board would likely be sympathetic to an employee that refuses to go to a DME 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 employer follow CDC guidelines, what other measures did employer take to prevent spread?)

Helpful Links:

[Centers for Disease Control and Prevention – COVID-19](#)

[Delaware.gov Coronavirus Disease COVID-19](#)

[OSHA's Guidance on Preparing Workplaces for COVID-19](#)

[State of Delaware](#)

[World Health Organization COVID-19 Updates](#)

