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

A claim for COVID-19 could arguably be compensable as an occupational disease or injury by accident under certain circumstances.

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

According to Section 42-11-10 of the South Carolina Workers’ Compensation Act, a compensable occupational disease is one that is “due to hazards in excess of those ordinarily incident to employment and peculiar to the occupation in which the employee is engaged” in order to be compensable. In addition, the statute specifically excludes an occupational disease that is “a contagious disease resulting from exposure to fellow employees or from a hazard to which the workman would have been equally exposed outside of his employment.” Finally, the statute excludes “ordinary diseases of life” to which the general public is equally exposed, “unless there is continuous exposure peculiar to the occupation itself which makes such disease a hazard inherent in such occupation.”

Therefore, a claimant asserting an occupational disease claim for COVID-19 must demonstrate both that COVID-19 is peculiar to his or her occupation and that it is not something he or she would be equally exposed to outside of work. The claimant also must present sufficient medical evidence to prove that the condition is causally related to the employment. For instance, a doctor, nurse, and other healthcare worker who is required to treat COVID-19 patients or otherwise come into close contact with infected patients would arguably have a compensable occupational disease claim, if he or she can prove the disease was most likely contracted as a result of workplace exposure.

An employee may also assert a COVID-19 claim as an injury by accident if the employee can prove he or she contracted the disease as a result of a specific instance of exposure at work. Section 42-1-160 of the SC Workers’ Compensation Act provides that a compensable injury by accident
is an injury that arises out of and in the course of employment. The Act specifically excludes “a
disease in any form, except when it results naturally and unavoidably from the accident” or is a
disease that is compensable as an occupational disease as set forth above. The SC Commission
and courts have found compensable injuries involving conditions such as heat stroke, influenza,
and pneumonia, among other diseases. However, to be compensable, a claimant must prove (1)
that the condition/illness was caused by exposure at work and (2) that such exposure was a result
of being placed at a greater risk of exposure due to the employment. Sturkie v. Ballenger Corp.
268 S.C. 536 (1977). Therefore, the heightened risk analysis for an injury by accident claim is
similar to that set forth above for occupational disease, the primary difference being the specific
triggering event or episode as a defining characteristic of injury by accident. Under this analysis,
a COVID-19 claim may be compensable as an injury by accident where, for example, an employee
is required to work in a facility where there have been known COVID-19 cases among the work
force. Of course, the employee must still prove that a specific instance of exposure at work
causd the employee to contract the disease, which could be an uphill battle for claimants in
South Carolina.

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?

Unless the employee has actually contracted the disease, there would likely not be a viable
claim under the SC Act.

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

As noted above, healthcare workers, including first responders, who are required to treat COVID-
19 patients will likely be considered at greater risk than the general public. It remains to be seen
whether our Commission would deem all healthcare workers at increased risk, including those
whose specific job duties do not require close contact with known COVID-19 patients.

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

That specific question has not been addressed by the SC Commission or courts, but we expect
that a pharmacist’s COVID-19 claim would more likely than not be found compensable if the
pharmacist can prove he or she contracted the disease as a result of workplace exposure.

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.

The South Carolina legislature has not yet formally proposed any changes to workers’
compensation laws in relation to COVID-19, although some legislators have called for expanded
benefits to aid first responders.
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.

To date, South Carolina’s Governor Henry McMaster has not issued an executive order addressing workers’ compensation benefits in the context of COVID-19. A spokesman for the Governor’s office has told news outlets the Governor is “taking a close look” at proposals regarding first responders’ benefits referenced above.

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

The same waiting period for TTD benefits would apply for COVID-19 as any other claim in South Carolina.

9. If the claim is compensable under the Workers’ Compensation 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 employee would not be entitled to collect TTD benefits for any period in which the employer pays full salary.

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?

The start of TTD benefits would not be delayed under this scenario.

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

Yes. As noted above, an employee cannot collect benefits during any period in which the employer is continuing to pay full salary.

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