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COVID-19 Update

March 12, 2020

Could COVID-19 constitute a compensable injury in your state? Are you up to date on how to handle a possible spread of coronavirus throughout your company? MVP has outlined how the coronavirus could affect workers' compensation claims in Missouri, Kansas, Iowa, Illinois, Oklahoma, Nebraska and Arkansas. Employment topics including FMLA, ADA & EEOC, Leave Policies and Confidentiality are also discussed so employers can follow the appropriate course of action while dealing with this novel virus.

Coronavirus – is it compensable?

Generally, a regular disease that the general public is exposed to is not covered under the occupational disease category. This includes influenza, colds and MRSA – even if the worker is a healthcare worker. These diseases can be contracted in infinite places; not necessarily at the worker's place of employment. However, if a worker catches a more serious disease, one that could easily be identified as coming from their place of employment and not endless other sources, they could be eligible for workers' compensation under the occupational disease category. Workers' compensation cases involving coronavirus will likely only have a possibility of being compensable if the worker is in the healthcare field and has been specifically exposed to the virus.

Impact of COVID-19 on existing workers' compensation claims

Protocols to help prevent the spread of COVID-19 could begin to have an impact on existing workers' compensation claims as medical providers begin screening patients and postponing non-emergent office visits and procedures. Currently, clinics are asking if patients have traveled to high risk areas in the past month and/or are exhibiting symptoms consistent with COVID-19, and if the answers are yes, the patients may be required to postpone a routine office visit or put off a procedure that can wait. As the situation with COVID-19 continues to evolve, additional protocols may be implemented resulting in delays in medical treatment in non-emergent workers' compensation situations. Injured workers rely on these office visits for updates in their work restrictions, to move forward with orthopedic surgeries, to receive physical therapy, in order to return to work. As a result, these delays may impact an injured worker's temporary disability benefits.

In addition, business interruption as a result of the spread of COVID-19 can impact workers' compensation benefits. In the event businesses are temporarily closed, or a layoff occurs, changes in temporary benefits could be triggered for injured workers who

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are off work or on light duty for a work injury. Workers in the hospitality, travel, and event venue industries are already beginning to experience this.

The impact that treatment delays or business interruptions may have on injured workers will vary from jurisdiction to jurisdiction. As the recommendations in these scenarios may also vary greatly depending on the facts of the specific claim, our MVP attorneys are available to answer questions about these scenarios as they arise.

Kansas

The Kansas Workers' Compensation Act includes supplemental Article 5a, which deals with occupational diseases exclusively. "Occupational diseases" are defined by K.S.A. 44-5a01(b) as "only a disease arising out of and in the course of the employment resulting from the nature of the employment in which the employee was engaged under such employer, and which was actually contracted while so engaged." When present, occupational diseases are included as "injuries" under the Act, and specifically require death or "disablement" of a worker, meaning an employee is actually incapacitated from performing his or her work, either partially or totally.

The disease must result from the "nature of employment," defined as a particular hazard of the disease, which is greater than the general risk and the risk of other occupations or trades, which distinguishes the employment from other occupations.

The diseases falling under this section must also have a "special risk" that is "connected with the particular type of employment" and must have "resulted from that source as a reasonable consequence of the risk." The statute excludes "ordinary diseases of life and conditions to which the general public is or may be exposed outside of the particular employment, and hazards of diseases and conditions attending employment in general."

Despite these rigorous requirements for proving a compensable occupational disease claim, the Kansas Act could include coronavirus exposure. The key inquiry will likely be the "nature of employment" creating a particular hazard of the disease. This will place healthcare workers, nursing home employees, first responders, and other medical providers in a unique position to make decent arguments that exposure to, and subsequent development of, the coronavirus is a compensable work-related occupational disease. The success of these potential claims will hinge on actual exposure to the virus through treatment of patients with the coronavirus. As for the general office employee or warehouse worker, it will be much more difficult to successfully bring a workers' compensation claim for exposure to the coronavirus since most of these occupations do not include a particular hazard of the coronavirus to which the general public is not exposed.



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Overall, as is the case in other states, the more the coronavirus spreads, the better the chances are of defending claims by non-healthcare workers. As with any case, employers and their insurers could conceivably be responsible for medical bills, TTD benefits, and PPD benefits. For most cases, PPD will be very minimal or a non-factor given the reported temporary nature of the virus. The key areas of exposure to employers and insurance carriers will likely be TTD from missed work along with medical bills for treatment of coronavirus symptoms.

Contact **Cliff Stubbs** with Questions in Kansas