



March 12, 2020

THE QUESTION WAS ASKED YESTERDAY AT THE INTERNATIONAL LEADERSHIP CONFERENCE:

Is an employer subject to a workers compensation claim for the Coronavirus?

The short answer is: It is unlikely.

Here is the more detailed answer from our General Counsel.

Whether an employee exposed to and contracting coronavirus on the job constitutes a work injury covered by workers' compensation, we must first determine whether coronavirus could be considered an occupational illness or disease under a workers' compensation analysis. Before tackling this, keep in mind that every state has its own workers' compensation system but there are basic tests that need to be satisfied in determining whether a condition is occupational and therefore covered under workers' compensation.

There is a two prong test that needs to be satisfied before any illness or disease, including Coronavirus, qualifies as occupational and compensable under workers' compensation. First, the illness or disease must be occupational, meaning that it arose out of and was in the course and scope of employment. Second, the illness or disease must arise out of or be caused by conditions peculiar to the work.

As to the first prong, the question in most states is dependent on the employee's activities, in other words, was the employee benefiting the employer when exposed to the illness or disease. Again, keep in mind that this test is subject to interpretations of different state laws. With Coronavirus now considered a global pandemic by the World Health Organization, it would be difficult for an employee to show that there was a nexus between the disease and work activities.

The second prong of showing that the disease is peculiar to the work appears to be an even higher hurdle to leap over in the case of Coronavirus. Under this prong, the illness or disease is peculiar to the work when such a disease is found almost exclusively to workers in a certain field or there is an increased exposure to the illness or disease because of the employee's working conditions. A common example would be black lung disease which has been found peculiar to coal miners. Asbestosis and other asbestos related illnesses have been found peculiar to certain occupations where there was a history of asbestos exposure.

While this is a fluid situation, it is unlikely that Coronavirus itself would be considered an occupational disease. However, there may be circumstances where Coronavirus could be compensable under workers' compensation. While Coronavirus could be considered an ordinary disease of life which is generally not compensable, if employment peculiarly exposes the employee to an increased risk or special hazard of developing the disease, it may be compensable. A healthcare worker may be able to show an increased risk of exposure to the illness as part of the job.

In summary, Coronavirus itself is likely not an occupational disease and the fact that an employee may contract the virus at work or from a co-worker would not constitute a compensable occupational illness. However, if there is something peculiar about the work that increase the likelihood of contracting Coronavirus, an employee may be able to prove a compensable work injury. This is a fluid situation and ultimate



determinations of compensability would depend on the interpretations of workers' compensation laws in the various states.