

## Updates

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Workers' Compensation and COVID-19: What Washington's Essential Businesses Should Know



As Washington businesses continue to operate under Governor Jay Inslee's "Stay Home, Stay Healthy" order in the wake of the global COVID-19 pandemic, workers' compensation may not be of primary concern. However, as we all play our part to try to "bend the curve," it is inevitable that some employees may face increased exposure risk as part of the essential workforce still operating throughout the state. As such, essential businesses could find themselves dealing with an unexpected avalanche of COVID-19-related workers' compensation claims. By planning ahead and taking some relatively straightforward precautions, essential businesses can minimize their risk of contending with successful claims, all while protecting their vital workforce from the disease.

### **COVID-19 as a Work-Related Condition**

Generally, workers' compensation claims are only approved if the claimed injury or illness resulted from work-related activity. While it is unlikely that contracting COVID-19 could be considered an industrial injury, an infected worker may be able to establish an occupational disease claim. Under Washington law, to be compensable an occupational disease-related disability must have (1) naturally arisen from, and (2) been proximately caused by the claimant's employment. To establish these elements, the claimant must show the following:

- That there was a greater risk or likelihood of contracting the disease due to a distinctive condition of their employment
- If not for their job, they would not have been exposed to whatever caused the illness

Normally, it is very difficult for a worker to meet these conditions for common illnesses, because risk of exposure or contraction of an infection is generally not directly associated with a distinctive working condition. The state Department of Labor & Industries (L&I) specifically notes that claims will generally be denied if exposure or contraction of an illness "is incidental to the workplace or common to all employment (such as an office worker who contracts the condition from a fellow employee)." Of course, during this global health emergency, businesses are not exactly operating under normal conditions.

On March 5, as part of the early response to the then emerging COVID-19 outbreak in Washington, Governor Inslee announced that workers' compensation coverage would be guaranteed for healthcare workers or first responders quarantined due to an on-the-job exposure. This allows the exposed worker to receive time-loss benefits during quarantine, as well as ensures continued coverage if the employee contracts the disease during that period. Benefits cease at the end of the ordered quarantine period if the worker remains asymptomatic and is able to return to work. To make a post-exposure quarantine claim, all the worker must show is that the quarantine was ordered by a physician or public health officer.

L&I has confirmed that this automatic coverage during quarantine applies only to healthcare workers and first responders. Similar coverage for any other worker facing quarantine due to a potential workplace exposure to COVID-19 may be available but will be determined on a case-by-case basis subject to the proof factors of an occupational disease claim.

Usually, COVID-19 claimants would have a difficult time establishing that a distinctive condition of their employment put them at greater risk of exposure and their job is the only reason they were exposed. That said, essential businesses are operating under unusual conditions. During the stay-at-home order, workers deemed essential likely have a stronger argument on both of these points, meaning essential businesses may face an unexpected spike in successful workers' compensation claims arising from these unique circumstances. This will be especially true for any businesses with confirmed cases of COVID-19-infected employees present in the workplace.

## **Minimizing the Risk of Potential Claims**

The most important things an essential business can do to reduce the chance of facing a spike in claims would be to implement all recommended safety precautions and react quickly and effectively to any confirmed cases of employee illness.

First, essential businesses are encouraged to implement all recommended safety protocols that make sense for their business. The major public health organizations have published guidelines for businesses operating during the pandemic to minimize the risk of exposure in the workplace. These organizations include state agencies: [L&I](#), the [Division of Occupational Safety and Health](#) (within L&I), and the [Department of Health](#) (DOH). Additionally, federal organizations such as the [Occupational Safety and Health Administration](#) (OSHA), and the [Centers for Disease Control and Prevention](#) (CDC) issue frequent guidance for individuals and employers. Employers should remember that guidance from these organizations is continually changing as they learn more about the virus. Businesses should plan to regularly check for updated guidance and adjust as necessary as conditions change.

Minimizing the possibility of workplace exposure is the best first step any business can take to limit the number of workers' compensation claims that may be filed. Taking these precautions may limit an infected worker's ability to establish that their infection arose from a distinctive condition of their employment that was not otherwise present in all other employment and/or non-employment circumstances.

Second, essential businesses must be prepared to respond when they learn that an employee has contracted the virus. Generally, it will be difficult for a worker who contracts the virus to point to an employment-related cause if there have been no prior reports of COVID-19 in the workplace. That may be less true for subsequent workers who contract the disease.

In the event of a reported illness, businesses should act quickly to minimize the potential exposure impact. The affected employee should not be allowed to return to work until the criteria to discontinue home isolation are met. There are different criteria based on testing and non-testing. If the employee is already at work, remove and isolate the affected employee and arrange for the employee to leave the workplace immediately. Follow [OSHA's Guidance on Preparing Workplaces for COVID-19](#) (pages 9-10) regarding appropriate methods for isolating the affected employee and protecting non-infected workers before the employee departs the workplace.

Employers should then communicate with local health officials and the state DOH. Make sure to follow any directions received, including recommended temporary site closures. Employers should also review and implement [CDC guidance](#) on [environmental cleaning and disinfection](#), which may include closure of the affected work area and the relocation or temporary furlough of employees, if possible, while the employer engages in the cleaning and disinfecting of surfaces, equipment, and other elements of the work environment where exposure occurred. Consult our comprehensive [Frequently Ask Questions](#) for additional COVID-19 related employment law guidance.

In addition to limiting the potential spread of the disease, by responding quickly an employer may have stronger arguments against any subsequent workers attempting to satisfy the requirements for a successful claim by removing what might otherwise be considered a distinctive condition of their employment. Additionally, acting quickly will allow an employer to ascertain and document which other employees may have come in contact with the initially affected employee. This documentation could prove invaluable in defending against a subsequent claim by a newly infected employee who was not exposed to the previously infected employee in the workplace.

## **Takeaways**

Washington's essential businesses are operating under unique conditions, the full impacts of which have yet to be determined. Employers are already facing significant economic pressure as a result of the pandemic. By taking all recommended precautions and planning ahead, employers should be able to mitigate a potential spike in COVID-19 workers' compensation claims. Employers should also continue to stay informed on the ever-changing conditions and consult trusted legal counsel for assistance when needed.

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