

Coronavirus (COVID-19) and Workers' Compensation

COVID-19 is the disease caused by the coronavirus, which is quickly spreading through communities around the world. The below is what we at NCAComp are able to advise our clients in regards to workers' compensation implications of this illness outbreak.

In New York State, most coronavirus cases will not be compensable. However there may be coverage based on the kind of work performed by employee. The legal definition of an occupational disease under the New York Workers' Compensation Law is: "a disease resulting from the *nature of employment* and contracted therein" (emphasis added).

There are a few factors to consider when determining if an illness caused by coronavirus is compensable under the definition of an injury or occupational disease in New York:

- What is the employee's job? Healthcare workers treating patients with COVID-19 may be eligible for coverage per the specific nature of their employment.
- Has the employee traveled to any of the High Risk Countries as identified by the CDC?
- Are there any other COVID-19 cases at the place of employment?

Consideration may be given if there is a "patient zero" factor where the source of the infection is a coworker or another person that the employee only interacts with as a condition of their employment (i.e. student, patient or client).

In New York State, historically, workers' compensation benefits are not extended to employees who contract the flu or other common virus at work, but there has been coverage provided for conditions like scabies or AIDS, where the source of the infection can be clearly identified.

As this issue unfolds, case law will undoubtedly be developed, and many workers' compensation claims may be litigated. There is currently no official guidance from the Workers' Compensation Board of New York State on how to proceed with this particular issue.

At this point, we advise our clients to encourage their employees to use their sick leave or short term disability (whichever is available) in order to receive wage replacement benefits while home due to a COVID-19 illness.

Most importantly, NCAComp continues to support our clients' efforts to maintain a safe workplace! The Centers for Disease Control is advising employers to do the following:

Perform routine environmental cleaning, emphasize staying home when sick, respiratory etiquette and hand hygiene by all employees

For more information from the CDC on how to protect your employees, please visit:
<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

If you have any questions on how COVID-19 may impact your workers' compensation program, please contact your adjuster or Erin Jordan at ejordan@nacom.com or 716-362-6493.