

Coronavirus and the New Jersey Workers' Compensation Act

The Coronavirus (officially Covid-19) is now in more than one state in the United States, including several cases discovered in New Jersey. If New Jersey employees become infected, this could open the door to claims for wage loss, medical benefits, and even permanency disability, or worse yet, dependency claims under our workers' compensation laws. Would a claim for Covid-19 be considered compensable under the New Jersey Workers' Compensation Act? Understandably, there have been no specific rulings on the issue at present. However, aside from employers reinforcing the many recommendations to keep its employees safe, employers and insurance carriers should be mindful of the potential application of workers' compensation laws if an employee is diagnosed with Covid-19.

As with any alleged "occupational" medical illness, the question of whether workers' compensation applies in New Jersey is whether the employee contracted Covid-19 directly from the workplace. In other words, did the illness arise out of and during the course of the employment?

Generally speaking, it is difficult to establish that communicable diseases arose during the course of employment. This is why we do not typically see seasonal influenza workplace claims since establishing that the illness was contracted directly from the workplace, and not just anywhere in the environment, is extremely difficult.

There may be certain professions where the causal link between the workplace and the contraction of the illness may be more likely to have occurred. For instance, healthcare workers treating or caring for patients who have tested positive for Covid-19 may have a stronger argument, with sustainable proof of a causal connection between exposure to the virus within the confines of the employment. For example, a nurse or other health care professional testing positive for Covid-19 immediately after rendering treatment to a patient who has tested positive for the disease.

One of the leading cases that may be considered analogous to this situation involved the contraction of Lyme disease. In the case of *Bird v. Somerset Hills Country Club*, 309 N.J. Super 517 (1998), Mr. Bird was a groundskeeper at the country club who was diagnosed with Lyme disease. It was established through testimony at trial that the nature of Bird's work often took him to the rough edges of the woods where infected tick larvae were usually found. Documents state that "he spent about 40 hours a week outdoors at his workplace, year-round, compared with only a few hours at home gardening." Medical experts on Bird's behalf agreed that Bird probably had contracted the disease on the job. The compensation judge found that the "Lyme disease was more probably than not contracted at work." On appeal, the Appellate Division affirmed that the hearing judge's decision. This 'more probable than not' language is the key to the burden of proof in such cases, that the petitioner must prove that the exposure to the virus occurred, more probably than not, during the course of employment.

A similar holding was made in an unreported Appellate decision in the matter of *Raimoni v Morris County Park Police and Commission*, No.A-0106-12T1. In that case, Raimoni was a mounted (on horseback) patrol officer, where her duties involved patrolling wooded areas where deer frequented, and she was regularly exposed to ticks in her work. Similar to the case of *Bird*, the court found that Raimoni's contraction of Lyme's disease was compensable since it was more probable that the exposure occurred during the course of her employment.

If the situation arises that a worker who contracts Covid-19 is found to be compensable, aside from the physical aspects of the disease, a psychiatric component could also arise relative to an involuntary quarantine requirement. This could occur for employees traveling in the course and scope of their

03.09.20



employment, so quarantine is what causes the psychiatric allegation regardless of whether they contract Covid-19. If it is determined that the abnormal working condition includes routine travel or immersion in group settings where there is potential exposure to Covid-19 and its potentially deadly consequences, compensation for a psychiatric injury is possible. However, showing a direct connection to the quarantine and the psychiatric component would be required.

Comment: Lastly, as some Covid-19 cases lead to death, there is also the possibility of a claim for dependency benefits by legal dependents if a causal link can be established between the contraction of the disease and death, to particular workplace exposure. As concerns grow regarding Covid-19, various businesses and industries may 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. For the protection of all employees, employers should advocate and continue to reinforce the many recommendations made by the CDC and other international health organizations for the prevention of all communicable diseases.

For more information, please contact Jennifer G. Laver at jlaver@wglaw.com or 856.382.1008 or Mark S. Setaro at msetaro@wglaw.com or 856.779.6010.