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

Yes, it could be however, it would depend upon the nature and type of employment. Each case should be analyzed on a case by case basis. Please see answer to Question 2.

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

In Massachusetts, M.G.L. c. 152, Section 1(7A) provides guidance with respect to claims of contraction of contagious or infectious diseases. According to Sec. 1(7A), “‘[p]ersonal injury’ includes infectious or contagious diseases if the nature of the employment is such that the hazard of contracting such diseases by an employee is inherent in the employment.” (Emphasis added). The statutory language of Sec. 1(7A) appears to limit insurers’ liability in cases resulting from COVID-19 infection and subsequent disability and/or treatment: insurers are only liable for disability and/or treatment caused by COVID-19 infection in cases where the risk of exposure to the virus was inherent in the particular workplace. For example, claims by healthcare providers infected by COVID-19 may likely be compensable due to exposure to infectious diseases being inherent to that particular line of work. Conversely, claims by pharmaceutical representatives infected by COVID-19 while attending a regional work conference may likely not be compensable because exposure to harmful diseases is not inherent to attending a work conference or seminar. Indeed, even some healthcare providers may not work in environments where there is an inherent danger of disease contraction. For example, some office-based medical specialists such as optometrists/ophthalmologists, dermatologists, and certain hospital/clinic workers such as administrative personnel may not work in an environment where the danger of disease contraction is inherent – although claimants’ counsel would certainly argue that the clinical setting as a whole represents an inherent danger to disease contraction. Therefore, COVID-19 infection would likely not be considered compensable in Massachusetts for a majority of workers because the risk of contraction of COVID-19, or any other infectious disease, is not inherent to most jobs. It is important to note that contraction of COVID-19 alone does not result in a compensable injury. There must also be a resulting disability.

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, because there is no personal injury under the definition set forth in Section 1(7A) unless an employee actually contracts and tests positive for COVID-19 with a resulting disability.
4. Are “first responders” considered at greater risk than the general public under the Workers’ Compensation Act?

Please see answer to Question 2.

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

No, not yet. It remains arguable that the contraction of COVID-19 is not inherent to this type of work.

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.

While it has not yet done so, the Massachusetts State Legislature may amend the Workers’ Compensation Act to provide a new category of claims tailored to employees’ work-related contraction of COVID-19. Such an amendment to the Act may expand insurers’ potential liability to cases in which potential contraction of an infectious disease was not inherent in the employment. We will provide additional information and recommendations if the State Legislature were to enact such an amendment to the Act.

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.

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

No, the waiting period would not be waived for compensable COVID-19 claims.

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?

Any payment made by an employer to an employee during a period of time when workers’ compensation benefits should have been paid would be considered a gratuitous payment.

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?

Salary continuation would be considered a gratuitous payment and an employee could also receive workers’ compensation benefits for the same period of time.
11. Can the TTD benefits be offset by the full salary paid to the employee?

No, please see above.