MISSOURI

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

Generally, no. Almost any potential claims arising out of exposure to the coronavirus in Missouri will be governed by Title XVIII Chapter 287.010 et seq. An occupational disease is defined to include communicable diseases. Section 287.067.7. This includes the coronavirus, or COVID-19. Under Missouri law, § 287.067.2 specifically, “[a]n occupational disease is not compensable merely because work was a triggering or precipitating factor.” Lankford v. Newton County, 517 S.W.3d 577, 584-85 (2d Dist. 2017). Rather, the Missouri Court of Appeals and the Commission have both found that an employee must demonstrate that the disease he suffered is not an “ordinary disease of life to which the general public is exposed outside of employment.” Id. Given the widespread reach of COVID-19 to every continent except Antarctica, most Missouri employers are well positioned to defend claims of coronavirus as a non-compensable, ordinary disease of life to which the general public is exposed outside of employment.

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

The exception to the general rule stated above is “where the diseases follow as an incident of an occupational disease” as defined by that section. § 287.067.1. “The disease need not have to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.” Id.

If it is shown that the employee was exposed to and contracted any contagious or communicable disease arising out of and in the course of his or her employment, he or she shall be eligible for benefits. § 287.067.7. This can be shown by submission of medical evidence establishing a probability that the employee’s working conditions caused the disease. Smith v. Capital Region Medical Center I, 412 S.W.3d 252 (Mo. App. 2013). This holding is consistent with § 287.063.1 which states that “[a]n employee shall be conclusively deemed to have been exposed to the hazards of an occupational disease when for any length of time, however short, he is employed in an occupation or process in which the hazard of the disease exists...”
In other words, a claim for COVID-19 may be compensable where the employment exposed the employee to the hazard of the disease to a greater degree than the employee would have been exposed in non-employment life, and the employee can demonstrate a medical probability that the heightened exposure caused him or her to contract the virus.

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?

Missouri’s Workers’ Compensation Act does 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.

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

Yes, but not because they are “first responders” per se.

The Missouri Workers’ Compensation law provides as follows:

“Disease of the lungs or respiratory tract, hypotension, hypertension, or disease of the heart or cardiovascular system, including carcinoma, may be recognized as occupational diseases for the purposes of this chapter and are defined to be disability due to exposure to smoke, gases, carcinogens, inadequate oxygen, of paid firefighters of a paid fire department or paid police officers of a paid police department certified under chapter 590 if a direct causal relationship is established, or psychological stress of firefighters of a paid fire department or paid peace officers of a police department who are certified under chapter 590 if a direct causal relationship is established.” § 287.067.6.

While this section recognizes diseases of the lungs or respiratory tract as occupational diseases for firefighters and police officers, it only does so if a direct causal relationship is established between the disease and a set of very specific exposure risks enumerated therein, and does not include exposure to communicable diseases like COVID-19.

However, first responders such as firefighters, police officers, and EMTs 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

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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.

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.” [https://www.merriam-webster.com/dictionary/first%20responder](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.

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.

We are not aware of any formal legislation being proposed that would eliminate the burden of proof for workers making a COVID-19 occupational disease claim. However, the Missouri Department of Labor and Industrial Relations is implementing an emergency rule pursuant to the Governor’s Executive Order which creates a presumption of occupational disease for first responders. See response to question 7, below.

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.

Yes, in limited circumstances. Effective April 22, 2020, and applying retroactively, Governor’s Executive Order 20-02 and Executive Order 20-04 have led to the implementation of Emergency Rule 8 CSR 50-5.005 by the Missouri Department of Labor and Industrial Relations. The emergency rule creates a presumption that first responders infected by or quarantined due to COVID-19 are deemed to have contracted a contagious or communicable occupational disease arising out of and in the course of the performance of their employment.

A first responder is defined under the rule as a law enforcement officer, firefighter, or emergency medical technician (EMT). The presumption established by this rule includes situations where
the first responder is quarantined at the direction of the employer due to suspected COVID-19 exposure, or the display of any COVID-19 symptoms, or receives a presumptive positive COVID-19 test, or receives a COVID-19 diagnosis from a physician, or receives a laboratory-confirmed COVID-19 diagnosis.

The presumption set forth in the rule does not apply where a subsequent medical determination establishes by clear and convincing evidence that the first responder did not actually have COVID-19, or contracted or was quarantined for COVID-19 resulting from exposure that was not related to the first responder’s employment. This last caveat essentially shifts the burden of proof on the issue of causation to the employer.

Attached please find copies of Governor’s Executive Orders 20-02 and 20-04, as well as Missouri Department of Labor and Industrial Relations Emergency Rule 8 CSR 50-5.005.

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 Department of Labor and Industrial Relations’ Emergency Rule 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 employee their full salary for the first two weeks during quarantine, how does this affect the TTD benefits?

Pursuant to § 287.160.1, no compensation other than medical treatment is payable for the first three days or less of disability, unless the disability lasts longer than fourteen days. In that case, payment for the first three days shall be made retroactively to the claimant.

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.