



## **COVID-19 PANDEMIC and WORKERS' COMPENSATION**

### **05/29/20 UPDATE - WVcorp**

As you know, on March 11, 2020, the World Health Organization declared COVID-19 (the novel coronavirus) a pandemic, and there are now confirmed cases in the state of West 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 Governor's May 15, 2020, declaration opened gymnasiums, fitness centers, recreation centers, and similar businesses effective May 18, 2020. With this declaration, employees with workers' compensation injuries can reengage any prescribed physical therapy at these locations in a similar capacity as prior to the emergency order closing such facilities. Participants and the facilities must, per the order, continue proper social distancing and hygiene practices.
2. James A. Dodrill, West Virginia Insurance Commissioner, has issued an order that insurers and other regulated entities "must not issue a cancellation notice or nonrenewal...if the reason for the cancellation or nonrenewal is a result of circumstances stemming from the COVID-19 pandemic."
3. The Governor's April 27, 2020, declaration permitted all clinics, offices, and other facilities operated under the regulation of Chapter 30 Health Boards to resume all operations and procedures. These facilities are to use guidance and best practices as disseminated by the Board.

#### **COVID-19 Claims for Non-First Responders:**

We anticipate that COVID-19 claims will be treated by the West Virginia OIC as any other community-acquired infectious disease, such as influenza. As community spread of COVID-19 increases, the OIC 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 employment hazard to which employees would have been equally exposed outside of employment (i.e., community-acquired). As more people are diagnosed with COVID-19 across the state, it will likely be impossible to track the source and/or specific exposure.

**First Responder Presumptions and COVID-19 Claims:**

Current West Virginia Workers' Compensation Laws, Chapter 23-4-1(h), defines firefighters as the only first responders with a rebuttable presumption for pulmonary disease. There is no presumption for other first responders, including EMT and law enforcement officers. Those who qualify as first responders, other than professional firefighters, will need to prove their exposure meets the same qualifications as other non-first responders in seeking workers' compensation benefits arising out of a pulmonary disease diagnosis, which could include COVID-19.

**Reporting Workers' Compensation of COVID-19**

Employees, both non-first responders and first responders, who are diagnosed with novel coronavirus (COVID-19) and believe they explicitly 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 traditional public or social interaction to which all citizens are exposed. Just the presence and performance of duties in an office, public, or responsive 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, WVcorp will investigate each claim and apply the West Virginia Workers' Compensation Laws in determining compensability.