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

Possibly. In Virginia, it is likely that COVID-19 would be considered an ordinary disease of life (or a disease to which the general public is also exposed). Therefore, it would be analyzed under Va. Code §65.2-401. An ordinary disease of life may be treated as an occupational disease if it can be established by clear and convincing evidence that:

i. The disease arose out of and in the course of the employment as provided in Va. Code §65.2-400 with respect to occupational diseases and did not result from causes outside the employment, and

ii. That one of the following exists:
   a. It follows as an incident of occupational disease
   b. It is an infectious or contagious disease contracted in the course of one’s employment in a hospital or sanitarium or laboratory or nursing home or while otherwise engaged in the direct delivery of health care, or in the course of employment as emergency rescue personnel and those volunteer emergency rescue personnel referred to in Va. Code §65.2-101; or
   c. It is characteristic of the employment and was caused by conditions peculiar to such employment.

COVID-19 could be considered a respiratory disease that would trigger a presumption that applies to volunteer or salaried firefighters and Department of Emergency Management hazardous materials officers pursuant to Va. Code §65.2-402 if it results in death or total or partial disability. Respiratory diseases resulting in death, or total or partial disability of these individuals are presumed to be occupational diseases suffered in the line of duty unless the presumption is overcome by a preponderance of the evidence.
2. What is the jurisdictional rationale that makes the claim compensable? Provide all rules that would apply to make the claim compensable.

Va. Code §65.2-401
Va. Code §65.2-400
Va. Code §65.2-402
Va. Code §32.1-123 (defines nursing home, as referenced by Va. Code §65.2-401)

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.

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

The Act does not so state. However, certain presumptions have been statutorily granted to first responders, and a specific code section addresses contagious diseases in the context of health care professionals. As such, cases may consider such professions to be at a greater risk than the general public, though it will likely be a case-by-case analysis.

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 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?

The claimant would not be entitled to recover both his wages from the employer and TTD from the carrier. They are only permitted one recovery. The carrier would be entitled to a credit for any benefits paid by the employer.

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?

Virginia has a 7 day waiting period before TTD benefits become due. However, if the disability extends beyond 21 days, then the initial 7 days are owed.

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

If the claimant continues receiving his full salary, he would not be entitled to claim TTD benefits for the weeks he was paid a salary. It is not recommended to pay a full salary to the employees though due to potential de facto award and statute of limitations concerns.