



Louisiana Workers' Compensation Law and COVID-19 as a Potential Compensable Occupational Disease



Trenton J. Oubre
Partner – Baton Rouge
Trenton.oubre@bswllp.com
225-381-8059

March 7, 2022



Louisiana's Workers' Compensation Occupational Disease Statutes: A History



To understand the potential to employers for possible compensability of COVID-19 infections of its employees under Louisiana Worker's Compensation law, it is important to understand the history of relevant Louisiana law.

In 1952, the Louisiana legislature established express statutory authority for the coverage of occupational diseases under Louisiana's workers' compensation law. The legislature rejected the notion of blanket coverage for all occupational diseases, and instead chose a moderate approach. The early legislation provided compensation for contraction of occupational diseases, which were placed into two categories:

One category included specifically listed diseases, namely conditions caused by exposure to X rays or radioactive substances, asbestosis, silicosis, dermatosis, and pneumoconiosis. The other category identified diseases by causative agents.



In 1975, it was recognized that many employment-related diseases did not fall into the two enumerated categories. Accordingly, the occupational disease statute was amended, setting forth a new definition of “occupational disease.” The list of specific diseases for which there was coverage under workers' compensation was removed, and substituted for the following: “[a]n occupational disease shall mean only that disease or illness which is due to causes and conditions characteristic of and peculiar to the particular trade, occupation, process, or employment in which the employee is exposed to such disease.” Through this amendment, the legislature was signaling its acceptance of a broader and more expansive definition of “occupational diseases” for which workers could seek compensation. Originally, La. R.S. 23:1031.1 provided as follows:



- A. Every employee who is disabled because of the contraction of an occupational disease as herein defined, or the dependent of an employee whose death is caused by an occupational disease, as herein defined, shall be entitled to the compensation provided in this Chapter the same as if said employee received personal injury by accident arising out of and in the course of his employment.
- B. An occupational disease shall mean only that disease or illness which is due to causes and conditions characteristic of and peculiar to the particular trade, occupation, process, or employment in which the employee is exposed to such disease.



In 1989, the legislature again amended the definition of “occupational disease” to exclude certain conditions, including degenerative disc disease, spinal stenosis, arthritis of any type, mental illness, and heart-related or perivascular disease. In 1990, the legislature specifically clarified that carpal tunnel is considered an occupational disease.



Through these amendments, the current and applicable Louisiana Workers' Compensation "Occupational Disease" statute is as follows:

- A. *Every employee who is **disabled** because of the contraction of an occupational disease as herein defined, or the dependent of an employee whose **death** is caused by an occupational disease, as herein defined, shall be entitled to the compensation provided in this Chapter the same as if said employee received personal injury by accident arising out of and in the course of his employment.*

- B. *An occupational disease means **only that disease or illness which is due to causes and conditions characteristic of and peculiar to the particular trade, occupation, process, or employment in which the employee is exposed to such disease.** Occupational disease shall include injuries due to work-related carpal tunnel syndrome. Degenerative disc disease, spinal stenosis, arthritis of any type, mental illness, and heart-related or perivascular disease are specifically excluded from the classification of an occupational disease for the purpose of this Section.*



- C. *Notwithstanding the limitations of Subsection B hereof, every laboratory technician who is disabled because of the contraction of any disease, diseased condition, or poisoning which disease, diseased condition, or poisoning is a result, whether directly or indirectly, of the nature of the work performed, or the dependent of a laboratory technician whose death is the result of a disease, diseased condition, or poisoning, whether directly or indirectly, of the nature of the work performed shall be entitled to compensation provided in this Chapter the same as if said laboratory technician received personal injury by accident arising out of and in the course of his employment.*

As used herein, the phrase “laboratory technician” shall mean any person who, because of his skills in the technical details of his work, is employed in a place devoted to experimental study in any branch of the natural or applied sciences; to the application of scientific principles of examination, testing, or analysis by instruments, apparatus, chemical or biological reactions or other scientific processes for the purposes of the natural or applied sciences; to the preparation, usually on a small scale, of drugs, chemicals, explosives, or other products or substances for experimental or analytical purposes; or in any other similar place of employment.

Except as otherwise provided in this Subsection, any disability or death claim arising under the provisions of this Subsection shall be handled in the same manner and considered the same as disability or death claims arising due to occupational diseases.



- D. Any occupational disease contracted by an employee while performing work for a particular employer in which he has been engaged for less than twelve months shall be presumed not to have been contracted in the course of and arising out of such employment, provided, however, that any such occupational disease so contracted within the twelve months' limitations as set out herein shall become compensable when the occupational disease shall have been proved to have been contracted during the course of the prior twelve months' employment by a preponderance of evidence.
- E. All claims for disability arising from an occupational disease are barred unless the employee files a claim as provided in this Chapter within one year of the date of that:
- 1) The disease manifested itself.
 - 2) The employee is disabled from working as a result of the disease.
 - 3) The employee knows or has reasonable grounds to believe that the disease is occupationally related.



- F. All claims for death arising from an occupational disease are barred unless the dependent or dependents as set out herein file a claim as provided in this Chapter within one year of the date of death of such employee (or) within one year of the date the claimant has reasonable grounds to believe that the death resulted from an occupational disease.
- G. Compensation shall not be payable hereunder to an employee or his dependents on account of disability or death arising from disease suffered by an employee who, at the time of entering into the employment from which the disease is claimed to have resulted, shall have willfully and falsely represented himself as not having previously suffered from such disease.



- H. *The rights and remedies herein granted to an employee or his dependent on account of an occupational disease for which he is entitled to compensation under this Chapter shall be exclusive of all other rights and remedies of such employee, his personal representatives, dependents or relatives.*

- I. ***Notice** of the time limitation in which claims may be filed for occupational disease or death resulting from occupational disease shall be posted by the employer at some convenient and conspicuous point about the place of business. If the employer fails to post this notice, the time in which a claim may be filed shall be extended for an additional six months.*

La. R.S. 23:1031.1. (Emphasis added).



After recognizing that an “occupational disease” includes repetitive injuries that result in a gradual deterioration or progressive degeneration, such as carpal tunnel syndrome, the legislature also revised the definition of “accident.” Accordingly, “accident” is defined as follows:

- 1) *“Accident” means an unexpected or unforeseen actual, identifiable, precipitous event happening suddenly or violently, with or without human fault, and directly producing at the time objective findings of an injury which is more than simply a gradual deterioration or progressive degeneration.*

La. R.S. 23:1021(1) (2014). (Emphasis added).



Thus, when an employee becomes disabled due to an occupational disease, he or she may be entitled to workers' compensation benefits as if said employee received personal injury by accident arising out of and in the course of his employment. However, the employee must show, by a preponderance of the evidence, that the **disease or illness is due to causes and conditions characteristic of and peculiar to the particular trade, occupation, process, or employment in which the employee is exposed to such disease.**

If an employee has been engaged in the particular work for an employer for less than 12 months, the disease is presumed to have not been contracted in the course of scope of employment. However, an employee can overcome this presumption by a preponderance of the evidence.



Moreover, this statute provides a specific time period for the employee or their respective dependent to file a claim for an occupational disease, being one year when three elements are all met:

- 1) that the disease manifested itself;
- 2) that the employee is disabled from working as a result of the disease; and
- 3) the employee knows or has reasonable grounds to believe that the disease is occupationally related.

All three elements must be met for the one year period to begin to run.



Moreover, this statute provides for death benefits to the dependents of the employee who file a claim within one year of the date of the death of the employee or within one year of the date that the claimant has reasonable grounds to believe that the death resulted from an occupational disease. The statute also expressly provides a general defense to such claims where the employee willfully and falsely misrepresented that they did not previously suffer from the specific occupational disease when they were hired.

Moreover, the employer is required to “post at a convenient and conspicuous point about the business,” notification of the time limitation for filing any claim for an occupational disease. If the notice is not properly posted, the time limitation for filing a claim of one (1) year is extended for an additional six (6) months.



In interpreting this statute, the Louisiana Supreme Court has reasoned that the occupational disease section of the workers' compensation act is essentially concerned with the claimant's proof that there is a relationship between the employment and the disease, such that the employer should bear the cost of the resulting disease or disability. Thus, the Louisiana Supreme Court has found that **causation is the central determinant** in assessing which risks are properly institutionalized as risks of employment and which risks properly remain in the tort system. *Arrant v. Graphic Packaging Inter., Inc.*, 2013-2878 (La. 5/5/15), 169 So.3d 296, citing *O'Regan v. Preferred Enterprises, Inc.*, 98-1602 (La. 3/17/00), 758 So.2d 124.



Proving Causation: Disease or Illness Due to Causes and Conditions Characteristic of and Peculiar to Employment



As stated above, an “occupational disease” for purposes of Louisiana Workers’ Compensation law shall mean only that disease or illness which is due to causes and conditions characteristic of and peculiar to the particular trade, occupation, process or employment in which the employee is exposed to such disease.

The causal link between an employee’s occupational disease and work-related duties must be established by a reasonable probability. The claimant will fail if there is only a possibility that the employment caused the disease, or if other causes not related to the employment are just as likely to have caused the disease. *Atkins v. DG Foods*, 48,490 (La. App. 2 Cir. 9/25/13), 125 So.3d 530.

A broader interpretation would simply require that the claimant identify his disease as resulting from conditions and causes present in his employment and not by other causes to which the employee, and the general population, might have been exposed. See *Page v. Prestressed Concrete Co.*, 399 So. 2d 657 (La. Ct. App. 1st Cir. 1981). See also *Creekmore v. Elco Maintenance*, 659 So. 2d 815 (La. Ct. App. 1st Cir. 1995) (claimant did not recover because he could not prove that contraction of histoplasmosis came from removal of pigeon nests during employment rather than from the general prevalence of the disease in his geographical region).



Our country and state are certainly in very unfamiliar times with the global spread of COVID-19 infections. No Louisiana court has had to address such a mass calamity under Louisiana Workers' Compensation system for causation purposes. However, we do have some guidance from prior court decisions for analogous airborne disease claims.

In *Creekmore v. Elco Maintenance*, 94-1571 (La. App. 1 Cir. 6/30/95), 659 So.2d 815, the claimant alleged that he contracted histoplasmosis, an airborne illness, while removing pigeon nests from a building, as part of his employment. The court rejected his claim for compensation for this occupational illness, reasoning that the “very endemic nature of histoplasmosis” in the area, with the causative spores transmitted by the wind, made it a very common disease in the area. The Court of Appeal accepted the lower court’s interpretation, also noting that histoplasmosis spore are ubiquitous in the Mississippi valley and the histoplasmosis disease is very endemic. Further, the court noted that it was an airborne disease. The court stated that the evidence on bird dropping may possibly permit an inference that the claimant contracted histoplasmosis while clearing the nests; however, that evidence did not invalidate the clearly permissible contrary inference that claimant’s histoplasmosis was more probably contracted from elsewhere in the area. Accordingly, the court held that claimant did not show his occupational disease was due to causes and conditions characteristics of and peculiar to his employment, for the evidence was that histoplasmosis was a widespread, airborne disease in the area.



The cases cited above could be used to support a reasonable position and basis that COVID-19 in general is not “characteristic of and peculiar to” any type of employment. As in *Creekmore*, COVID-19 has been documented to be airborne and extremely contagious. As a new pandemic virus, researchers cannot state with certainty every conceivable manner how COVID-19 can be contracted. It has been documented that it lingers in the air for long periods of time. It is also documented to live on surfaces for long periods. It is rampant in the United States, and currently Louisiana is becoming a “hotspot” for the virus.

Further, as in *Hymes*, and due to the pandemic nature of COVID-19, it is generally not more likely that a person would contract it due to a work condition than a non-work condition. With few specific occupational exceptions (emergency healthcare providers, lab technicians, etc.), there is nothing overwhelming clear about COVID-19 that would generally make it peculiar to a type of employment when it could theoretically be contracted at any workplace.



A Somber Reality: When Coronavirus Results In Death of an Employee



If COVID-19 is found to be a compensable occupational disease by one or more relevant Louisiana courts, and an employee dies as a result of the virus, an employer may be obligated to pay death benefits.

Proof of dependency is essential to recovery of death benefits, as only those considered dependents are able to recover. However, certain persons are entitled to a conclusive presumption of total dependency. The surviving spouse living with the deceased at the time of the accident or death is presumed to be actually and wholly dependent, as is a child under 18 (or over 18, if physically or mentally incapacitated from earning) who lives with the parent at the time of the injury, and a child up to the age of 23 if that child is enrolled and attending as a full-time student in any accredited educational institution. All other claimants, however, must prove dependency as a matter of fact. They must establish a need for the financial contributions of the deceased and also that such contributions were made by him during the year preceding the fatal accident.

Though the amount of death benefits is based upon a percentage of the pre-disease wages of the employee subject to the maximum payout, which through August 31, 2022 is \$743.00 per week, the indemnity death benefits owed are determined based upon the number of dependents and the level of dependency.



Louisiana Workers' Compensation Fraud: Two Legal Grounds

A) GENERAL FRAUD

- La. R.S. 23:1208 –
 - A. It shall be unlawful for any person, for the purpose of obtaining or defeating any benefit or payment under the provisions of this Chapter, either for himself or for any other person, to willfully make a false statement or representation.
 - B. It shall be unlawful for any person, whether present or absent, directly or indirectly, to aid and abet an employer or claimant, or directly or indirectly, counsel an employer or claimant to willfully make a false statement or representation.



Louisiana Workers' Compensation Fraud: Two Legal Grounds (cont.)

- La. R.S. 23:1208 –
 - A. Note: Section 1208 applies to any false statement or misrepresentation, including one concerning a prior injury, made willfully by a claimant for the purpose of obtaining benefits, and thus is generally applicable once an accident has already occurred and a claim is being made. Under Section 1208, there is no requirement that the employee be put on notice of the consequences of making the false statements of that the employer was prejudiced by the statement.
 - B. Considering this general fraud statute, possible fraud applications and defenses to claims for potential COVID claims could include the following:
 - (1) Employees lying about the source of contraction of COVID;
 - (2) Employees lying to medical providers regarding the source of contraction of COVID;
 - (3) Employees lying about false/manipulated COVID tests;
 - (4) Employees alleging quarantine or COVID exposures as grounds for missing work as grounds for obtaining workers' compensation indemnity or medical benefits; and
 - (5) The potential fraud concerns are limitless with regard to these claims.



Louisiana Workers' Compensation Fraud: Two Legal Grounds (cont.)

B) JOB APPLICATION FRAUD

- La. R.S. 23:1208.1
 - A. Nothing in this Title shall prohibit an employer from inquiring about previous injuries, disabilities, or other medical conditions and the employee shall answer truthfully; failure to answer truthfully shall result in the employee's forfeiture of benefits under this Chapter, provided said failure to answer directly relates to the medical condition for which a claim for benefits is made or affects the employer's ability to receive reimbursement from the second injury fund.



Louisiana Workers' Compensation Fraud: Two Legal Grounds (cont.)

Note: Section 1208.1 applies to false statements or misrepresentations made pursuant to employment related inquiries regarding prior medical history such as in an employment application or some post-employment questionnaire and not to statements made in relation to a pending claim.

In order for the provisions of Section 1208.1 to be enforced, the written form inquiring about previous medical conditions must contain a **notice** advising the employee that the failure to answer truthfully may result in the forfeiture or workers' compensation benefits. It is specifically provided in the statute that the notice "shall be prominently displayed in bold face letter of no less than ten point type." Accordingly, the following notice should be placed on all post-offer employment questionnaires on every page:

NOTICE: The failure to answer truthfully any of the above inquiries about your previous injuries, disabilities, or other medical conditions may result in forfeiture of all workers' compensation benefits under La. R.S. 23:1208.1



Louisiana Workers' Compensation Fraud: Two Legal Grounds (cont.)

There are also **additional burdens** of proof which must be met in order to obtain the forfeiture under Section 1208.1. The statute specifically provides that the forfeiture of benefits **shall result**, provided that “the failure to answer truthfully **directly** relates to the medical condition for which a claim for benefits is made or **affects** the employer’s ability to receive reimbursement from the Second Injury Fund. The employee’s answer must be prejudicial to the employer’s ability to be reimbursed from the Second Injury Fund.

The Louisiana Supreme Court toughened the employer’s burden of proving the direct relation between the employee’s untruthful answer and the current medical condition. The Supreme Court held that the “direct relation” is established only when the second injury was inevitable or likely to occur due to the pre-existing condition. See *Wise v. J.E. Merit Constructors, Inc.*, 97-0684 (La. 1/21/98), 707 So.2d 1214.



Louisiana Workers' Compensation Fraud: Two Legal Grounds (cont.)

Obviously, most employers Medical History Questionnaires do not currently contain questions and request for information regarding COVID exposure, complications and prior contraction of such. It is feasible and prudent that they should, as some COVID related conditions could be significant and could amount to a pre-existing permanent partial disability conditions for Second Injury Fund recovery claims, involving permanent cardiovascular issues, permanent restrictions from employment, permanent job modifications and such.

Should an employee misrepresent their accurate COVID history on the Medical History Questionnaire, this could conceivably give rise to a defense to such claims for workers' compensation fraud under this statute. This issue has not been litigated or adjudicated at this point in Louisiana.



Recent Louisiana Statute Regarding Limitation of Liability for COVID-19 Tort Claims Effective March 11, 2020

- In 2020, the Louisiana Legislature passed La. R.S. 9:2800.25 providing an express limitation for COVID-19 claims.
- Specifically, with regard to the interplay with Louisiana Workers' Compensation Laws, the statute expressly provides that an employee whose contraction of COVID-19 is determined to be compensable under Louisiana Workers' Compensation Law, they shall have no remedy based in tort for such exposure against his/her employer or related employer entities, unless the exposure was intentional.
- The statute further provides that employees who contract COVID-19 and are not covered by the Louisiana Workers' Compensation Law, also shall have no remedy in tort for such exposure against the employer and all employer related entities, unless the exposure was caused by an intentional act.
- Accordingly, as of March 11, 2020, unless there is an intentional act for contraction of COVID-19 that can be reasonably asserted against the employer, the employee's only potential course of action would be a workers' compensation claim against his/her employer.

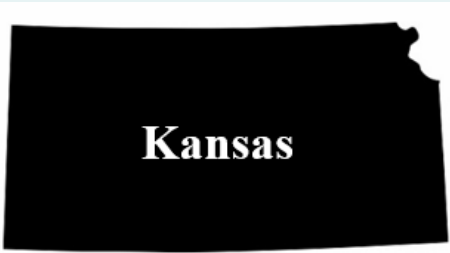



La. R.S. 9:2800.25

- A. No natural or juridical person, state or local government, or political subdivision thereof shall be liable for any civil damages for injury or death resulting from or related to actual or alleged exposure to COVID-19 in the course of or through the performance or provision of the person's, government's, or political subdivision's business operations unless the person, government, or political subdivision failed to substantially comply with the applicable COVID-19 procedures established by the federal, state, or local agency which governs the business operations and the injury or death was caused by the person's, government's, or political subdivision's gross negligence or wanton or reckless misconduct. If two or more sources of procedures are applicable to the business operations at the time of the actual or alleged exposure, the person, government, or political subdivision shall substantially comply with any one applicable set of procedures.
- B. No natural or juridical person, state or local government, or political subdivision thereof, nor specifically a business event strategist, association meeting planner, corporate meeting planner, independent trade show organizer or owner, or any other entity hosting, promoting, producing or otherwise organizing an event of any kind, shall be held liable for any civil damages for injury or death resulting from or related to actual or alleged exposure to COVID-19 in the course of or through the performance of hosting, promoting, producing or otherwise organizing, planning or owning a tradeshow, convention, meeting, association produced event, corporate event, sporting event, or exhibition of any kind, unless such damages were caused by the gross negligence or willful or wanton misconduct.
- C. An employee whose contraction of COVID-19 is determined to be compensable under the Louisiana Workers' Compensation Law shall have no remedy based in tort for such exposure against his employer, joint employer, borrowed employer, statutory employer, any other person or entity listed in R.S. 23:1032(A)(1)(b), and any other person or entity potentially liable pursuant to the Louisiana Workers' Compensation Law unless the exposure was intentional as provided by R.S. 23:1032(B).
- D. Notwithstanding the rights of employees as provided by R.S. 23:1032(B), employees who contract COVID-19 and are not covered by the Louisiana Workers' Compensation Law shall have no remedy in tort for such exposure against their employer, joint employer, borrowed employer, statutory employer, any other person or entity listed in R.S. 23:1032(A)(1)(b), and any other person or entity potentially liable pursuant to the Louisiana Workers' Compensation Law unless the exposure was caused by intentional act.





Workers' Compensation Adjudications in Other States

STATE	SUMMARY
 <p data-bbox="533 594 687 629">Kansas</p>	<p data-bbox="880 451 1818 568">Workers' Compensation Appeals Board found that an injured worker's exposure to COVID-19 from a physical therapist providing medical treatment for a previous work-related injury and subsequent contraction of COVID-19 <u>was work related and compensable</u> under the Workers' Compensation Act.</p> <p data-bbox="880 608 1843 725">The Board noted that exposure to COVID-19 during the course of medical treatment was analogous to a new injury resulting from medical malpractice. If not for the medical treatment required by the previous work-related accident, the claimant would not have been exposed to the injury, disease, or infection related to the treatment.</p> <p data-bbox="880 765 1727 791"><i>Talavera v. Bob's Super Saver, Inc.</i>, CS-00-045-082, AP-00-0457-217 (2021).</p>
 <p data-bbox="481 1125 664 1160">Mississippi</p>	<p data-bbox="880 831 1843 948">Workers' Compensation Commission denied nurse working for nursing home's workers' compensation claim for benefits for contraction of COVID-19 because claimant failed to produce substantial evidence (either lay or medical) that would show that the contraction of COVID-19 was work-related.</p> <p data-bbox="880 988 1870 1076">The Commission reasoned that disability resulting from COVID-19 <i>may</i> be compensable <u>only if</u> there is a direct causal connection between the work performed and COVID-19, and that the direct causal connection is supported by medical evidence.</p> <p data-bbox="880 1116 1850 1233">The Commission found that, in an analysis of COVID-19 cases, the focus should be on whether there is proof that: (1) the claimant is diagnosed with COVID-19; (2) the claimant has an impairment; and (3) the claimant's COVID-19 is causally connected to the employment to a reasonable degree of medical certainty.</p> <p data-bbox="880 1273 1669 1299"><i>West v. The Nichols Center</i>, 082521 MSWC, 2006972-R-2479 (8/25/21).</p>




Workers' Compensation Adjudications in Other States

STATE	SUMMARY
 <p data-bbox="484 554 687 589">New York</p>	<p data-bbox="886 294 1856 348">Workers' Compensation Board found that claimant failed to establish that his contraction of COVID-19 was an accident that arose out of his employment as a correctional officer.</p> <p data-bbox="886 386 1875 539">The Board held that when alleging that COVID-19 has been contracted at work, a claimant may show that an accident occurred in the course of employment by demonstrating prevalence, which can be shown when evidence of the nature and extent of work activities include significant contact with the public and/or coworkers in an area where COVID-19 is prevalent.</p> <p data-bbox="886 578 1866 731">Here, claimant did not demonstrate prevalence because he failed to indicate whether other coworkers and inmates, who allegedly tested positive for the illness were in close proximity to the claimant or when these other individuals tested positive. Also, claimant did not go to work for a period of time preceding his COVID-19 diagnosis, during which he engaged in other activities.</p> <p data-bbox="886 769 1315 793"><i>NYS Department of Corrections (2021).</i></p>
 <p data-bbox="484 1125 687 1160">New York</p>	<p data-bbox="886 801 1875 919">Workers' Compensation Board found that police officer who alleged that he had contracted COVID-19 as a result of his employment presented sufficient evidence to demonstrate that he suffered an accident in the course of his employment resulting in causally related COVID 19 infection.</p> <p data-bbox="886 958 1875 1110">The Board held that prevalence is evidence of significantly elevated hazards of environmental exposure that are endemic to or in a workplace, which demonstrates that the level of exposure of extraordinary. Public-facing workers and workers in highly prevalent COVID-19 environments are workers who can show that exposure was at such a level of elevated risk as to constitute an extraordinary event.</p> <p data-bbox="886 1149 1866 1302">Here, the board determined that the positive COVID-19 test produced by the officer, who was subjected to a series of interactions with the public, satisfied the requirement of prima facie medical evidence between it documented the illness. Thus, the board concluded that there was sufficient evidence to show that the officer suffered an accident in the course of employment.</p> <p data-bbox="886 1340 1431 1365"><i>Employer: County of Nassau Civil Service (2021).</i></p>



Workers' Compensation Adjudications in Other States

STATE	SUMMARY
 <p data-bbox="465 601 672 634">New York</p>	<p data-bbox="880 448 1843 505">Workers' Compensation Board found that a <u>positive COVID 19 test is sufficient prima facie medical evidence for a COVID 19 Workers' Compensation claim.</u></p> <p data-bbox="880 544 1866 662">Here, claimant allegedly contracted COVID 19 while driving for Uber. The Board found that claimant's positive COVID 19 test constitutes prima facie medical evidence because it documents the claimant's COVID 19 illness and there is no requirement that prima facie medical evidence, in itself, show a causal link between the injury and employment.</p> <p data-bbox="880 701 1296 729"><i>New York Black Car Operator (2020).</i></p>



Proper Measures To Implement in Anticipation of Potential Claims

In order to diminish and reduce any reasonable probability that any claim of COVID-19 was contracted “on the job”, through any employment related activity or from an infected co-employee, it is highly advised that all proper safety measures be immediately taken to shield and protect your workforce from contraction of the disease, including but not limited to the following:

1. Posting throughout the place(s) of employment, company vehicles, emails, etc., and with continuous written updates to all employees, managers, supervisors, and all persons on the business premises, the requirement for following all reasonable safety measures, including all CDC hygiene guidelines for hand washing, sanitation, personal protective gear, social distancing, quarantine measures, and all proper measures;



Proper Measures To Implement in Anticipation of Potential Claims

2. Removing employees who test positive (or who have any family member or other relevant person who has tested positive), or who have any symptoms of COVID-19, from the workforce immediately;
3. Follow all federal and state proclamations on business shutdown of operations and allowed essential business functions; and
4. Notify on a continuous basis in writing all employees and all persons on the business premises, of the requirement to follow all aforementioned measures to protect them from contraction of COVID-19.



Defense Measures Upon Notification Of An Alleged Occupational Disease Contraction of Covid-19

Upon notification of any potential claim by an employee and/or dependent of a deceased employee, alleging any potential for occupationally contracted COVID-19 claim, it is imperative that the employer conduct immediate investigatory measures, including:

1. Obtaining all relevant personnel and employment file documentation, clarifying the specific job duties and requirements outlining the specific nature of the employee's particular job duties for evaluation of any possible unique causal exposure connection basis for COVID-19 contractions;
2. Obtaining all pertinent information regarding all recent habits, company cell phone and dispatch records verifying all locations, points of travel and activities of the employee, both on the job and off the job;



Defense Measures Upon Notification Of An Alleged Occupational Disease Contraction of Covid-19

3. Obtaining all pertinent medical records, death certificate records, and obituary information, through a medical release if needed, to expedite receipt of such information for evaluation of the claim and issuing the relevant Louisiana Workforce Commission Forms; and
4. Obtaining any and all pertinent social media public posts, recent travel information, other jobs held, family or friend health conditions and interactions, and other information which may provide probative evidence that the contraction of the COVID-19 virus was not occupationally related nor unique to the peculiar job duties of the employee.



Conclusion



Although the burden of proof in establishing causation for COVID-19 as a covered employment occupational disease will be difficult for claimants to meet, COVID-19 may provide the ideal unique disease to allow employees to meet this significant burden. COVID-19 has certainly placed a strain on certain occupations, and the extraordinary exposure possibilities and stress employees are currently experiencing may not be considered “typical” of normal workplace stress. With this in consideration, the key is how quickly and prudently employers and their insurers investigate and respond to these claims.



Questions?



Trenton J. Oubre
Partner – Baton Rouge
trenton.oubre@bswllp.com
225-381-8059