In Arkansas there is no case law involving COVID-19, nor any statutory law. States may be considering legislation but to date the Arkansas legislature has not addressed workers' compensation law as it applies to this pandemic. Accordingly, our response to these questions necessarily involves educated guesswork. It is not possible to predict with certainty whether the Commission will analyze COVID-19 exposure at work under the legal framework of an “accident” or “occupational disease.” If the Commission views the compensable question as an accident, the claimant would have to prove by a preponderance of the evidence that 1) the exposure occurred at work, and 2) the work exposure caused the virus. If the Commission views the compensable question as an occupational disease, claimant would have to prove 1) that the virus was contracted “due to the nature of the occupation or process” and 2) that the virus is not an “ordinary disease of life to which the general public is exposed.” Without legislation claimant would have a difficult burden establishing compensability under either decision framework. For certain workers the burden may be eased by executive order entered by Governor Hutchinson on April 14, 2020. (See No. 7 below)

1. Would a claim for COVID-19 be considered a compensable occupational disease injury under the Workers’ Compensation Act?

Given case law in Arkansas, it would appear that COVID-19 could be analyzed under either the accident or occupational disease framework. It is expected the occupational disease framework would be an easier fit.

2. What is the jurisdictional rationale that makes the claim compensable? Provide all rules that would apply to make the claim compensable.

The primary statutory claim bases would be found for an “accident” under Ark. Code Ann. § 11-9-102, and for an “occupational disease” under Ark. Code Ann. § 11-9-601. To establish compensability claimant would have to prove by a preponderance of the evidence that the condition arose out of an in the course of the employment. More specific requirements are outlined in the two referenced statutes.

3. If the employee is directed by the employer to quarantine due to possible exposure at work (and the employer is continuing full salary for 14 days), does the employer’s direction make the claim compensable under the Workers’ Compensation Act?
No. To establish compensability claimant would have the same burden as would exist had the employer not paid claimant full wages during a mandated 14-day quarantine.

4. Are “first responders” considered at greater risk than the general public under the Workers’ Compensation Act?

First responders are not addressed specifically under the Workers’ Compensation Act. Case law would suggest that first responders – as other potential claimants – would have the same burdens for establishing causation under either the accident or occupational disease decision framework. It is certainly conceivable that a first responder by virtue of his or her direct contact with infected persons may have an easier time establishing causation. This is particularly true given that first responders and other providers are intentionally placing themselves in harm’s way, and would therefore be more likely to receive a favorable hearing before the Commission.

5. Is “Pharmacy” considered a first responder under the Workers’ Compensation Act?

No.

6. Is the state calling for legislation that would eliminate the burden of proof for workers making a COVID-19 occupational disease claim? If so, please provide summary of what is being proposed.

No legislation has been introduced.

7. Has the state governor issued an executive order allowing for COVID-19 cases compensable under the Workers’ Compensation Act? If so, please provide copy of the executive order.

Yes. On April 14, 2020, Governor Asa Hutchinson announced an executive order addressing expansion of workers’ compensation liability. The order can be succinctly summarized as follows:

**First responders** and **frontline healthcare workers** will be permitted to file workers’ compensation claims if there is a “causal connection” between contracting COVID-19 and their work responsibilities. This contrasts with current statutory law which would limit potential comp liability for persons contracting an infectious or contagious disease to those working in a hospital or sanitorium. The order included some additional temporary changes to statutory limitations pertaining to workers who suffer pulmonary or respiratory accidents, specifically defining COVID-19 as an “unusual and unpredicted incident.” Those covered by the order would include fire fighters and first responders.
8. If COVID-19 claims are compensable under the Workers’ Compensation Act, is the waiting period waived?

Without legislation or an executive order, there is no basis to conclude that the waiting period would be waived. This, however, may change.

9. If the claim is compensable under the Workers’ Compensation Act and the Employer pays the employee their full salary for the first two weeks during quarantine, how does this affect the TTD benefits?

During the time claimant is paid full wages, no TTD would be owed.

10. Can the TTD benefits start be delayed if the employee’s disability extends beyond 14 days if the employee receives their full salary for the first two weeks?

The timing for receipt of TTD benefits (Ark. Code Ann. § 11-9-501) is triggered by the date of “disability.” The timing for initiating benefits would not change but claimant would not be entitled to simultaneously receive TTD benefits and full pay.

11. Can the TTD benefits be offset by the full salary paid to the employee?

Yes.