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

Yes.

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

Connecticut General Statute § 31-275(15) defines an occupational disease to include “any disease peculiar to the occupation in which the employee was engaged and due to the causes in excess of the ordinary hazards of employment as such...”. Thus, a medical professional treating COVID-19 patients who subsequently contracts the virus will likely be able to establish a compensable occupational disease. However, this is likely a question of fact to be determined by a trial commissioner.

The commissioner will most likely consider: a) does the person work in a particular occupation that is more predisposed to be exposed to COVID-19; and, b) can it be determined that there was actual exposure. Given the community spread of COVID-19 and ease with which it spreads, this is not an easy standard to meet. The true exposure for these claims will be those that result in death cases, where the potential for survivor/dependent claims exists.

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?

In order for the claim to be compensable it must arise out of and in the course of employment. Being quarantined due to a possible workplace exposure will not make a claim compensable, even if it is at the employer’s direction. If an employee is able to meet his burden of proving compensability, he will not be entitled to collect indemnity benefits while he is receiving his salary.
4. Are “first responders” considered at greater risk than the general public under the Workers’ Compensation Act?

Connecticut General Statute § 31-275(9) (A) defines who is an “employee” subject to the Workers’ Compensation Act. There is no separate designation for first responders. As a practical matter, given the nature of COVID-19 as a transmittable disease, first responders would likely be considered to be at greater risk than the general public.

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

No. The Connecticut Workers’ Compensation Act does not contain a separate designation for first responders or pharmacists.

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 to eliminate the burden of proof in COVID-19 is not being considered at this time. However, the legislature is currently not in session (as of April 2020), and there is the potential for retroactive application of the law once government returns to its normal course of business.

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.

Governor Ned Lamont has not issued an executive order regarding the compensability of COVID-19 cases. He has, however, temporarily waived statute of limitation requirements.

8. If COVID-19 claims are compensable under the Workers’ Compensation Act, is the waiting period waived?

No. Pursuant to Connecticut General Statute § 31-295(a) an employee is not eligible for indemnity benefits until he has been incapacitated for 3 days from earning full wages at his customary employment. The dates of incapacity do not need to be consecutive. There is no waiting period for medical benefits.

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?

An employee who receives their full salary is not entitled to TTD benefits.
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?

Yes. An employee who receives their full salary for the first 14 days will be entitled to TTD benefits once the salary ends.

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

There is no double recovery. If an employee is receiving full salary he or she is not entitled to receive indemnity benefits.