

Coronavirus and Delaware Workers' Compensation

According to the Centers for Disease Control and Prevention (CDC), the Coronavirus (Covid-19) has spread throughout the United States, with the number of cases increasing daily. In the event of a Delaware employee alleging a Covid-19 infection due to work-related activities, to what extent are Delaware employers potentially liable for workers' compensation benefits? With no direct precedent to rely upon, exposure reduction strategies must be based on an application of the current facts of prior judicial dispositions of occupational disease claims in Delaware.

An employee alleging a Covid-19 infection must bear the burden of proof by providing substantial evidence that workplace exposure caused the infection. First, the claimant would need to establish a workplace exposure. In the context of a virus, like Covid-19, which could reach pandemic proportions in the global population, it would be a challenge for the claimant to prove a specific workplace exposure. According to the CDC, people around the globe are contracting Covid-19 through various events outside of an employment context. However, there are still situations where a person could become infected by Covid-19 in the workplace. For example, a caregiver treating a patient infected with Covid-19 or employee handling materials known to have come from areas with high levels of infection. In either of these cases, a workplace exposure could feasibly provide the basis for a work-related injury.

Second, the claimant would need to establish that his exposure at work was the likely cause of the infection. Assuming the claimant had established exposure to the virus at work, then the claimant would need to prove that exposure was the cause of the diagnosis. This might seem obvious, but mere exposure does not necessarily lead to infection. The claimant would need to prove that the actual exposure of Covid-19 at work caused their disease and not a general exposure outside of work, which goes back to the issue of Covid-19 being a pandemic. The claimant could just as easily have been exposed to and infected by exposure outside of work.

Third, the claimant must prove "his ailment resulted from the peculiar nature of the employment rather than his own peculiar predisposition." *Diamond Fuel Oil v. O'Neal*, 734 A.2d 1060 (Del. 1999). If we examine this statement by the Supreme Court further, the claimant must prove that there was something about his employment that put him at a higher risk for contracting Covid-19 than anyone else presenting to work on any given day. This is why the common cold, for example, is generally not something deemed compensable. The Industrial Accident Board tends to interpret this language favorably to the employer in occupational disease cases, with the exception being mesothelioma cases and asbestos exposure.

If a claimant could prove all three tests to the satisfaction of the Court, are there any affirmative defenses available to the employer? Fortunately, yes. Willful self-exposure to an occupational disease is a defense in Delaware. This would include failure to observe safety regulations posted in the workplace; or failure to truthfully state to the best of the employees' knowledge an answer to an inquiry made by the employer of the location, duration and nature of previous possible exposures to the virus.

Comment: As concerns grow regarding the Coronavirus, various businesses and industries will be affected in a variety of ways. Employee health and employer exposure for workers' compensation benefits are only some of the considerations necessitated by this public health crisis. Careful analysis and legal guidance will be necessary for dealing with these issues.