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

Under the Illinois Occupational Disease Act, the term “Occupational Disease” means a disease arising out of and in the course of the employment or which has become aggravated and rendered disabling as a result of the exposure of the employment. Such aggravation shall arise out of a risk peculiar to or increased by the employment and not common to the general public. 820 ILCS 310/1(d).

The primary challenge facing an Illinois employee bringing a claim for workers’ compensation arising out of COVID-19 is establishing that their employment exposed them to COVID-19 to a greater degree than the general public. The next hurdle will be proving that the work actually caused them to contract the virus. Many Illinois employees, such as those in a standard office setting, could not support a claim for COVID-19 related occupational disease, as their risk of exposure at work would be no different than their risk of exposure while in a public place. However, if the employee does establish that greater risk of exposure, they may be able to avail themselves of Illinois’ low causation standard. The Illinois Supreme Court has stated that nothing in the statutory language of the Act requires proof of a direct causal connection. Sperling v. Industrial Comm’n, 129 Ill.2d 416 (1989). Other decisions also make clear that “[a] finding of a causal relation may be based on a medical expert’s opinion that an accident ‘could have’ or ‘might have’ caused an injury.” Consolidation Coal Company v. Industrial Comm’n, 265 Ill. App. 3d 830, 839 (5th Dist. 1994).

As such, if an employee is able to demonstrate that their employment created a heightened risk of exposure to COVID-19, there is a reasonable chance that they will be able to satisfy the causation requirements in Illinois, and prevail on an occupational disease claim.

For additional information, see response to question 6, below.
2. What is the jurisdictional rationale that makes the claim compensable? Provide all rules that would apply to make the claim compensable.

The Workers’ Occupational Disease Act covers illnesses and diseases when the employee’s work exposes them to a greater risk than the general public of contracting the illness or disease.

“A disease shall be deemed to arise out of the employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease. The disease need not to have been foreseen or expected but after its contraction it must appear to have its origin or aggravation in a risk connect with the employment and to have flowed from that source as a rational consequence.” 820 ILCS 310/1(d).

As such, to sustain a claim for an occupational disease related to COVID-19 exposure, an employee would need to prove the following: (1) that he or she was exposed to COVID-19 while at work; and (2) that he or she faced a greater risk of exposure to COVID-19 at work than in his or her non-employment life.

For additional information, see response to question 6, below.

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?

Illinois’ Workers’ Compensation and Occupational Disease Acts do not specifically address this issue. However, an employer’s order for its employees to quarantine due to a possible exposure at work would not likely be considered an acceptance of liability for a claim of occupational disease caused by COVID-19. This is especially true where an employer continues to pay its employees their usual wages, rather than temporary total disability, during said quarantine. Rather, the issue of compensability would most likely hinge on the particular facts surrounding an employee’s contraction of the virus, including positive cases among other employees, and would be governed by the rules stated in response to questions 1 and 2, above.

For additional information, see response to question 6, below.

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

The Workers’ Occupational Disease Act covers illnesses and diseases when the employee’s work exposes them to a greater risk than the general public of contracting the illness or disease. This is particularly true in the case of first responders (i.e. EMTs, firefighters, etc.), for whom any condition or impairment resulting directly or indirectly from any lung or respiratory disease or condition shall be rebuttably presumed to have arisen out of and in the course of that
employment, and further, shall be rebuttably presumed to be causally connected to the hazards or exposures of the employment. 820 ILCS 310/1(d).

This section of the act does not include police and other law enforcement officers that would normally be considered “first responders.” However, first responders such as police officers, and those specifically enumerated in the Occupational Disease Act, are certainly more likely to encounter those who may have COVID-19 while performing the essential functions of their jobs, as opposed to in their daily lives. They not only encounter individuals throughout the communities they protect and serve, they also interact in close proximity to their colleagues within police departments, firehouses, etc. These facts, combined with the fact that a carrier of the virus can remain asymptomatic for weeks while transmitting it unknowingly to countless other individuals, creates the greater risk or hazard of exposure to COVID-19 at work that would justify an occupational disease claim as discussed in question 2, above.

This same rationale could also be argued by hospital and medical office personnel, who may not be considered “first responders,” but who nevertheless face a similar heightened risk of exposure due to their interactions with members of the community at large through their daily work activities.

For additional information, see response to question 6, below.

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

The term “first responder” is not defined by Missouri’s Workers’ Compensation Act. As such, it would be given its plain meaning: “a person (such as a police officer or an EMT) who is among those responsible for going immediately to the scene of an accident or emergency to provide assistance.” [Link](https://www.merriam-webster.com/dictionary/first%20responder)

Based on this definition, a pharmacist would not be considered a first responder. However, a pharmacist may still be able to establish an occupational disease claim based on the arguments discussed in questions 2 and 4, above. The merits of that claim may not be as strong for a pharmacist compared to a first responder, given the variance in the degree of risk of exposure between the two categories of workers.

For additional information, see response to question 6, below.

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.

A temporary Emergency Amendment to the Illinois Workers’ Compensation Commission’s Rules of Evidence has been proposed, creating a rebuttable presumption of exposure at work and causation in favor of First Responders and Front-Line Workers. The amendment would be effective for a maximum of 150 days.
“In any proceeding before the Commission where the petitioner is a COVID-19 First Responder or Front-Line Worker as defined in Section (a)(2), if the petitioner’s injury or period of incapacity resulted from exposure to the COVID-19 virus during a COVID-19-related state of emergency, the exposure will be rebuttably presumed to have arisen out of and in the course of the petitioner’s COVID-19 First Responder or Front-Line Worker employment and, further, will be rebuttably presumed to be causally connected to the hazards or exposures of the petitioner’s COVID-19 First Responder or Front-Line Worker employment.” Section 9030.70 Rules of Evidence (a)(1).

The term “COVID-19 First Responder or Front-Line Worker” means police, fire personnel, EMTs, paramedics, health care providers engaged in patient care, correction officers, and crucial personnel identified under the following headings in Section 1 Part 12 of Executive Order 2020-10 dated March 20, 2020: stores that sell groceries and medicine; food, beverage, and cannabis production and agriculture; organizations that provide charitable and social services; gas stations and businesses needed for transportation; financial institutions; hardware and supplies stores; critical trades; mail, post, shipping, logistics, delivery, and pick-up services; educational institutions; laundry services; restaurants for consumption off-premises; supplies to work from home; supplies for essential businesses and operations; transportation; home-based care and services; residential facilities and shelters, professional services; day care centers for employees exempted by Executive Order 2020-10; manufacture, distribution, and supply chain for critical products and industries; critical labor union functions; hotels and motels; and funeral services.

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.

See response to question 6, above.

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

No. Neither the Workers’ Compensation Act, nor the Occupational Disease Act, provide for a waiver of the three-day waiting period for payment of compensation in this scenario.

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

According to 820 ILCS 305/8(b), if the period of temporary total incapacity for work lasts more than 3 working days, weekly compensation provided shall be paid beginning on the 4th day of such temporary total incapacity and continuing as long as the total temporary incapacity lasts. In cases where the temporary total incapacity for work continues for a period of 14 days or more from the day of the accident compensation shall commence on the day after the accident.

If the employee’s occupational disease claim for COVID-19 is indeed compensable, and assuming the disability lasts longer than 14 days, the employee would owe TTD benefits dating back to the
date of quarantine or diagnosis. If an employer paid the employee their regular wages during the first two weeks of quarantine, then TTD benefits would need to be initiated upon the termination of the employee’s regular wages.

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

See response to question 9, above.

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

See response to question 9, above.
EMERGENCY

9030.70 Rules of Evidence

a) The Illinois Rules of Evidence shall apply in all proceedings before the Commission, either upon Arbitration or Review, except to the extent they conflict with the Act, the Workers' Occupational Diseases Act [820 ILCS 310], or the Rules Governing Practice Before the Workers' Compensation Commission (50 Ill. Adm. Code Chapter VI).
have arisen out of and in the course of the petitioner’s COVID-19 First Responder or Front-Line Worker employment and, further, will be rebuttably presumed to be causally connected to the hazards or exposures of the petitioner’s COVID-19 First Responder or Front-Line Worker employment.

2) The term “COVID-19 First Responder or Front-Line Worker” means any individuals employed as police, fire personnel, emergency medical technicians, or paramedics and all individuals employed and considered as first responders, health care providers engaged in patient care, correction officers, and the crucial personnel identified under the following headings in Section 1 Part 12 of Executive Order 2020-10 dated March 20, 2020: “Stores that sell groceries and medicine”; “Food, beverage, and cannabis production and agriculture”; “Organizations that provide charitable and social services”; “Gas stations and businesses needed for transportation”; “Financial institutions”; “Hardware and supplies stores”; “Critical trades”; “Mail, post, shipping, logistics, delivery, and pick-up services”; “Educational institutions”; “Laundry services”; “Restaurants for consumption off-premises”; “Supplies to work from home”; “Supplies for Essential Businesses and Operations”; “Transportation”; “Home-based care and services”; “Residential facilities and shelters”; “Professional services”; “Day care centers for employees exempted by [Executive Order 2020-10]”; “Manufacture, distribution, and supply chain for critical products and industries”; “Critical labor union functions”; “Hotels and motels”; and “Funeral services”.

b) Exhibits offered in evidence, whether admitted or rejected, shall be retained by the assigned Arbitrator or Commissioner until a decision is issued in the matter. Exhibits may not be removed by the parties. Once a final decision is rendered, exhibits shall be retained by the Commission pursuant to the requirements of Section 17 of the Act.

(Source: Amended by emergency rulemaking at 44 Ill. Reg. _____, effective ________________ for a maximum of 150 days)