

New York Workers' Compensation Law: Is COVID-19 Compensable?

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As previously noted in our [blog](#), workers' compensation is an emerging area of concern for employers during the COVID-19 crisis. For New York employers in the heart of the pandemic, the question of whether one of their employees will contract COVID-19 in the workplace is less a matter of "if" than "when." Infected employees may subsequently seek workers' compensation benefits, which have the potential to be significant if the employee contracts a severe case or suffers lasting damage. As businesses in New York plan to reopen, employers in the state must take care to review applicable workers' compensation laws and understand when employees who contract COVID-19 in the workplace may be entitled to benefits.

New York Workers' Compensation Overview

Under the New York Workers' Compensation Law ("NYWCL"), the vast majority of New York employers must fund and provide monetary and medical benefits to covered employees who suffer injury or illness "arising out of and in the course of" their employment. Eligible employees may be entitled to weekly cash benefits and/or medical expenses associated with the malady. Workers' compensation is the exclusive remedy for employees who suffer on-the-job injury or illness in New York, and employees are generally barred from seeking civil damages in a private lawsuit for a NYWCL-covered injury as a result.

COVID-19 As A Compensable Injury

Whether an employee who contracts COVID-19 in the workplace is eligible for workers' compensation benefits depends on whether the illness qualifies as a compensable "occupational disease" under the NYWCL. While certain diseases, like silicosis and illnesses stemming from chemical poisoning, automatically qualify as occupational diseases, the term also encompasses "disease or infection [that] may naturally and unavoidably" arise out of or in the course of an employee's employment. However, for an illness that is not specifically identified by the NYWCL, the affected employee must show a direct link between the illness and the nature of his or her employment, as opposed to a condition in the workplace, ordinary contact with co-workers, or other unrelated factors.

New York, unlike [other states](#), has not specified whether COVID-19 qualifies as an "occupational

disease.” However, New York courts reviewing workers’ compensation claims arising from other communicable illnesses have consistently determined that they only qualify as compensable occupational diseases where the nature of the infected employee’s work places them at a high risk of exposure. For example, in *Lachowicz v. Albany Med. Ctr. Hosp.*, 30 A.D.2d 1004 (N.Y. App. Div. 3d Dep’t 1968), the New York Appellate Division held that a maintenance worker in a tuberculosis ward was entitled to workers’ compensation benefits after contracting the disease, even though there was no evidence that he came into direct contact with a patient diagnosed with tuberculosis.^[1] Conversely, in *Paider v. Park East Movers*, 19 N.Y.2d 373 (1967), the New York Court of Appeals held that a moving company truck driver who contracted tuberculosis from an infected co-worker did not have a compensable occupational disease because his illness resulted from “ordinary contact with a fellow employee,” rather than any “distinctive feature of the kind of work performed.”^[2]

As these cases demonstrate, employees who contract a communicable disease in the workplace are more likely to be eligible for workers’ compensation benefits if the nature of their employment places them at high risk of contracting the disease. In the COVID-19 context, this means that health care workers and other employees who contract the virus after routine exposure to individuals with the virus are more likely to be entitled to workers’ compensation benefits under an occupational disease theory. Alternatively, office workers or other employees who may contract COVID-19 through casual contact with an infected co-worker or other forms of incidental exposure are unlikely to qualify for workers’ compensation benefits under the NYWCL.

Considerations For Teleworking Employees

As a result of New York’s PAUSE order, many employees in non-essential industries currently telework and are expected to do so for the foreseeable future. Under the NYWCL, an employee’s home may be treated as the “workplace” when the employee regularly works from home for the employer’s benefit and with the employer’s knowledge. However, as described above, an employee whose job duties do not require them to be in regular contact with COVID-19 patients is unlikely to show that the virus is an occupational disease that entitles them to benefits. Teleworking employees who contract COVID-19 while working from home (such as from a family member) thus appear to be less likely to qualify for workers’ compensation benefits than employees who are routinely exposed to COVID-19 patients as part of their job duties.

At present, there is no “bright line” test to determine whether any single employee’s line of work is risky enough to render their COVID-19 a compensable illness. However, New York employers should keep the foregoing distinctions in mind when deciding whether to contest any virus-related workers’ compensation claims they receive. Given the scope and nature of the COVID-19 pandemic, the New York Workers’ Compensation Board may issue additional guidance regarding the compensability of COVID-19. We will continue to monitor this issue and provide additional updates as they become available.

As you are aware, things are changing quickly and there is no clear-cut authority or bright line rules. This is not an unequivocal statement of the law, but instead represents our best interpretation of where things currently stand. This article does not address other the potential impacts of the numerous other local, state and federal orders that have been issued in response to the COVID-19 pandemic, including, without limitation, potential liability should an employee become ill, requirements regarding family leave, sick pay and other issues.

This alert is provided for information purposes only and does not constitute legal advice and is not intended to form an attorney client relationship.

FOOTNOTES

[1] See also *Lyden v. United Hospital*, 275 A.D. 877 (N.Y. App. Div. 3d Dep't 1949) (laboratory technician's tuberculosis was a compensable occupational disease where the technician did not have tuberculosis before beginning the job and had no contact with anyone diagnosed with tuberculosis outside of the workplace); *Esposito v. N.Y.S. Willowbrook Sch.*, 46 A.D.2d 969 (N.Y. App. Div. 3d Dep't 1974) (kitchen worker at a school with a hepatitis outbreak was entitled to workers' compensation benefits after he contracted the disease handling contaminated student food waste).

[2] See also *Artiste v. Kingsbrook Jewish Med. Ctr.*, 221 A.D.2d 81 (N.Y. App. Div. 3d Dep't 1996) (nurse's aide who contracted HIV through an accidental needle stick from a diabetic patient with no signs of HIV did not have a compensable occupational disease where her job duties did not involve contact with known HIV-positive patients or contaminated blood products).

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