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

For claims involving “front line state employees”, if an employee tests positive for Covid-19, the claim is to be considered a compensable occupational disease unless it can be shown, by a preponderance of the evidence, that the employee contracted Covid-19 outside the scope of his or her employment as a state employee. See Florida Department of Financial Services’ Directive 2020-05. “Front line state employees” include: 1) first responders as defined by Section 112.1815, Florida Statutes to include firefighters, law enforcement officers, emergency medical technicians or paramedics; 2) corrections officers as defined by Section 943.10, and other employees whose official duties require physical presence in a state operated detention facility; 3) state employees working in the healthcare field whose duties require contact with persons as they are being tested for Covid-19; 4) child safety investigators whose duties require them to conduct welfare checks on behalf of minors; and 5) members of the Florida National Guard who are called to active duty for service in the State of Florida in response to Covid-19. See Florida Department of Financial Services’ Directive 2020-05.

For all other employees, claims for Covid-19 are not automatically considered a compensable occupational disease under the Florida Act. Per our applicable statute, an “occupational disease” shall be construed to mean only a disease which is due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation, process, or employment, and to exclude all ordinary diseases of life to which the general public is exposed, unless the incidence of the disease is substantially higher in the particular trade, occupation, process, or employment than for the general public. See Section 440.151, Florida Statutes. “Occupational disease” means only a disease for which there are epidemiological studies showing that exposure to the specific substance involved, at the levels to which the employee was exposed, may cause the precise disease sustained by the employee. Id. A careful reading of this definition makes it clear that the burden of proof for a claimant to prevail in an occupational disease case is extremely high. First of all, when looking at just the disease/virus itself, ordinary diseases of life to which the general public are exposed are not generally compensable. Covid 19 would likely be viewed as an ordinary disease of life at this time, unless a claimant can prove that his/her job poses a substantially higher risk of contracting Covid 19 than the general public is exposed. Even if a claimant can prove this, under the definition of an occupational disease, the claimant would then have to prove by epidemiological studies that exposure to a specific substance, at the levels he/she was exposed, may cause him/her to contract Covid 19. This is a difficult hurdle for any occupational disease claim but especially true in a situation where there are likely no studies.
whatsoever. In addition, based on the “clear and convincing” standard, which applies to occupational disease cases, the claimant will need to prove the exposure to the substance causing the illness and the levels to which he/she was exposed can cause his/her illness. Based on the case law, the fact that Covid 19 is highly contagious and that it is possible that the claimant may have been exposed to this virus at work is not sufficient to overcome the applicable burden of proof.

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

See Response #1 for statutory provision regarding “occupational disease” claims in Florida.

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?

Simply requesting that an employee quarantine due to “possible exposure” while at work will not be a sufficient basis on which to base a workers’ compensation claim. As noted above, for claims involving “front line state employees”, in order to be considered compensable, an employee must test positive for Covid-19. For all other employees, in order to substantiate an “occupational disease” claim under the Act, the employee will need to prove, among other things, actual exposure to Covid 19 while at work and that the actual exposure caused his or her condition.

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

In Florida, public safety workers or first responders are defined as any person employed full time by the state or any political subdivision of the state as a firefighter, paramedic, emergency medical technician, law enforcement officer, or correctional officer who, in the course of employment, runs a high risk of occupational exposure to hepatitis, meningococcal meningitis, or tuberculosis and who is not employed elsewhere in a similar capacity, per Section 112.181, Florida Statutes.

Pursuant to Florida Department of Financial Services’ Directive 2020-05, if a first responder as defined in Section 112.181, tests positive for Covid-19, the claim is considered compensable under the Florida Act, unless it can be shown by a preponderance of the evidence that the employee contracted Covid-19 outside the scope of his or her employment as a state employee.

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

Per the definition of public safety worker or first responder as set forth above, a pharmacy worker does not appear to meet the definition of same under Florida Statutes.
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.

On March 30, 2020, the Chief Financial Officer with the Department of Financial Services issued Directive 2020-05 directing that for claims involving “front line state employees”, if an employee tests positive for Covid-19, the claim is to be considered a compensable occupational disease pursuant to Section 112.1815, Florida Statutes, unless it can be shown, by a preponderance of the evidence, that the employee contracted Covid-19 outside the scope of his or her employment as a state employee. See Florida Department of Financial Services’ Directive 2020-05. “Front line state employees” include: 1) first responders as defined by Section 112.1815, Florida Statutes to include firefighters, law enforcement officers, emergency medical technicians or paramedics; 2) corrections officers as defined by Section 943.10, and other employees whose official duties require physical presence in a state operated detention facility; 3) state employees working in the healthcare field whose duties require contact with persons as they are being tested for Covid-19; 4) child safety investigators whose duties require them to conduct welfare checks on behalf of minors; and 5) members of the Florida National Guard who are called to active duty for service in the State of Florida in response to Covid-19. See Florida Department of Financial Services’ Directive 2020-05.

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 by the state governor with regard to compensability of Covid-19 cases. However, on March 30, 2020, the Chief Financial Officer with the Department of Financial Services issued a Directive essentially providing that “front line state employees” who test positive for Covid-19 are presumed to be covered as an occupational disease under Section 440.151, Florida Statutes, unless it can be shown by a preponderance of the evidence that the employee contracted Covid-19 outside the scope of his or her employment as a state employee. A copy of the Directive is attached.

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

If it is determined that a COVID-19 claim is compensable under the Florida Act (please see above regarding compensability requirements) and the claimant receives his/her full salary, then TTD benefits would not be due for the period of time his/her full salary continues to be paid.

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 it is determined that a COVID-19 claim is compensable under the Florida Act (please see above regarding compensability requirements) and the claimant receives his/her full salary, then TTD benefits would not be due for the period of time his/her full salary continues to be paid.

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. If the claimant continues to receive their full salary, then TTD benefits would not be due for the period of time the fully salary continues.

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

Yes. If the claimant continues to receive their full salary, then TTD benefits would not be due.
CFO Patronis Directs Florida to Provide Workers' Comp Coverage for Public Servants on the Front Line of COVID-19

4/1/2020

For Immediate Release: Monday, March 30, 2020

Contact: Office of Communications, Communications@MyFloridaCFO.com, 850.413.2842

CFO Patronis Directs Florida to Provide Workers' Comp Coverage for Public Servants on the Front Line of COVID-19

TALLAHASSEE, Fla. – Today, Florida Chief Financial Officer (CFO) and State Fire Marshal Jimmy Patronis directed the Division of Risk Management to provide workers' compensation coverage to state employees who are fighting COVID-19. The directive provides coverage for state officials whose responsibilities require them to interface with individuals who are potentially infected with the coronavirus.

CFO Jimmy Patronis said, “If we’re going to ask our public servants to fight this pandemic on our behalf, they have to know we’ve got their backs if they get sick. COVID-19 is taking some of our public servants off their feet for weeks. Workers' compensation insurance was developed to provide our public servants a way to cover a portion of their lost wages and medical costs, so their families don’t have to worry as much. Providing this important coverage to our men and women on the front line is just the right thing to do.”

Under the CFO’s directive, state agencies can choose to opt-out of coverage. To date, the Division of Risk Management has received 36 claims for COVID-19. Additionally, the Florida League of Cities recently announced the Florida Municipal Insurance Trust will cover first responders’ COVID-19 claims. While the severity and duration of recovery for COVID-19 varies with each patient, generally individuals recover after two weeks.

CFO DIRECTIVE BELOW:

FLORIDA DEPARTMENT OF FINANCIAL SERVICES
OFFICE OF THE CHIEF FINANCIAL OFFICER

CHIEF FINANCIAL OFFICER DIRECTIVE 2020-05

WHEREAS, Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans; and
WHEREAS, on March 1, 2020, the State Surgeon General and State Health Officer declared a Public Health Emergency exists in the State of Florida as a result of COVID-19; and
WHEREAS, numerous counties in Florida have positive cases for COVID-19, and COVID-19 poses a risk to the entire state of Florida; and
WHEREAS, the Governor issued Executive Order 20-52 on March 9, 2020, pursuant to the authority vested in him by Article IV, Section I(a) of the Florida Constitution, the State Emergency Management Act, s. 252.31, Florida Statutes, et al., as amended, and all other applicable laws, and declared a state of emergency for the State of Florida; and
WHEREAS, the Governor, in Executive Order Number 20-52, authorized each State agency to

suspend the provisions of any regulatory statute of that agency, if strict compliance with that statute would in any way prevent, hinder, or delay necessary action in coping with this emergency; and

WHEREAS, on March 24, 2020, the Governor issued Executive Order Number 20-83 directing the Surgeon General to issue a public health advisory urging persons over the age of 65 and persons with serious underlying medical conditions that place them at a high risk of severe illness from COVID-19 to stay home and take other measures as necessary to limit their risk of exposure to COVID-19; and

WHEREAS, Executive Order Number 20-83 directed the State Surgeon General and State Health Officer to issue a public health advisory urging those who can work remotely to do so; and

WHEREAS, on March 23, 2020, the Governor issued Executive Order 20-80 requiring, among other things, the screening of individuals whose point of departure originated outside the State of Florida in an area with substantial community spread, including the New York Tri-State Area; and

WHEREAS, members of the Florida National Guard have been activated in response to COVID-19, and are performing duties such as airport screenings, and COVID-19 test administrations, that require substantial contact with populations known or suspected to carry COVID-19; and

WHEREAS, the Division of Risk Management is housed within the Department of Financial Services, an agency headed by the Chief Financial Officer; and

WHEREAS, Section 284.30, Florida Statutes, directs the Division of Risk Management to provide worker's compensation coverage on behalf of the State of Florida to certain state employees; and

WHEREAS, certain state employees, herein defined as “Frontline State Employees” perform critical functions, which cannot be deferred or performed remotely, and require substantial contacts with populations known or suspected of carrying COVID-19; and

WHEREAS, providing workers' compensation benefits to Frontline State Employees who contract COVID-19 will support their recovery, and speed their ability to resume functions critical to the State of Florida.

THEREFORE, BE IT RESOLVED THAT I, JIMMY T. PATRONIS JR., in accordance with the authority invested in me by Article IV, Section 4 of the Florida Constitution, Executive Order 20-52, and sections 17.30, 20.121(1), 437.103(8), Florida Statutes, hereby issue the following Directive:

Section 1. The Division of Risk Management shall process Workers' Compensation claims submitted by Frontline State Employees who have tested positive for COVID-19, through a reliable method, as compensable claims for occupational disease pursuant to Section 112.1815, Florida Statutes, and Chapter 440, Florida Statutes, unless the State of Florida can show, by preponderance of the evidence, that a Frontline State Employee contracted COVID-19 outside his or her scope of employment as a state employee.

Section 2. For purposes of this Directive, the term "Frontline State Employee" shall include:

a. First Responders, as defined in Section 112.1815, Florida Statutes, including: law enforcement officers, as defined in Section 943.10, Florida Statutes; firefighters, as defined in Section 633.102, Florida Statutes; and emergency medical technicians or paramedics.

b. Corrections officers, as defined in Section 943.10, Florida Statutes, and other employees, whose official duties require physical presence in a state-operated detention facility.

c. State Employees working in the healthcare field, whose duties require contact with persons as they are being tested for COVID-19 or otherwise known to be infected with COVID-19.

d. Child Safety Investigators, whose duties require them to conduct welfare checks on behalf of minors.

e. Members of the Florida National Guard, who are called to active duty for service in the State of Florida in response to COVID-19.

Section 3. The Division of Risk Management is further directed to process claims as set forth in Section 1. and Section 2. of this Order, without regard to whether any other non-compensable factor may have contributed to the Employee contracting COVID-19, and compensation shall not be reduced because of any other potential causative factors.

Section 4. The head of any executive or cabinet agency may opt-out of the provisions of this Directive by providing written notice to the Agency Clerk for the Department of Financial Services.
Section 5. This Directive shall remain in effect until rescinded by the Chief Financial Officer or superseded by Executive Order of the Governor.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, this 30th day of March, 2020.

Signed, Jimmy T. Patronis, Jr., Chief Financial Officer State of Florida.

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About CFO Jimmy Patronis
Chief Financial Officer and State Fire Marshal Jimmy Patronis is a statewide elected official and a member of Florida’s Cabinet who oversees the Department of Financial Services. CFO Patronis works each day to fight insurance fraud, support Florida’s firefighters, and ensure the state’s finances are stable to support economic growth in the state. Follow the activities of the Department on Facebook (FLDFS) and Twitter (@FLDFS).