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.

**New Hampshire**

In New Hampshire, injuries that result from a “neutral risk” are generally deemed non-compensable. Neutral risks are risks that are the same as the general public. See Appeal of Margeson, 162 N.H. 273 (2011).

The New Hampshire statute includes “occupational disease” as a compensable injury. The definition of “occupational disease” is an “injury arising out of and in the course of the employee's employment and due to causes and conditions characteristic of and peculiar to the particular trade, occupation or employment.” See RSA 281-A:2(XIII). Arguably, the “occupational disease” provision will not apply to any cases of COVID-19, as the risk of contraction is not “characteristic of and peculiar to” the employment. Perhaps a healthcare worker could make an argument that the occupational disease provision applies, but even in such employment, the virus itself is arguably not “characteristic of and peculiar to” the employment.

In most cases, the contraction of COVID-19 would be considered a neutral risk and generally non-compensable. An employee could theoretically shift the claim to a “personal risk” if they can prove a specific identifiable exposure within the work setting.
The evidentiary burden on such a case would be very difficult for an employee to meet. Generally, COVID-19 will be considered a neutral risk, and New Hampshire case law supports the utilization of the increased-risk test for neutral risk cases. Under the increased-risk test, an employee may only recover benefits if the injury results from “a risk greater than that to which the general public is exposed.” Appeal of Margeson, 162 N.H. 273, 283 (2011). Thus, again the employee would be required to prove that his/her risk of contracting COVID-19 was greater than the general public’s risk. Healthcare workers are likely the only employees that may be able to establish this, but each claim must be evaluated on a case-by-case basis.