

COVID-19 in the Course and Scope of PA Employment

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Workers' Compensation Alert
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In light of the current coronavirus (COVID-19) pandemic, employers are now facing new labor and employment issues based on the health and economic needs of their employees. In addition, employers and workers' compensation carriers are suddenly grappling with new work-related injuries due to the potential for workers to contract the coronavirus while in the course and scope of their employment.

There are two types of workers' compensation injuries in Pennsylvania. The obvious one is an "injury" that is "arising in the course of his employment and related thereto, and such disease or infection as naturally results from the injury..." 77 P.S. §411(1). Court decisions have expanded the phrase "course of employment" to "course and scope of employment."

The second category is an "*occupational disease*" with an exposure that "the incidence of which is substantially greater in that industry or occupation than in the general population." 77 P.S. §271 (n). The law includes a list of diseases that are presumed to be work related, including the virus Hepatitis C. 77 P.S. §271 (m.1)

The coronavirus is entirely new (a "novel" virus), so there is nothing in statutes or case law to specifically address the illness as a work injury. However, there are existing rules and similar past cases that can be applied for some guidance.

For example, in the *injury* category, there is the case of an office worker who contracted meningitis from a co-worker when there was a "kiss on the cheek good-bye" at the time of a special event for the employees. The office worker died and fatal claim benefits were granted to the dependents. In this instance, there was a specific scenario that persuaded the workers' compensation judge to award benefits. *New Castle v. WCAB (Sallie)*, 546 A.2d 132 (Cmwlth. Ct. 1987).

In the *occupational disease* category, there is the case of a visiting nurse who contracted Hepatitis C through an accidental needle stick while caring for a patient. The nurse was entitled to a presumption of a causal relationship to work in light of her occupation and she was awarded benefits. *Sun Home Health Visiting Nurses v. WCAB (Noguchi)*, 815 A.2d 1156 (Cmwlth. Ct. 2003).

If an employer is aware of a specific incident that can lead to a possible illness or quarantine needed for an employee, this should be reported to the workers' compensation carrier immediately. The carrier and employer are required to respond to a reported injury within 21 days. There is a way to temporarily accept an injury as work-related without making any admissions. That is probably the best course for short term illnesses or when causation is questionable.

In Pennsylvania, there is a seven (7) day waiting period before any workers' compensation wage loss benefits are payable; benefits commence on the eighth day if the employee is still out from work. The first seven days are not paid unless the employee is out for 14 days. If the employee receives unemployment benefits while being out, this is credited against any workers' compensation wage loss benefits that are paid. If the employer pays the employee's full salary, there is no need to pay workers' compensation wage loss benefits, and the salary is considered "wages in lieu of workers' compensation."

If you have any questions about workers' compensation issues as it relates to COVID-19, please contact Sandy Niemotka (niemotkas@whiteandwilliams.com; 215.864.6338).

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As we continue to monitor the novel coronavirus (COVID-19), White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. Read all of the updates here.

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