WORKERS’ COMPENSATION LIABILITY FOR INFECTIOUS DISEASES IN THE NEW ENGLAND STATES

We have recently received questions from many employers and insurers regarding how to handle claims involving coronavirus/COVID-19.

The analysis of compensability for infectious disease differs between each state.

Such claims require close investigation of the actual exposure to the virus and the nature of the particular employment, as well as legal analysis of complex causation standards.

All claims involving COVID-19 should be assessed on a case-by-case basis and our attorneys are ready to assist you with any questions concerning compensability.

Massachusetts

In Massachusetts, the contraction of contagious or infectious disease is not considered a compensable injury unless the risk of exposure is “inherent in the workplace”. Section 1(7A) contains a provision which states if the nature of the employment is such that the hazard of contracting such infectious or contagious diseases is inherent in the employment, then disability resulting from the disease is compensable. See M.G.L. c.152 §1(7A). Therefore, there is by statute limited exposure for employers and insurers for disability and medical expenses as a result of exposure to an infectious disease including COVID-19 in the workplace. Even if an exposure may have occurred in the workplace, unless the risk of exposure is “inherent” in the actual workplace environment it is not a compensable injury by the limiting language in the statute. This would be the case for traveling employees as well as those attending seminars - there may be a work related possible exposure to an infectious disease while in the course of one’s employment but the language in the statute limits the liability to those who are exposed because the risk was inherent in the workplace.
As a result, for most employments, coronavirus/COVID-19 would not be considered a compensable personal injury. As noted above, § 1(7A). The most obvious example of such employment is the healthcare field (i.e., doctors, nurses, CNA's, phlebotomists, pulmonary therapists, physician’s assistants, administrative and custodial staff at healthcare facilities). In such cases, the employee must still prove that an exposure occurred in the workplace (i.e., a patient or co-worker testing positive for COVID-19). Thus, the test is two-fold: (1) an exposure occurred at work, and (2) the risk is inherent in the employment.

For employments where the risk of contracting the COVID-19 is not inherent, a claim would be non-compensable in Massachusetts even if the employee could prove the exposure actually occurred at work. In Lussier v. Sadler Brothers, Inc., 12 Mass. Workers’ Comp. Rep. 451 (1998), an employee’s claim for tuberculosis was denied despite uncontroverted evidence that she contracted the disease from an infected co-worker. The Reviewing Board denied the claim because the employee worked as a machine operator and the risk of contracting tuberculosis was not inherent in her employment, even though she did in fact contract the disease at work. The Reviewing Board reasoned, “We consider that the danger of exposure to germs from co-employees while working in close contact is a condition common and necessary to a great many occupations. Although it is undisputed that [the employee] contracted tuberculosis in the work environment, that fact is not enough. . . . If it were, every bout of the flu contracted at work, resulting in more than a five days’ absence from work would be a personal injury under the Act.” Id. at 452.

Note: If denying an infectious disease claim, use Form 104 in Massachusetts and list Section 1(7A) as a defense and add “not inherent in the workplace” along with any other defenses listed.