VERMONT

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

Whether a claim for COVID-19 is considered a compensable occupational disease injury needs to be analyzed on a case-by-case basis. In Vermont, “occupational disease” is defined under 21 V.S.A. § 601(23) of the Vermont Workers’ Compensation Act as:

a disease that results from causes and conditions characteristic of and peculiar to a particular trade, occupation, process, or employment, and to which an employee is not ordinarily subjected or exposed outside or away from the employment and arises out of and in the course of the employment.

The definition necessitates an analysis of the claimant’s: occupation; general non-work exposure to COVID-19; and ability to show that an alleged COVID-19 infection arose out of and in the course of employment. In most cases, it is likely that a claim for COVID-19 would not be a compensable injury. However, it is important to note that the Vermont Workers’ Compensation Act provides some occupations with likely presumptive compensable COVID-19 claims, where there is documented workplace exposure. Pursuant to 21 V.S.A. § 601(11)(H)(i), in relevant part:

In the case of firefighters and members of a rescue or an ambulance squad, disability or death resulting from lung disease or an infectious disease either one of which is caused by aerosolized airborne infectious agents or blood-borne pathogens and acquired after a documented occupational exposure in the line of duty to a person with an illness shall be presumed to be compensable, unless it is shown by a preponderance of the evidence that the disease was caused by nonservice-connected risk factors or nonservice-connected exposure.

This presumptive compensability is limited and defined in more detail in the statute. This presumptive compensability for some occupations may also enhance claims for other workers with documented workplace COVID-19 exposure, particularly in healthcare settings.
2. What is the jurisdictional rationale that makes the claim compensable? Provide all rules that would apply to make the claim compensable.

Please see the response to #1, above. The Vermont Workers’ Compensation Act seeks to provide the exclusive remedy for workplace injury, thus insulating employers from other common law claims related to potential COVID-19 infections. 21 V.S.A. § 622 (“entitled to compensation under the provisions of this chapter shall exclude all other rights and remedies of the employee, the employee's personal representatives, dependents, or next of kin, at common law or otherwise on account of such injury”). Particularly given the current shortage of protective equipment in the healthcare industry and beyond, the Vermont Workers’ Compensation Act provides employees with a framework for a compensable claim, with established maximum liabilities, while shielding employers from other claims related to failures to provide an adequate protective equipment and a safe workplace.

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. The possibility of exposure does not equate to personal injury and, therefore, the direction to quarantine in the absence of an established COVID-19 infection (clinical diagnosis or positive test) would not be compensable under the Vermont Workers’ Compensation Act.

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

Yes. See Answer 1: first responders have likely presumptive compensable claims. In addition, first responders are provided enhanced protection under the Act with regard to PTSD claims, which may be relevant to the current pandemic.

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’s 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’ 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?

If the employer pays the employee during their first two weeks of quarantine and the claim is compensable, the Vermont Workers’ Compensation Act prevents double recovery and the claimant will not be entitled to TTD benefits during the employer-paid quarantine, but would be entitled to TTD benefits for the remainder of their total disability.

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?

No. Following the onset of the employee’s total disability, TTD benefits will be due when the employee begins losing paid time, subject to the usual waiting periods.

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

If the employee is paid his/her full salary while he/she is out of work, then the employee is not entitled to receive temporary disability benefits during that time.