MAINE

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

Yes. An occupational disease in Maine is defined as a disease that is “due to causes and conditions characteristic of a particular trade, occupation, process or employment and that arises out of and in the course of employment.” 39-A MRS 603. Employments with an enhanced risk of contracting this virus, such as nursing, first responders, doctors, and perhaps grocery/retail workers could successfully prosecute a claim, depending on the facts in a particular case.

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 number one. Compensability would depend heavily on facts such as whether there was known non-occupational exposure to an individual who tested positive, other evidence of whether there was a cluster of positive tests at this work site, etc.

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?**

No. Under EEOC and CDC Guidelines these are prophylactic steps to avoid disease and not evidence of a work injury.

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

Yes. In Maine First Responders have a presumption for some types of disease. This is not yet listed as a statutory presumptive disease for First Responders, but it may well be addressed in the next Legislative session, and, based on common knowledge from the CDC and from all news outlets the Judges will probably look with favor on First Responders who answered the call during the State Shutdown (stay home) Order, providing they can establish that they responded to patients who tested positive.
5. Is “Pharmacy” considered a first responder under the Workers’ Compensation Act?

The Maine statute and case law does not address this issue.

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.

Not yet. Our legislature is not in session at this time.

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.

Not at this time.

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

Not at this time.

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?

The employer would get a credit for the salary continuation. 39-A MRS 221

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?

The obligation to pay starts after the waiting period (7 days) is exhausted, but benefits have to be paid from the onset of disability if disability exceeds 14 days. A salary continuation will be viewed as a credit against the obligation to pay worker’s compensation benefits, but the WCB filings need to be timely and need to reflect benefits are being paid in the form of salary continuation.

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

Yes, so long as the employee did not contribute to the cost of the salary continuation plan.