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

The current Ohio case law would seem to hold that a claim for COVID-19 would not be considered a compensable occupational disease injury. Ohio case law recognizes that germs, bacteria and influenza are in the atmosphere surrounding us at all times and they are not necessarily an additional work hazard.

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

A COVID-19 claim could possibly be compensable if 1) it is a disease contracted in the course of employment; 2) a disease peculiar to a particular industrial process, trade or occupation; and 3) it is a disease to which a claimant is not ordinarily subjected or exposed to outside or away from employment. The employment must create a risk of contracting the disease in a greater degree and in a different manner than in the public generally.

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, with the possibility of coverage if the employee has contracted COVID-19 and the requirements of No. 2 above have been satisfied.

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

The Ohio Workers’ Compensation Act currently addresses peace officers, fire fighters or EMTs, and two house bills have recently been sponsored to create a presumption in favor of a workers’ compensation claim for those persons who act as first responders and contract COVID-19 during the time frame of the State declaration of emergency.
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.

Yes, The Ohio Workers’ Compensation Act currently addresses peace officers, fire fighters or EMTs, and two house bills have recently been sponsored to create a presumption in favor of a workers’ compensation claim for those persons who act as first responders and contract COVID-19 during the time frame of the State declaration of emergency.

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?

With regard to any workers’ compensation claim in Ohio, if the employer voluntarily pays employees their full salary, TTD benefits are not payable for that same time frame.

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. The employee would need to file the appropriate forms for TTD benefit approval which could cause a delay.

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

Yes.