

COVID-19 PANDEMIC and WORKERS' COMPENSATION
05/29/2020 UPDATE from VACORP

As you know, on March 11, 2020, the World Health Organization declared COVID-19 (the novel coronavirus) a pandemic and there are increasing numbers of confirmed cases in the Commonwealth of Virginia. As we try to navigate our new reality, we wanted to provide this information and likely implications for workers' compensation claims.

Impact on Existing Claims:

1. The Virginia Workers' Compensation Commission reopened its headquarters on April 21, 2020, with minimal occupancy of employees performing critical functions.
2. The Commission directed that all evidentiary hearings scheduled on or after June 11, 2020, be conducted in-person. Commissioners retain discretion to allow any attendee to participate in the hearing by video or telephone when requested and where appropriate. Commission and security personnel will conduct a non-invasive temperature screening prior to entry and individuals will be required to wear a mask and gloves inside Commission facilities.
3. Effective March 26, 2020, the Virginia Workers' Compensation Commission suspended the requirement that settlement documents be notarized. Notwithstanding, we will continue to require notarized documents for settlements over \$15,000, unless other procedural safeguards are agreed to by the parties.
4. Many medical providers cancelled non-emergency treatment, such as routine office visits and physical therapy in March and April. In the short-term, this will dramatically limit access to care, as well as delay return to work, while these providers reopen in a reduced capacity.
5. CDC Guidelines regarding social distancing may be reasonable justification to cancel and/or reschedule in-person medical appointments and vocational rehabilitation.
6. Effective May 29, 2020, individuals aged ten and over are required to wear face coverings inside public spaces, with limited exceptions.

COVID-19 Claims for Non-First Responders:

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. As community spread of COVID-19 increases, 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). As testing ramps up, and more people are diagnosed with COVID-19, it will likely be impossible to track the source and/or specific exposure.

First Responder Presumptions and COVID-19 Claims:

The Virginia Workers' Compensation Act provides qualified first responders, such as law enforcement officials and firefighters, with a compensability presumption for certain infectious diseases which are currently limited to hepatitis, meningococcal meningitis, tuberculosis or HIV, and would not cover COVID-19 claims.

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. As you may know, presumption claims for workers' compensation benefits are inherently fact specific, and any COVID-19 cases would be evaluated on a case-by-case basis.

Reporting COVID-19 Claims:

Employees, including non-first Responders, First Responders, and covered volunteers, who are diagnosed with COVID-19 and believe they contracted the virus as a result of a workplace exposure can report their claim through normal channels. As noted above, simply acquiring the virus is not indicative of compensability; there must be an actual increased hazard of employment beyond that of the general 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.