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

Nevada has not issued specific guidance regarding compensation for employees affected by COVID-19. Pursuant to Nevada Revised Statute § 617.358, an occupational disease or illness must be shown by a preponderance of the evidence to have arisen out of and in the course of employment. To be considered an occupational disease, the illness must be peculiar to that job and not arise from a hazard to which workers would have been equally exposed outside of the employment. NRS § 617.440. With the possible exception of health care personnel, many employees may be unable to prove that their COVID-19 infection was peculiar to their job.

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

An occupational disease qualifies for compensation under NRS § 617.440 if:

a) There is a direct causal connection between the conditions under which the work is performed and the occupational disease;

b) It can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;

c) It can be fairly traced to the employment as the proximate cause; and

d) It does not come from a hazard to which workers would have been equally exposed outside of the employment.

Additionally, while the disease does not need to have been foreseen or expected it must be “incidental to the character of the business and not independent of the relation of the employer and employee.”

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?
Nevada has not specifically addressed worker’s compensation claims for employer-directed quarantine.

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

Nevada has not specifically addressed the risk posed to first responders for exposure COVID-19. A first responder exposed to COVID-19 is, however, more likely to meet the criteria for an occupational disease under NRS § 617.440 than other professions based on the causal connection between the duties of a first responder and exposure to an infectious disease.

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

Nevada has not addressed whether pharmacies are considered first responders for purposes of workers’ compensation.

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.

There is currently no pending legislation regarding the burden of proof for employees making a COVID-19 occupational disease claim.

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.

Nevada Governor Steve Sisolak has not issued an executive order allowing for workers’ compensation for COVID-19 claims.

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

Nevada has not specifically waived any requirement for COVID-19 workers’ compensation claims.

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?

An employee who qualifies for Temporary Total Disability (TTD) may receive 66.6% of the employee’s regular salary. An employee qualifies for TTD benefits until he is able to return to work or has reached maximum medical benefit.

© COPYRIGHT 2020 ALFA INTERNATIONAL GLOBAL LEGAL NETWORK, INC. ALL RIGHTS RESERVED.
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?

An employee only qualifies for Temporary Total Disability (TTD) benefits if he is unable to work for five consecutive days after the injury or for five of twenty consecutive days and the employer does not offer light duty. NRS § 617.420. Benefit eligibility continues until the employee is able to return to work or has reached maximum medical benefit. The employee will not receive benefits from workers’ compensation if the employer continues to pay the employee’s full salary. After the employee no longer receives a full salary from the employer, he may receive TTD benefits until he is medically cleared to return to work. The employee should provide the employer notice of the injury within seven days as required in NRS § 617.342 and file a workers’ compensation claim as appropriate.

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

An employee who qualifies for Temporary Total Disability (TTD) benefits is entitled to 66.6% of his regular salary. This may be offset by regular employer salary payments or by light duty salary. If the light duty salary is lower than the qualified TTD amount, the employee may recover the difference through workers’ compensation. The employee should provide the employer notice of the injury within seven days as required in NRS § 617.342 and file a workers’ compensation claim as appropriate.