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PROTECTING YOUR LEGAL RIGHTS DURING THE CORONAVIRUS/COVID-19 OUTBREAK

Given the recent outbreak of COVID-19, there has understandably been a great deal of concern in the general public regarding exposure and contracting the disease. That is true for all members of society including public employees as well as the private sector workers such as those who work in our offices. In general, our governmental agencies, the media, and online publications have provided great information regarding how to stay safe and steps to take to continue preventing any further catastrophic outbreaks of the disease and to help further the “flattening of the curve” of new cases. The question has been posed to our office several times over the last week or two on what to do if someone believes they were exposed, and worse, what to do if they have tested positive for the disease. With that in mind, we believe that your members can use this information to best protect themselves going forward.

From a work-related perspective, many of us are in situations where we have constant interactions with the general public where exposure may occur. For uniformed personnel, this is especially problematic because not only is it an aspect of your job but also a **requirement** of the job. While social distancing may be practical inside of an office environment or even with our co-workers and neighbors, considering many of the jobs in which you engage, there is no way to limit the exposure that you might have with a member of the general public. With that being said, you can almost be guaranteed that in the situation that one of your members contracts the disease and wants to make it a work-related claim, the employers and insurance carriers or self-insured third party administrators will controvert these claims on the grounds that they are not covered under either the established line of duty policies or under the Workers’ Compensation Law.

While general exposures and contracting of an illness is incredibly hard to prove, in certain scenarios with the proper evidence, a nexus can be established between the exposure at work and the disease. If a member believes that someone that they had direct contact and interaction with suffers with the Coronavirus or COVID-19, they should absolutely document that exposure with the employer as soon as possible. Whether that be an informal record that is kept with the job, or a memo book or log book entry, or a more formal documenting procedure that has been set forth by the employer, the member absolutely has an affirmative obligation to put the employer on notice as soon as possible in order to best protect their benefits. If the exposure turns out to be nothing, then so be it. However, if the member later tests positive for the disease, that initial documentation might be the piece of evidence that sets apart a valid and compensable claim for one that gets denied for a lack of nexus to the workplace.

The next step is obviously the medical documentation supporting the positive diagnosis of the disease. That will certainly include a positive test for the disease in a similar method to any other exposure claim for any other disease or a valid diagnostic exam for an orthopedic injury. With the medical documentation confirming the contraction of the disease, the member will also need a medical doctor indicating that they know of the prior exposure at work, and he or she believes within a reasonable degree of medical certainty that the exposure is the cause of the member's illness. In Workers' Compensation, that medical report is called *prima facie medical evidence*, and it is the foundational piece of evidence to any claim.

Even with those steps being taken by the members, we believe that the vast majority of situations will involve litigation of these claims before the agency. The insurance carriers and self-insured will be loathe to simply accept that any exposure, the medical costs if any, and the compensable lost time from work should be covered as work-related. Thus, the claim will likely involve the case being set for trial and the member needing to testify to their exposure at work and the steps they took in order to inform the employer timely of that exposure.

Also, any member that ends up in this situation should also keep in mind that as opposed to a physical injury such as one to the knee or shoulder, these claims are unlikely to end up with a monetary settlement except those resulting in lost time from work. Therefore, the goal of these benefits would be to make sure that the medical treatment required to cure the member to get them back to work is paid for by the employer, and if the member misses any time from work, that they are compensated for that lost time pursuant to the applicable statutes and Workers' Compensation rates.

Over the past several weeks, people have reached out to our office with these questions among others given the crisis. In fact, we have had several individuals inform us that their employers are telling them that they will NOT cover COVID-19 as incurred in the line of duty or giving the impression that this situation is "not covered" as work-related. While the general rule regarding sickness and illness may confirm their instincts, the facts of the exposure matter more than anything else, and thus, a blanket rule of "This is not coverable" might not apply to a different set of facts. In the past we have been able to get cases established regarding other diseases such as flesh-eating bacteria which likely only could have been contracted at work or other illnesses of a similar severity. The key is the evidence that is presented and a medical doctor indicating they believe that the disease was contracted at work or the exposure at work caused the infection. Simply put, do not believe that every case involving the Coronavirus is not work related. With a well documented exposure, it can be covered in Workers' Compensation and before other agencies in exactly the same manner as any other disease or illness.

The other point worth mentioning is that some job titles and jobs have certain illnesses that are presumed to have been contracted due to a work related exposure. This might include Hepatitis-C, HIV/AIDS, or tuberculosis. Please note that these type of presumptions DO NOT apply to COVID-19. Those presumptions have been granted by law from the state or municipality. Until such a presumption exists for uniformed personnel, each member must document the exposure as best as possible in order to protect his or her benefits and rights.

Of course, if you have any questions or concerns, never hesitate to contact our office at 516-496-0400. One of our experienced and talented legal professionals will be happy to walk through the process with you and advise you properly regarding your rights to benefits covering your exposure.

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