

Virginia Workers' Compensation

COVID-19 Quick Guide



General Provisions:

When must an Employer's First Report 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? The Virginia Commission will issue a 20-Day Order to determine the Employer/Insurer's position. A response must be filed within 20 days of the Order.

Compensability:

Under Virginia law, could COVID-19 be compensable as an occupational disease? For the bulk of the population, unlikely. As the disease has been termed a "pandemic," most claimants would have difficulty offering evidence to show that the employment is a proximate cause of contracting the disease. Certain statutory presumptions exist for first responders who contract respiratory illnesses arising out of and in the course of their employment (See Va. Code Section 65.2-402). Also, healthcare workers would likely have a better chance of proving their case by being able to offer evidence of specific exposure events. But again, for most of the population, it would not be considered an occupational disease.

Could COVID-19 be compensable as an accidental injury? Unlikely. In order to prove an injury by accident, the claimant must offer evidence of a *specific incident*, occurring at a reasonably definite time, and resulting in a sudden or mechanical change to the body. To pinpoint the exposure point is a proof problem. Furthermore, occupational disease and/or ordinary disease of life claims are broader and more likely to encompass the facts of an exposure to a virus.

If a person contracted COVID-19 while traveling on business, would that result in a compensable claim? Unlikely. The analysis of whether the exposure is a compensable occupational disease does not change merely because the affected individual is traveling.

If a person is injured while teleworking, would those injuries be compensable? Possibly. It would depend on whether the injury arose out of employment. Simple acts of bending, stepping, and sitting, are not generally compensable events. There must be some work nexus that can be blamed for the injury event. For example, if the claimant (at home) bent over to pick up a box of reference books needed to perform his work, and in the act of picking up the box experienced back pain, it could be a compensable injury. However, if an employee (not distracted by work-related issues) went to sit in a chair and missed it simply because he was not paying attention, it would not be compensable.

Are psychiatric claims compensable for a person that has actually contracted COVID-19? Yes, if an employee otherwise has a compensable COVID-19 claim and claims psychological impairment 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? No.

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? An employee would be entitled to temporary disability benefits, either total or partial, medical treatment, and, potentially, death benefits.

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, to an extent. An employer/insurer may make voluntary medical payments for a period not to exceed six months following the date of the accident 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 not. Presently the Virginia Commission has precedent standing for the proposition that a general furlough is a sufficient defense against disability for a partially disabled employee.

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? No. An employer can file an application on an unjustified refusal of medical services ground in order to affect a suspension, but such an application is unlikely to pass docketing review because the fear of the disease is likely justified.

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:

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

[Office of Workers' Compensation](#)

[US Department of Labor – OSHA: COVID-19](#)

[VA Department of Health – COVID-19](#)

[VA Department of Health](#)

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