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

Potentially. Louisiana defines an occupational disease as a “disease or illness which is due to causes and conditions characteristic of and peculiar to the particular trade, occupation, process, or employment in which the employee is exposed to such disease.” La. R.S. 23:1031.1. The Statute provides that carpal tunnel syndrome is meant to be included as an occupational disease. The Statute excludes degenerative disc disease, spinal stenosis, among others from the definition.

In summary, whether or not Louisiana Workers’ Compensation Courts will adjudicate COVID-19 as a compensable workplace accident will turn on whether the employee can prove a causal link between his occupation and his contraction of the disease.

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

The Louisiana Supreme Court has stated that “an occupational disease is one in which there is a demonstrated causal link between the particular disease or illness and the occupation.” Duplechin v. St. Landry Par. Sch. Bd., 2017-748 (La. App. 3 Cir. 2/7/18), 237 So. 3d 1196, 1199. The phrase “characteristic of and peculiar to” does not mean that the disease occurs only in persons engaged in the particular employment and not otherwise found among the general public. Rather, it means that the disease must result from the conditions and causes present in the employment and not from other causes to which the claimant and everyone else might have been exposed. Stated otherwise, it means that the disease must originate from conditions in the employment that result in a hazard that distinguishes the employment in character from the general run of occupations. Johnson v. Manitowoc Co., 52,264 (La. App. 2 Cir. 9/26/18), 256 So. 3d 463, 468, writ denied, 2018-1759 (La. 1/8/19), 260 So. 3d 592
The claimant asserting an occupational disease must prove, by a preponderance of the evidence, a disability related to an employment-related disease, that it was contracted during the course of employment, and that it is the result of the work performed. The causal link between an employee's occupational disease and work-related duties must be established by a reasonable probability. The claimant will fail if there is only a possibility that the employment caused the disease, or if other causes not related to the employment are just as likely to have caused the disease. Johnson, supra.

Notwithstanding the foregoing, even if COVID-19 is not considered a compensable “occupational disease,” there exists the possibility that a court could determine that the contraction of the disease occurred through a compensable “accident,” which is defined as “unexpected or unforeseen actual, identifiable, precipitous event happening suddenly or violently, with or without human fault, and directly producing at the time objective findings of an injury which is more than simply a gradual deterioration or progressive degeneration. “‘Injury’ include[s] only injuries by violence to the physical structure of the body and such disease or infections as naturally result therefrom…” If the Claimant can identify a person sneezing on or near them, or the touching of a surface or person that was contaminated, a court may determine such an event to be an “accident” under the Statute.

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?

The action of the employer will not affect the possible compensability of the disease. In fact, it may be advisable to require an employee who was possibly exposed to self-quarantine and continuing payment of their full salary for 14 days. Such action will allow the employer to maintain their denial of the claim if the employee ends up showing symptoms and requires medical treatment and/or is disabled from work for an extended period. In addition any amount of salary paid to the employee can be offset against any workers’ compensation benefits allegedly owed.

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

Possibly. Expert testimony is needed to support a finding of an occupational disease. Atkins v. DG Foods, 48,490 (La. App. 2 Cir. 9/25/13), 125 So.3d 530. Generally, it would seem that the general public, who are “social distancing” and self-quarantined in their homes would be at a lower risk for contraction of the disease than first responders who are regularly treating patients with symptoms and/or positive results for the disease. Whether or not the risk of a first responder is actually greater than that of the general public will turn on a number of factors.
5. Is “Pharmacy” considered a first responder under the Workers’ Compensation Act?

The Louisiana Act does not define “first responders.” It’s unlikely that a pharmacy would be considered a “first responder” such that their risk of infection would be higher than the general public. Whether a pharmacy employee who contracts the illness would be entitled to compensation would like require the analysis outlined under #2, above.

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 eliminating the burden of proof. The employee’s burden of proof is still a “preponderance” of the evidence.

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.

No executive order has been issued, but legislation (Senate Bill 475) has been introduced which would explicitly provide workers’ compensation coverage for “essential workers,” defined as people working in public safety, government, emergency response, health care or private businesses that are designated and deemed necessary or critical for response to COVID-19 by their employer or official commission. The bill, if enacted, would allow all essential workers who have been disabled by workplace-contracted COVID-19 to seek workers compensation benefits. It would also provide dependents of essential workers whose death benefits for death caused by COVID-19 contracted in the workplace.

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

No legislation or executive order has been issued or enacted suspending the 7-day waiting period.

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?

The employer can offset the full salary paid against any workers’ compensation wage benefits that are or become due. An injured employee is entitled to 66-2/3% of their average weekly wage during the period of temporary total disability. If the employee earns their full wages in lieu of compensation, they will have been overpaid on benefits for the first two weeks. However, if their disability continues for greater than 14 days, the employer may offset any overpayment by reducing their weekly benefit payments until the overpayment is recouped.
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, but the employer may reduce the weekly benefits paid to offset the amounts paid in wages, as described above.

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

Yes, see #9, above.