MARYLAND

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

The Maryland Workers’ Compensation Act defines a compensable accidental injury as an accidental injury that arises out of and in the course of employment; an injury caused by a willful or negligent act of a third party directed against a covered employee; or a disease or infection that naturally results from an accidental injury that arises out or and in the course of employment including an occupational disease. Md. Code Ann., Lab. & Empl. § 9-101(b).

An occupational disease is defined as a disease contracted by a covered employee as the result of and in the course of employment and that causes the covered employee to become temporarily or permanently, partially or totally incapacitated. Md. Code Ann., Lab. & Empl. § 9-101(g). Section 9-502 of the Act limits an Employer’s liability for an occupational disease to those cases where the occupational disease is due to the nature of an employment in which the hazards of the disease exist or has manifestations that are consistent with those known to result from exposure to a biological, chemical or physical agent that is attributable to the type of employment in which the covered employee was employed. Certain diseases are presumed to constitute an occupational disease suffered by public safety employees in the line of their duty pursuant to Md. Code Ann., Lab. & Empl. § 9-503.

Coronavirus would be treated as any other disease under the Workers’ Compensation law. There has been no legislation introduced or passed to date that would treat this recent development any differently. Therefore, considerations for compensability should follow established law on this topic.

We have seen the transmission of communicable diseases being found compensable in certain factual scenarios under Maryland law. Often, this is in the context of an accidental injury where exposure occurs in a health care or public safety setting and there is defined transmission such as a needle stick or exposure to blood and transmission of a disease which is not widespread. We do not generally see claims for transmission of diseases such as the common cold or the flu. This distinction is relevant to the analysis of whether coronavirus claims would be found compensable.

If the transmission of any disease can be traced to a specific, identifiable, accidental injury at work, such as the accidental exposure to bodily fluids, then the contraction of that disease can be said to arise out of and in the course of the employment and could therefore be treated as compensable.
If the transmission of any disease can be established to be due to the nature of an employment in which the hazards of the disease exist or has manifestations that are consistent with those known to result from exposure to a biological, chemical or physical agent that is attributable to the type of employment in which the covered employee was employed, it could be considered a compensable occupational disease.

In other words, there is a requirement that the employee be able to establish that the exposure to the disease took place at work or that they worked in a setting where exposure to the disease is inherent in the work. A needle stick is an identifiable specific accident and thus can be a compensable claim. However, it may be difficult, if not impossible, in most circumstances, to establish how or when a person contracts a disease that can be spread person-to-person or capable of community spread, such as the common cold, the flu or coronavirus.

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. An employee would have to show a specific identifiable event in order to prove compensability under Md. Code Ann., Lab. & Empl. § 9-101(b) of the Maryland Workers’ Compensation Act.

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 of Md. Code Ann., Lab. & Empl. §§ 9-101(b) and 9-503.

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

As of now, the Maryland Legislature has not enacted any rule or regulation that changes or adds a presumption for “first responders.” Maryland has presumptions for certain types of cancers and diseases written into the law for first responders and, currently, COVID-19 has not been added to the list of presumptions.

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

A pharmacy is not considered a first responder under the Maryland Workers’ Compensation Act.
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 is currently being proposed in Maryland and the Maryland Legislature is not currently in session.

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.

The Maryland Governor has not issued an executive order to make COVID-19 cases compensable.

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

No, the waiting period would still apply.

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?

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 could be started after the 14 day period. After that time, the employee would receive 2/3 of his or her Average Weekly Wage instead of full salary.

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.