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

Yes, with conditions. If an employee contracts the virus and can prove the infection arose out of and in the course and scope of employment, the employee may have a compensable workers’ compensation claim. Per the Colorado W.C.R.P. 5, a blood borne infection or contagious disease may be compensable under workers’ compensation in Colorado. However, an employee must overcome the significant hurdle of proving they actually contracted the disease at work and in the course and scope of their employment.

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

Per W.C.R.P. 5, a blood borne infection or contagious disease may be compensable under workers’ compensation in Colorado. However, the employee must prove the infection occurred at work and during the course of and within the scope of employment.

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. In Colorado, workers’ compensation provides benefits for an employee that is injured on a job. Workers’ compensation covers injuries that:

- Arise out of the employment;
- During the course of employment; and
- Within the scope of employment

The effect of COVID-19 is largely uncharted territory; however, an employee must still meet their burden of proof that the injury is compensable. It is important to note, the employee may bring evidence of the quarantine requirement and the admission of the potential exposure to prove they suffered a compensable injury. An employee will still need to overcome the significant hurdle of proving they actually contracted the disease at work and in the course and scope of their employment. Even if there is a possibility the claimant contracted COVID-19 at work, the claimant must still meet the evidentiary burden to prove the infection occurred at work and during the course of and within the scope of employment.
• First, an employee must prove the virus was in the workplace environment. This may be through another employee with a positive COVID-19 diagnosis or potentially a customer carrying the virus.

• Next, the worker must prove they were exposed to the virus during the course of employment. If the employee can prove they interacted with an infected individual at work or somehow acquired the virus through the subsequent use of objects the infected individual touched, they may have a compensable claim.

• Lastly, the employee must prove they contracted the virus while in the scope of employment. If the employee was engaged in an activity outside the scope of their employment at the time of infection, the claim would not be compensable.

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

The Colorado Workers’ Compensation Act does not include a separate provision for “first responders.” Those considered to be first responders generally fall under the definition for an “employee.” C.R.S. § 8-40-202(2)(a).

However, volunteer firefighters, volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, and volunteer search teams are deemed employees during the actual performance of their duties, and during drills, practice, and training necessary and proper for the performance of their duties. C.R.S. § 8-40-202(1)(a)(I)(A). In addition, volunteer police officers may constitute employees under the Act. City of Florence v. Pepper, 145 P.3d 654, 660 (Colo. 2006).

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

The Colorado Workers’ Compensation Act does not include pharmacy as a first responder.

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.

As of April 16, 2020, Colorado does not have any pending legislation related to COVID-19 and occupational disease claims. However, there is current discussion between stakeholders and the Governor’s office to consider first responders (and perhaps other workers, i.e. grocery store employees) to have presumptively contracted COVID-19 in the workplace, if they contract the virus. But there is no current draft of that legislation, nor is there any indication if the governor will agree with this proposal.

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.

As of April 13, 2020, Colorado Governor Polis has not issued an executive order compelling the compensability of COVID-19 cases.

8. If COVID-19 claims are compensable under the Workers’ Compensation Act, is the waiting period waived?
Colorado has not issued any specific rules related to COVID-19. As blood borne and infectious diseases are compensable under the Colorado Workers’ Compensation Act, the same rules will apply for the waiting period.

If the period of disability does not last longer than 3 days from the day the employee leaves work as a result of the injury, then the employee is not entitled to temporary total disability benefits. If the employee is off work as a result of the injury for more than two weeks, temporary disability benefits are recoverable from the first day the injured employee left work as a result of the accident or injury. C.R.S. § 8-42-103(1)(a)-(b).

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

If the employee receives their full salary for the first two weeks, TTD benefits would still be owed. However, technically the employer would be reimbursed by the WC insurer for any wages they continued to pay an employee for a compensable injury. Public policy prohibits employers from avoiding paying workers’ compensation benefits by continuing to pay a worker’s salary, unless they have applied for and have been approved for the statutory wage continuation program. In Colorado, temporary indemnity benefits are paid to injured workers if they have restrictions and incur a total or partial wage loss as a result of an injury. C.R.S. § 8-42-105(1); C.R.S. § 8-42-106(1).

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?

No. Even if an employee is receiving their full wages, they are entitled to TTD benefits. But, again, the WC insurer technically would reimburse the employer for any continuation of wages after the work injury. Additionally, after two weeks, when the employee is no longer receiving their full wages, the would be paid directly for their wage loss and TTD benefits would be owed.

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

If an employee is receiving their full wages, they are not suffering a wage loss, and therefore TTD benefits are not owed. The employer would technically be reimbursed for the wages paid.