

COVID-19: NOVEL DISEASE RAISES NOVEL WORKERS' COMPENSATION QUESTIONS

Not only has the global health and economic impact of COVID-19 been harsh, but the highly contagious and potentially deadly disease will likely have a large impact on Minnesota workers' compensation claims.

Employers and insurers will see a rise in claims from existing injuries due to COVID-19 related layoffs, while also facing new occupational disease claims from employees that contract COVID-19.

I. Existing Claims

(TTD Benefits)

Initially, there could be a wave of temporary total disability claims stemming from existing injuries due to mass layoffs. While keeping in mind that every claim and situation is different, employers and insurers should consider the following issues when deciding how to handle these claims:

1. Is the employee ninety days post service of MMI? Unless the employee is medically unable to continue working, the employee should not be entitled to temporary total disability benefits more than ninety days after being served MMI.
2. Is the employee looking for work?
3. Does the employee have work restrictions due to the work injury, and if so, are they substantially contributing to the employee's loss of earnings?
4. Was the employer required to layoff the employee due to a government issued "stay at home" order or to comply with the government's recommendation to practice social distancing?
5. Are the government's response and the economic fallout superseding intervening factors that make it difficult for the employee to work at this time, regardless of his or her injury?
6. Would the work be available to the employee, but for the employer complying with a government order or recommendation?
7. Would a Compensation Judge award temporary total disability benefits on the grounds the employee's restrictions make the employee less marketable to the few companies that are hiring, such as grocery stores and pharmacies?
8. Is the layoff temporary or long term? If the layoff is temporary, it may be easier to argue that the employee's wage loss is predominantly a product of COVID-19 and that the employee's restrictions are not substantially contributing to the employee's inability to find work. In other words, it would be unlikely that an employee could find gainful employment during a short term layoff or furlough, regardless of his or her restrictions.
9. From a public policy standpoint, did the date of injury employer proceed with layoffs in order to support the health of their employees and/or the general public?

(continued on other side)

(TPD Benefits)

If the employee was receiving TPD benefits at the time of the layoff, the employer and insurer can file an NOID on the grounds an employee is required to be working in order to receive TPD benefits. The employer and insurer should then consider the above issues in deciding whether to pay TTD benefits.

(Rehabilitation Benefits)

If an employee is currently receiving rehabilitation benefits, or a QRC finds the employee to be eligible for services following an initial rehabilitation consultation, the employer and insurer should consider filing a rehabilitation request denying or discontinuing rehabilitation benefits. Rehabilitation can be denied if it is anticipated the employee will return to work with his or her date of injury employer, or the employee is not permanently precluded from engaging in his or her customary occupation or date of injury employment. The employer and insurer could also argue that rehabilitation services should be denied or placed on hold, if there is no suitable work to look for due to government social distancing recommendations and/or stay at home orders.

II. Occupational Disease Claims

In addition to TTD, TPD, and rehabilitation claims due to layoffs, a second wave of claims may come from employees claiming an occupational disease due to contracting COVID-19. The definition of occupational disease is contained in Minn. Stat. §176.011, Subd 15(a). According to the statute, an occupational physical disease is a “disease arising out of and in the course of employment peculiar to the occupation in which the employee is engaged and due to causes in excess of the hazards ordinary of employment.”

This definition raises two primary defenses to COVID-19 claims.

1. First, if there is community spread, how can the disease be peculiar to the occupation in which the employee is engaged and due to causes in excess of the ordinary hazards of employment? In fact, some experts believe the majority of Americans will contract the disease, though most will be asymptomatic or only have mild symptoms. However, employee’s attorneys may argue the disease is peculiar to the occupation because the employee was unable to self-quarantine or unable to practice social distancing at work.
2. Second, how can the employee show that the disease arose out of and in the course of employment, especially if there is community spread? In this regard, employers and insurers will want to investigate whether the employee had close contact outside of work with anyone that contracted the disease, such as members of their household, and if so, when?

If you would like to discuss any of these issues with any of our workers’ compensation attorneys, please feel free to contact us.

The information contained herein should not be considered as Legal Advice on any Particular Issue, Fact or Circumstance.

This document is intended to be used for general informational purposes only. Comments or Inquiries may be directed to a Workers’ Compensation Attorney at the Office of Jardine, Logan & O’Brien, P.L.L.P.