



COVID-19 PANDEMIC and WORKERS' COMPENSATION November 2021 UPDATE from VAcorp

In March 2020, the World Health Organization declared COVID-19 (the novel coronavirus) a pandemic and there continues to be numerous confirmed cases in the Commonwealth of Virginia. As we continue to navigate this new reality, we hope you find this updated information regarding likely COVID-19 implications for workers' compensation claims beneficial to your operations.

Impact on Existing Claims:

1. The Virginia Workers' Compensation Commission continues to conduct in-person hearings. However, the individual Deputy Commissioners have discretion to opt for virtual hearings, either on their own or pursuant to request from the parties. Additionally, Commissioners retain discretion to allow any attendee to participate in the hearing by video or telephone when requested and where appropriate.
2. CDC Guidelines regarding social distancing may be considered reasonable justification to cancel and/or reschedule in-person medical appointments and vocational rehabilitation, depending on the circumstances.
3. As COVID-19-related hospitalization numbers fluctuate, we may continue to see delays in workers' compensation medical treatment, particularly surgical procedures.
4. Effective August 1, 2021, the Virginia Workers' Compensation Commission reinstated the requirement that settlement documents be notarized.

COVID-19 Claims for Non-First Responders and Non-Health Care Providers:

We anticipate that COVID-19 claims will be treated by the Virginia Workers' Compensation Commission as any other community-acquired infectious disease, such as influenza. With the widespread of COVID-19, the Commission will likely view COVID-19 as an ordinary disease of life which results in a higher burden of proof for the claimant and will, in most cases, result in denial of workers' compensation benefits.

As a preliminary matter, a claimant must prove the existence of a disease, which will likely require a confirmed diagnosis of COVID-19. Mere exposure or symptoms consistent with COVID-19 (which might also be consistent with a cold or seasonal flu) will be insufficient. More critically, a claimant must prove that the disease did not result from causes outside of the employment (i.e., community-acquired).

COVID-19 Presumptions for First Responders and Health Care Providers:

Effective July 1, 2021, the Virginia Workers' Compensation Act provides firefighters, law enforcement officers, correctional and regional jail officers, and health care providers with a compensability presumption for COVID-19. The new statutory provisions include a retroactivity component. For health care providers, the new presumption may apply if the relevant death or disability occurred on or after March 12, 2020, and before December 31, 2021. For firefighters, law enforcement officers, and correctional and regional jail officers, the new presumption may apply if the relevant death or disability occurred on or after July 1, 2020, and before December 31, 2021.

In order for the COVID-19 compensability presumption to apply, a number of criteria must be met. These include requirements for a positive COVID-19 diagnosis, for signs and symptoms of COVID-19 requiring medical treatment, and for death or disability resulting from COVID-19. Additionally, if a COVID-19 vaccine was required by the employer and the employee refused, the new presumption will not apply (unless the employee is already immunized or has a written declaration from his or her physician that the immunization would pose a significant risk to the employee's health).

If the presumption is established, the burden shifts to the employer to prove both that the claimant was not infected with COVID-19 at work, and when/how the claimant was infected with COVID-19 outside of work.

Firefighter Respiratory Disease Presumption:

In addition to the new COVID-19-specific presumption mentioned above, the Virginia Workers' Compensation Act also provides firefighters and Department of Emergency Management hazardous materials officers with a compensability presumption for respiratory diseases that cause death or any health condition or impairment. The Commission has not yet addressed whether a qualified first responder would be entitled to the compensability presumption when the respiratory disease was caused by a virus. Presumption claims for workers' compensation benefits are inherently fact specific; all COVID-19 cases are evaluated on a case-by-case basis.

Reporting Workers' Compensation Claims of COVID-19:

Employees, both Non-first Responders and First Responders, including covered volunteers, who are diagnosed with coronavirus and believe they explicitly contracted the virus as a result of a workplace exposure can report their claims through normal channels. Absent an applicable compensability presumption, simply acquiring the virus is not indicative of compensability; there must be an actual increased hazard of employment beyond that of traditional public or social interaction to which all citizens are exposed. Just the presence and performance of duties in an office, public, or school setting in which others have or may have the disease likely will not result in reaching the threshold for compensability. As with any other reported incident, VAcorp will investigate each claim and apply the Virginia Workers' Compensation Act in determining compensability.

For additional information, please call your VAcorp Member Services representative.