



ALFA International

The Global Legal Network
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VIRTUAL WORKERS' COMPENSATION SEMINAR

March 25, 2021

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TAKING THE MASK OFF OF COVID-19

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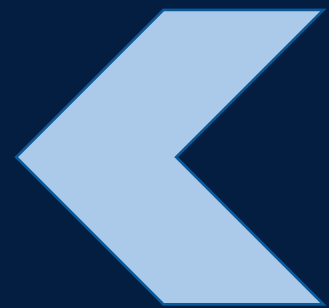
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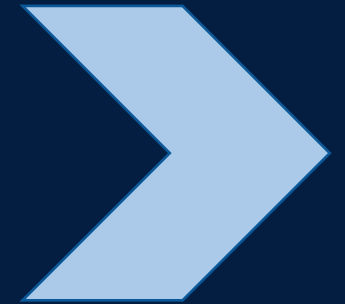
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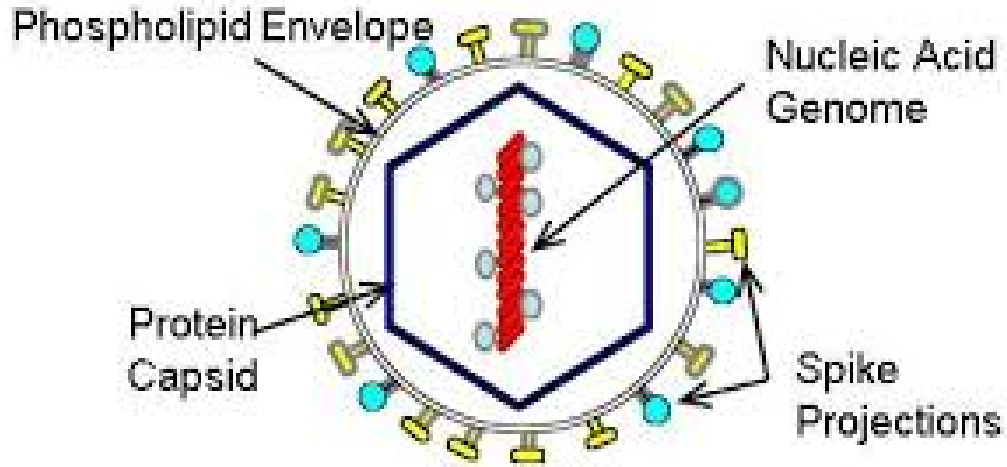
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THE MEDICAL DETAILS



COVID-19: WHAT IS IT?



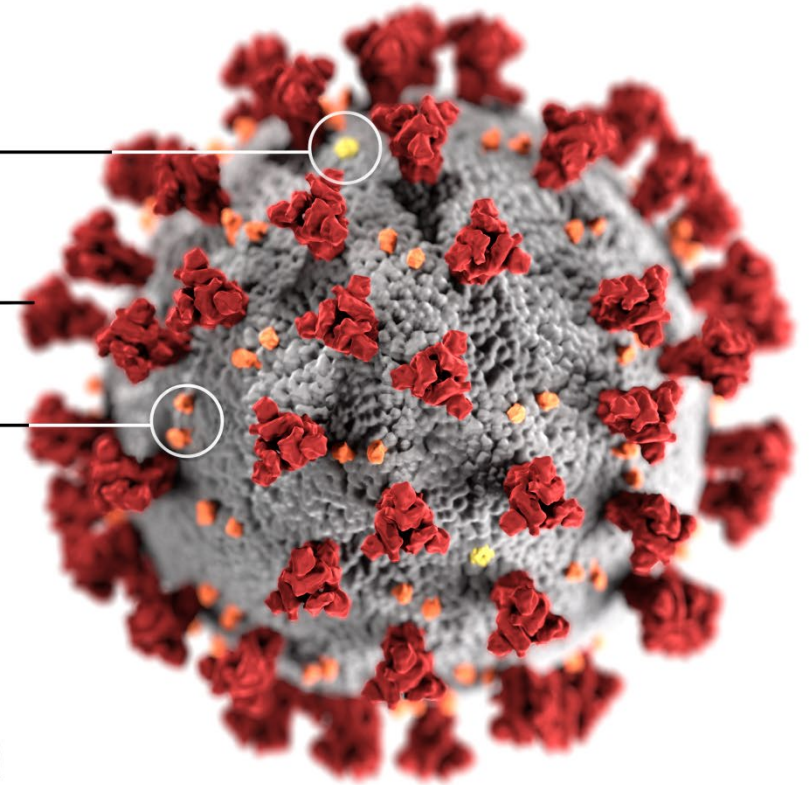
A typical enveloped virus

A virus is a small collection of genetic code, either DNA or RNA, surrounded by a protein coat. A virus cannot replicate alone. Viruses must infect cells and use components of the host cell to make copies of themselves. Often, they kill the host cell in the process, and cause damage to the host organism. Viruses have been found everywhere on Earth. Researchers estimate that viruses outnumber bacteria by 10 to 1. Because viruses don't have the same components as bacteria, they cannot be killed by antibiotics.

E protein

S protein

M protein



COVID-19

COVID-19: BASIC MEDICAL FACTS ABOUT CORONAVIRUSES

- There are many different kinds of coronaviruses. Some of them can cause colds or other mild respiratory (nose, throat, lung) illnesses. About 20% of all “colds” are caused by coronaviruses.
- Other coronaviruses can cause more serious diseases, including COVID-19, severe acute respiratory syndrome (SARS) and Middle East respiratory syndrome (MERS).
- Coronaviruses are named for their appearance: Under the microscope, the viruses look like they are covered with pointed structures that surround them like a corona, or crown.

COVID-19: INCUBATION PERIOD AND TRANSMISSION

- 2 – 14 DAYS AFTER ACQUIRING THE VIRUS; AVERAGE IS 5 – 6 DAYS.
 - During this period, also known as the “pre- symptomatic” period, some infected persons can be contagious.
- Transmission after 7 – 10 days of illness is felt to be unlikely.
- Primary mode of transmission is person to person through respiratory droplets.
- 6 feet is still the recommended safe distance.
- No evidence for transmission through non-mucus membrane contact.
- Prolonged viral RNA detection does not indicate prolonged infectiousness. Virus present on contaminated surfaces may be another source of infection if susceptible individuals touch these surfaces and then transfer infectious virus to mucous membranes in the mouth, eyes, or nose.
 - The frequency and relative importance of this type of transmission remain unclear.

COVID-19: EPIDEMIOLOGY

- Globally, over 100 million confirmed cases of COVID-19 have been reported. Since the first reports of cases from Wuhan China, at the end of 2019, cases have been reported in all continents, except for Antarctica
- As of 3/11/2021 there have been 29,929,180 infections and 543,757 deaths in the USA
- USA total deaths is greater than the deaths in the three of the most effected countries combined (Brazil, India and Russia)

COVID-19: IMMUNITY AND VACCINATION

- Immunity following infection — SARS-CoV-2-specific antibodies and cell-mediated responses are induced following infection. Evidence suggests that some of these responses are protective and generally last at least several months. However, it is unknown whether all infected patients mount a protective immune response and how long protective effects last beyond the first few months after infection.
- Risk of reinfection — Overall, the short-term risk of reinfection (e.g., within the first few months after initial infection) appears low. Nevertheless, sporadic cases of reinfection have been documented.

COVID-19: IMMUNITY AND VACCINATION

- There are two emergency approved RNA vaccines are now available in the USA (Pfizer and Moderna). RNA vaccines were the first vaccines for SARS-CoV-2 to be produced and represent an entirely new vaccine approach. Once administered, the RNA is translated into the target protein, which is intended to elicit an immune response. The Johnson and Johnson and AstraZeneca vaccines are an adenovirus vector vaccine with is a more traditional technology. All are highly effective in preventing severe illness, hospitalizations and death.
- The duration of immunity after vaccination is not currently known.

COVID-19 WORKERS' COMPENSATION ISSUES: CAUSATION

INDIVIDUAL RISK FACTORS:

- Age
- Race/ethnicity
- Gender
- Some medical conditions
- Use of certain medications
- Poverty and crowding
- Certain occupations

COVID-19 WORKERS COMPENSATION ISSUES: CAUSATION

OCCUPATIONS AT HIGHEST RISK ¹

- Health care workers
- Police and firefighters
- Correctional officers
- Food service workers
- Social workers
- Educators

¹ Baker M. et al. Estimating the burden of U.S. workers exposed to infection or disease: a key factor in containing risk of COVID-19 infection. PLoS One 2020

COVID-19 WORKERS COMPENSATION ISSUES: RISKS FOR SEVERE DISEASE

- Cancer
- Chronic kidney disease
- COPD (chronic obstructive pulmonary disease)
- Down Syndrome
- Heart conditions
- Immunocompromised post-transplant
- Obesity (body mass index [BMI] of 30 kg/m² or higher but < 40 kg/m²)
- Severe Obesity (BMI ≥ 40 kg/m²)
- Pregnancy
- Sickle cell disease
- Smoking
- Type 2 diabetes mellitus
- Asthma (moderate-to-severe)
- Cerebrovascular disease (affects blood vessels and blood supply to the brain)
- Cystic fibrosis
- Hypertension or high blood pressure
- Immunocompromised state (weakened immune system) from blood or bone marrow transplant, immune deficiencies, HIV, use of corticosteroids, or use of other immune weakening medicines
- Neurologic conditions, such as dementia
- Liver disease
- Overweight (BMI > 25 kg/m², but < 30 kg/m²)
- Pulmonary fibrosis (having damaged or scarred lung tissues)
- Type 1 diabetes mellitus

COVID-19 WORKERS' COMPENSATION ISSUES: CAUSATION

LEVELS OF COMMUNITY RISK

- 1: No new cases
- 2: Sporadic cases
- 3: Clusters of cases
- 4: Community transmission

COVID-19 WORKERS COMPENSATION ISSUES: DETERMINING WORK RELATEDNESS

- Because COVID-19 infections are widespread throughout the general public, it will be difficult to link the infection to employment.
 - ASSESS OCCUPATIONAL RISK FACTORS
 - ASSESS COMMUNITY RISK FACTORS
 - ASSESS SPECIFICS OF CASE
 - EXPOSURE POTENTIAL
 - TIMING OF ONSET OF SYMPTOMS AND TIMING OF TEST
 - CONFIRM RESULTS OF TEST

COVID-19 WORKERS COMPENSATION ISSUES: DETERMINING WORK RELATEDNESS

■ TWO CASE EXAMPLES

- 42 year old female nursing assistant reports onset of symptoms on 4/1/2020. She then tested positive for COVID-19 on 4/3/2021. The employer changed workers compensation insurance companies on 4/1/2020. The new insurance company is contesting the claim.
- 53 year old police officer tests positive for COVID-19 on 7/5/2020. He files a claim for work related illness stating that he believes he was exposed when arresting a suspect on 7/1/2020. He lives with his wife and 3 children and his mother-in-law who became ill with COVID on 6/30/2020. The workers compensation carrier for the municipality is contesting the claim.

COVID-19 WORKERS COMPENSATION ISSUES: FITNESS FOR DUTY AND RETURN TO WORK

PEOPLE WHO HAVE COVID-19

- People who have symptoms of COVID-19 and are able to recover at home
- People who don't have symptoms but have tested positive for COVID-19

STEPS TO TAKE

- Stay home except to get medical care
- Monitor your symptoms. If you have an emergency warning sign (including trouble breathing), seek emergency medical care immediately
- Stay in a separate room from other household members, if possible
- Use a separate bathroom, if possible
- Avoid contact with other members of the household and pets
- Don't share personal household items, like cups, towels, and utensils
- Wear a mask when around other people, if you are able to

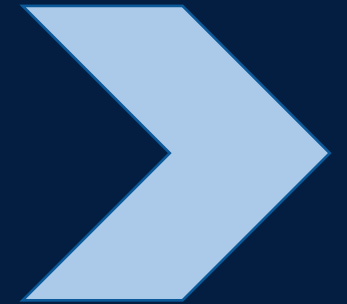
COVID-19 WORKERS COMPENSATION ISSUES: INDIVIDUALS WHO HAVE SYMPTOMS OR A POSITIVE COVID TEST

When you can be around others after you had or likely had COVID-19?

- CDC's recommends that you can be with others after: At least 10 days since symptoms first appeared **and**
 - At least 24 hours with no fever without fever-reducing medication **and**
 - Other symptoms of COVID-19 are improving



THE LEGAL DETAILS



TO PRESUME OR NOT TO PRESUME? THAT IS THE QUESTION!

STATES WITH PRESUMPTIONS FOR COVID CLAIMS

- Many states have passed presumptions and the list changes almost daily.
 - Some already expired.
 - Some remain in effect.
 - Some are being presented this year in legislatures.

Why is this an issue??

TO PRESUME OR NOT TO PRESUME? THAT IS THE QUESTION!

- TYPICAL EMPLOYEES COVERED BY PRESUMPTIVE ACTS
 - “Essential” workers
 - First Responders
 - Medical, health care, public health workers
 - Home health care, residential care workers
 - Correctional officers
 - Food, agricultural, grocery workers
 - Drivers, cleaning staff, airline, construction workers

TO PRESUME OR NOT TO PRESUME? THAT IS THE QUESTION!

WHAT IS A PRESUMPTION?

- Who has the burden of proof?
 - What does claimant have to prove?
 - What do respondents have to prove?
- What is the burden of proof?
 - Rebuttable?
 - Preponderance vs. clear and convincing?

TO PRESUME OR NOT TO PRESUME? THAT IS THE QUESTION!

- OTHER AREAS WITH PRESUMPTIONS
 - Firefighter cancer
 - PTSD
 - What will come in the future?
- All of this is a chipping away of the concept of workers' compensation and is moving toward more of a social welfare program funded by employers, not the state.

TYPICAL ISSUES WITH PRESUMPTION BILLS

- Retroactivity.
- Sunset provisions.
- Classes of workers entitled to the presumption.
- Requirements for positive diagnosis and treatment.
- How presumption affects other statutory provisions.
- Cost considerations to self-insureds and municipalities.
- Long-term impact on other viruses in the future.

LITIGATING A CASE WITH AND WITHOUT A PRESUMPTION

With a Presumption

- Employee's level of proof diminished.
- Burden shifts to Employer.
- "Definite cause" issue.
- Contact tracing becomes more important.

Without a Presumption

- Burden remains with Employee.
- Medical evidence usually required.
- Employee often must prove a connection at work to the exclusion of other causes.

TACTICS FOR LITIGATING COVID-19 CASES

- Contact tracing programs.
- PPE programs.
- Geographic searches.
- Bank subpoenas.
- Social media investigations.
- Community spread.

FITNESS FOR DUTY: HOW TO HANDLE COVID-19 AS PART OF YOUR RETURN TO WORK PROGRAM

Considerations for your Return to Work Program:

- Availability of light duty.
 - Economic impact on Employers and ability to accommodate.
- Requirements for physical examinations.
- Availability of vaccine.
- Clearance from medical professionals.

THE GREAT UNKNOWN: THE VACCINE'S IMPACT ON COVID-19 WORKERS' COMPENSATION CLAIMS

- Can an Employer mandate the vaccine?
 - Consideration liability, federal legislation.
- What happens if an employee refuses the vaccine?
- Can Employers require employees to return to the workplace without a vaccine?
- Is a claim for a reaction to the vaccine compensable?
- The legal landscape is constantly evolving on these issues.

PUBLIC HEALTH ORDERS

Executive Orders vs. Legislative Action

- Temporary/Finite period of time
- Typical issues covered
 - Masks
 - Percentage of occupancy
 - Curfews
 - Shut downs
 - School attendance
 - Application/non-enforcement of laws

POP UP QUESTION

- Do COVID presumptions really adversely affect my WC program?
 - A. What WC program? Do we have one?
 - B. If a COVID claim is made, it must have occurred on the job, so the presumption is ok.
 - C. This is only temporary and limited. So, although we don't like it, there's no long term effect
 - D. It's the camel's nose under the tent! Watch out for more presumptions to come!

POP UP QUESTION

- Do I really have to follow public orders?
 - A. I'm a private company. I don't do public.
 - B. The state is too busy. They won't have time to check on us.
 - C. We don't have the manpower to make sure all are followed.
 - D. We can be shut down if we don't follow orders!



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CHALLENGES WITH COVID-19

Roundtable Discussion

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