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

If it is shown that the infection caused a disability “arising from any cause connected with or arising from the particular characteristics of the employment” it would fall under the Occupational Disease section of the Workers’ Compensation Act, specifically, RI General Laws 28-34-2 (34). It is not be definition listed as an occupational disease. The employee has to demonstrate that the infection was the result of a workplace exposure.

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

An employee would have to demonstrate that the condition was the result of exposure at work. There is no presumption that is work-related. The employee would have to show to a reasonable degree of certainty that the condition was likely the result of a workplace exposure. In order for the claim to be compensable, other possible sources of the infection would have to be eliminated. It would have to be shown that the only way the employee could have contracted the condition was from workplace exposure, as the virus is not limited to an employee who are working in a particular job.

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?

The mandate of a quarantine would not make the claim compensable under the Workers’ Compensation Act as there is no injury. The quarantine requirement applies to all employee’s who have traveled outside the country or may have otherwise been exposed. Any payments to the employee for the forced time off would be governed by state or federal mandates, not the Workers’ Compensation Act.
4. Are “first responders” considered at greater risk than the general public under the Workers’ Compensation Act?

No, there is no subcategory for “first responders” relative to physical injuries. As it pertains to stress claims, the burden of proof would be higher for “first responders” as the standard is higher because the stress is evaluated in terms of the normal stress of someone in the profession of the employee. The Supreme Court has adopted a “Street Risk Doctrine” which could be used to assert that the condition should be considered compensable if the employee’s job requires daily interaction with the public. However, the employee would still have to show the infection was the result of exposure at work.

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.

Some members of the legislature are asking that the Governor issue an Executive Order eliminating the obligation to show a causal connection between the infection and the workplace. The executive order would apply to first responders and anyone designated by the Director of the Department of Labor and Training and the Director of the Department of Administration as an essential employee. This would include any public safety official, including but not limited to, police, fire, EMS, medical facility workers, correctional officers, dispatchers, paramedics, pharmacists, and pharmaceutical technicians. The order would also apply to grocery or retail workers, essential state and municipal employees, janitorial staff, public transportation employees, parcel and freight delivery employees, truck drivers and utility workers, whether the workers are citizens, documented or undocumented immigrants. Any worker who contracts, has symptoms of or otherwise becomes affected with COVID-19, during the time period in which the state, federal government or any municipality declared a state of emergency because of the COVID-19 pandemic, that results in a period of hospitalization, quarantine, or require self-quarantine measures as a result of being infected or coming into contact with someone who is infected with the COVID-19, shall have their medical condition or incapacity to work presumed to be work-related.

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.

Not yet.

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

The proposal does not address the waiting period of 21 days from date of injury.
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?

The payments would likely be considered gratuitous if the employee were disabled as a result of exposure. As a practical matter, benefits would likely be awarded only once the employee has lost their earnings capacity and are not being paid.

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?

Probably yes, as employees would prefer to receive the salary rather than the reduced weekly benefit that is workers’ compensation. However, if the employee is totally disabled, the payments could be seen as gratuitous which would require payment of benefits during the period they received their salary.

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

Probably, as the court would be loath to order payments when the employee has no lost earnings while receiving full pay.