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

**COVID-19 could**, in the proper circumstance be considered an occupational disease/injury. Both legal and medical causation would have to be proved by the claimant. Under NH law, infection by COVID-19 would probably be considered a “neutral risk” so the condition may be compensable if it resulted from being exposed to “a risk greater than that to which the general public is exposed.” Even if the risk faced by the employee is not qualitatively peculiar to the environment, the injury may be compensable if the employee faces an increased quantity of a risk. *Appeal of Margeson*, 162 N.H. 273, 283 (2011). For example, if the nature of the work required increased close association with co-workers. Of course, the employee would need to satisfy the medical prong of the test by proving that he/she contracted COVID-19 at the employment site rather than outside the employment site.

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

Assuming that it could be proven that the COVID-19 infection was contracted at the work site, the theory for compensability would be that the employment somehow created a risk greater than that to which the general public is exposed. I.e., the employee was required to work in close contact to other workers whereas he/she ordinarily would have been sheltering at home.

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.

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

No. However, there is a provision that requires the carrier to pay “all expenses associated with the medical evaluation and recommended post-exposure prophylaxis treatment for emergency response/public safety workers” which means preventative medical treatment started after an identified critical exposure or unprotected exposure in order to prevent infection or
transmission of a blood borne or airborne disease. RSA 281-A:23,VI-a and RSA 281-A:2,XIV-a, b. However, “such medical evaluation and prophylaxis treatment shall be provided without prejudice as to the issue of the causal relationship of any subsequently diagnosed blood borne disease or airborne disease to the emergency response/public safety worker’s work and without prejudice to the compensability of the blood borne disease or airborne disease as an occupational disease or an accidental injury for purposes of this chapter.” Emphasis added. RSA 281-A:23,VI-a.

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

No.

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.

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.

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?

If the employer chooses to pay the employee their full salary for what is deemed to be a compensable two-week quarantine, no TTD benefits would be owed for that same period as the employee did not suffer any loss of earnings.

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?

If the employer pays the first two weeks of full salary but no more, the TTD benefits would commence on the 15th day.
11. Can the TTD benefits be offset by the full salary paid to the employee?

If full salary is paid to the employee that is in lieu of TTD benefits and no TTD benefits are owed while employee is getting full salary.