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

The District of Columbia Workers’ Compensation Act provides that an injury is one which arises out of and occurs in the course of an employee’s employment, or an occupational disease that arises naturally results from employment. D.C. Code § 32-1501. An employee has a rebuttable presumption that the claim is compensable if something unexpectedly went wrong with his or her body and the working conditions could have caused the harm. D.C. Code § 32-1521. The Employer and Insurer have to produce substantial evidence to rebut the presumption and, once this is done, the burden then shifts back to the employee to prove compensability by a preponderance of the evidence. D.C. Code § 32-1521(a).

The District of Columbia also has the “positional risk” doctrine which provides that an injury arises out of employment if it would not have occurred but for the fact that the conditions or obligations of the employment placed the Claimant in a position where he or she was injured. Clark v. DOES, 743 A.2d 722 (D.C. 2000). This has been used over the years to expand the circumstances under which a claim can be compensable in the District. In addition, the D.C. Court of Appeals has held that where workplace conditions cause an employee’s injuries, the resulting disability can be compensable as arising out of and in the course of employment. Howard Univ. Hosp. v. DOESW, 881 A.2d 567 (D.C. 2005).

Under these standards, an injury could be compensable but only if an employee can show that it arose out of and occurred in the course of employment and that it would not have occurred but for the fact that the employee was working in the area where he or she was at the time of the event. Mere speculation that the exposure occurred at the place of employment will not be enough to bring the claim within the parameters of the Act, as the D.C. Administrative Hearings Division has denied those types of claims. While there is a presumption of compensability, this can be rebutted and the Employer and Insurer could produce evidence of general exposures to the coronavirus outside of the place of employment to disprove the link between the virus and the employee’s employment. If the coronavirus becomes more widespread in the United States, the presumption will likely become more easily rebutted. Once the presumption is rebutted, the burden will fall back to the employee to prove compensability.

Just because an employee has been diagnosed with coronavirus in a setting where they were performing their work duties does not make it compensable under D.C. law. If an employee contracts coronavirus at work, there will still be a legal, factual, and medical dispute about whether the exposure actually occurred during the course and scope of the employee’s job duties. The transmission would not be compensable
if the employee cannot show that it arises out of employment, even if it occurred in the course and scope of the employee’s job duties.

We could see a compensable claim in a situation where an employee works in a healthcare setting and can prove a specific transmission and exposure to a patient diagnosed with coronavirus. However, it would be more challenging for an employee to show compensability merely because they work with a co-employee who was diagnosed with the virus.

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

See Answer to Question No. 1.

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?

There is no change to the general compensability rules simply because there is a directed quarantine due to possible exposure at work. The employee would still have to prove the exposure and meet the compensability requirements under the Act.

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

There are no presumptions for first responders in D.C. under the Act.

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

A pharmacy is not considered a first responder under the Act and there are no presumptions for first responders.

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.

There is currently no legislation being proposed.

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.

There has been no executive Order issued at this time on compensability of COVID-19 cases.
8. If COVID-19 claims are compensable under the Workers’ Compensation Act, is the waiting period waived?

No, the waiting period still applies.

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?

Any TTD benefits that would be due and owing would be subject to a credit for full salary or any other benefits that were paid by the Employer during the required period of disability.

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, TTD benefits can begin after the 14 day waiting period. At that time, they would be paid based on the Claimant’s compensation rate, which is 2/3 of his or her Average Weekly Wage.

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

The Employer would be entitled to a credit for those full salaried benefits paid to the employee so that the employee was not paid twice. In other words, if the employee was paid full salary by the Employer, no TTD would be due for that period of time. Only if no salary was paid would TTD be due and owing.