

Labor & Employment Alert
April 29, 2020

Workers' Compensation Claims and COVID-19

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The coronavirus and its effects are likely to have an impact on workers' compensation claims. Two of the most common questions that have been raised regarding COVID-19 and workers' compensation are addressed below, including compensation for employees who contract COVID-19 at work and employees who are injured while working from home.

If an employee contracts COVID-19 at work, is that a compensable injury?

Workers' compensation is available for those who experience a "personal injury" arising out of and in the course of their employment. Under the Workers' Compensation statute personal injury may include contraction of an infectious or contagious disease but only if "the hazard of contracting such diseases by an employee is *inherent in the employment*."

In one of the earliest cases interpreting this statute, the court found that a nurse who contracted tuberculosis while working actively with tuberculosis patients in a hospital was eligible for workers' compensation as contracting the disease was *inherent in her employment*.

In a more recent decision, a machine operator was denied compensation by the Department of Industrial Accidents ("DIA") after contracting tuberculosis from a coworker. Though there was no doubt that the claimant contracted tuberculosis from a coworker while at work, the DIA found 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." Therefore, the hazard of contracting tuberculosis was not *inherent in the employment*, and the disease was not a compensable personal injury.

Health care workers are more likely to be able to demonstrate that COVID-19 is inherent in their employment. For non-healthcare workers who are inadvertently exposed to coronavirus (such as grocery workers, delivery drivers or servers) liability may turn on the factual circumstances regarding contraction of the virus in the particular employment setting.



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If an employee is injured while working remotely, may they be eligible for workers' compensation benefits?

Compensation is available to an employee who receives an injury "arising out of and in the course of his employment." This is a factual question if the claimant's employment brought them into contact with the risk that caused the injury. Injuries at home raise unique factual questions regarding the connection between the injury and employment. There is no categorical exemption for injuries which workers experience while at home. Even injuries resulting from "a risk of [the employee's] home" may be compensable depending on the factual circumstances.

In one of the earliest workers' compensation cases regarding at-home injuries, compensation was provided to an employee who passed away while repairing a blowtorch at home. The injury was work-related, because the employee was preparing for his work the following day.

Approximately six years later, the Supreme Judicial Court upheld an award for an employee who injured his knee in his driveway while getting out of his car. The employee was returning from work-related travel and also regularly worked from his home. He was on call twenty-four hours a day and often left his house at night to investigate incidents for the insurance company. The Court found that exiting the car, even if at his own home, under these factual circumstances was an injury arising from and in the course of the claimant's employment.

In contrast, the DIA denied compensation to a travelling salesman who was injured in an accident on his commute home. The employee argued that his trip home was work-related because he was taking work home with him. However, the DIA found that this "unauthorized preparation for the next day's work" did not make his commute home an incident of his employment.

Lastly, the DIA provided compensation to a high school tennis coach who fell down his basement stairs while at home. Following a match, the coach had driven home, had dinner, and was headed towards his home office in the basement to make phone calls to the local newspapers regarding the match when he fell down the stairs and injured his knee. The DIA held that the injury was work-related because the employee could choose when and from where to make phone calls to the newspaper and his actions were undoubtedly in furtherance of his employer's interests.

These examples highlight the intensely fact-specific nature of determining if injuries at home arise out of and in the course of an individual's employment. While the facts of each case will



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differ, it is clear that the DIA is willing to compensate at-home injuries if the necessary work connection is made, even when such injuries are normal injuries an employee may otherwise experience while at home.

Cases specifically relating to COVID-19 and its impacts have not yet been decided by the DIA or the courts, but the examples described above provide some guidance for employers when such claims inevitably arise. However, it is important to keep in mind that the global pandemic is an unprecedented situation, and in the context of workers' compensation, which is extremely fact-driven in the first place, it may be difficult to predict how the DIA will come out in any particular situation. Additionally, the state legislature is considering a number of bills which would provide greater access to workers' compensation for employees affected by COVID-19. Such legislation could shift the analysis of these claims dramatically. Further information will be forthcoming if the legislation is enacted.

This Client Alert was prepared by Rachel Mills. This Alert was reviewed with Nan O'Neill, David DeLuca, Kier Wachterhauser and Katherine Hesse. If you have any questions about this issue, please contact David DeLuca or the attorney responsible for your account, or call (617) 479-5000.

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