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

Yes, under 77 P.S. § 27.1(n), the Act covers any disease 1) to which the Claimant is exposed through his employment, 2) which is causally related to the industry or occupation, and 3) the incidence of which is substantially greater in the industry than for the general population. There are likely to be significant challenges to bringing an occupational clam under these requirements, but if the conditions are met, a COVID-19 infection will be compensable.

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

Yes, an infectious disease can be compensable both as an occupational disease and as a specific injury. Under the occupational disease provisions of the Act, a Claimant must meet the three conditions listed above.

As a specific accident/injury, the Claimant must show the infection was contracted at work and led to a disability. The Act covers any disease caused by or related to employment. Claimant bears the burden of proof on all aspects of a claim, which may be difficult for the Claimant to meet. See, 77 P.S. § 411 and Pawlosky v. WCAB (Latrobe Brewing Co.), 525 A.2d 1204, 1210 (Pa. 1987).

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?

Normally, without proof of actual exposure or injury a claim cannot be compensable. Proof of exposure will likely be difficult to produce by the Claimant. However, if a possible exposure is acknowledged and salary is continued, the Employer may be deemed to have accepted the injury and be required to pay benefits until the benefits can be suspended by law. See, Funari v. WCAB (Temple Inland), No. 1171 C.D. 2013 (Pa.Cmwlth. 2013).
4. Are “first responders” considered at greater risk than the general public under the Workers’ Compensation Act?

As a matter of law, no. However, first responders may have increased exposure and find it easier to document such exposure.

However, delineated first responders (police, firefighters and others) are covered under the Pennsylvania Heart & Lung Act, which provides increased benefits for line-of-duty injuries.

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

No, although pharmacies are considered essential businesses under the state of emergency, there are no provisions for pharmacy workers being considered first responders. Pharmacy workers are not covered by the Heart & Lung Act.

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 are a number of proposed laws being considered in reaction to the epidemic. According to news reports, the State Fraternal Order of Police has drafted proposed legislation to make a COVID-19 an occupational disease, however this bill has not been formally taken up or sponsored by any legislators.

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. No such order has been issued at this time.

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

No, the standard waiting period remains in effect. Claimants must be out of work for 7 days to begin receiving benefits. After 14 days, benefits are payable retroactively to the first day of disability.

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?

Salary continuation is payment in lieu of TTD/indemnity benefits, as such TTD would not be owed during the salary continuation period. However, Payment of salary continuation after a work injury effects an acceptance of the claim. This may prevent an Employer from unilaterally
stopping compensation and will shift the burden of proof in future litigation to the Employer to show that the Claimant is no longer disabled.

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?

TTD benefits can be delayed under this scenario. However, the continuation of salary after an exposure will require TTD benefits to be paid.

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

Yes, salary continuation is a benefit in lieu of indemnity/TTD compensation.