

COVID-19 FAQ's

Workers' Disability Compensation Agency

INFORMATION FOR EMPLOYEES

Q: I have COVID-19 infection and I think it came from work, is it covered under workers' compensation?

A: Yes, it can be. Workers' compensation is designed to provide benefits to workers whose injuries "arise out of and in the course of the employment." In the majority of cases it is obvious whether an injury happened at work (such as a fall from a ladder). There are, however, times when the relationship between the job and the injury will be questioned.

Q: How do I prove my workers' compensation claim?

A: It depends on the type of your employment. If you are a **First Response Employee**, and you are diagnosed with COVID-19 infection either by a physician or as a result of a test, based on your specific type of employment sector and unless proven otherwise, you are considered to have a personal injury that arises out of and in the course of your employment. The rule indicates a positive test or diagnosed by physician. Many tests at this time are not being performed by physicians. Confirmation is not necessary per the rule. Employers always have the opportunity to obtain contrary evidence to present if they choose, and to dispute a claim.

Q: Who is defined as a "First Response Employee?"

A: Under the 3-30-2020 Workers' Disability Compensation Agency Emergency Rules, a First Response Employee is defined as one or more of the following:

- A person working in ambulance operations and advanced mobile emergency care services, county medical care facilities, emergency services, emergency medical services, homes for the aged, hospices, hospitals and nursing homes.
- A person working in a home health agency or visiting nurse association.
- Any person working as a physician, physician assistant, nurse, emergency medical technician, paramedic or respiratory therapist.
- Any police officers, fire fighters, emergency medical technicians, on-call members of a fire department, volunteer civil defense workers, on-call members of a life support agency or members of an emergency rescue team, as those terms are used in the Worker's Disability Compensation Act of 1969, 1969 PA 317.

- A member of the Michigan State Police or an officer of the Commercial Vehicle Enforcement Division of the Department of the State Police.
- A Michigan Department of Corrections Officer or local corrections officer.

Q: If I am not considered a First Response Employee, can I still make a claim for an injury or occupational disease if diagnosed with COVID-19 infection?

A: Yes. If you can identify specific exposure to COVID-19, such as a date, location, etc. and have been diagnosed by a physician or test, you may be able to show you have suffered a personal injury and therefore may be entitled to workers' compensation benefits. Remember, Michigan is a wage loss system so in order to be eligible for any benefits a worker must show that the exposure arose out of and in the course of employment like any other work injury and that it has caused a loss of wage earning capacity in work suitable to your qualifications and training.

Q: Could I still make a claim if I can't point to a specific source of exposure but work around people who have been diagnosed?

A: Yes. According to the workers' compensation statute, "Personal injury includes a disease or disability that is due to causes and conditions that are characteristic of and peculiar to the business of the employer and that arises out of and in the course of the employment." Another way to describe these might be injuries or diseases that arise over time. Remember, the key with any injury is that it must be attributable to work. For example, the statute goes on to state that, "An ordinary disease of life to which the public is generally exposed outside of the employment is not compensable."

Q: What benefits are available if my workers' compensation claim is approved?

A: The workers' compensation law provides a strict limit on the benefits that an individual can receive as the result of a job-related injury/illness. You can only receive certain specified 1) wage loss benefits, 2) medical benefits, 3) rehabilitation benefits and 4) burial allowance in the case of the employee's death.

Q: When and for how long are my workers' compensation benefits paid?

A: MCL 418.311 of the Worker's Disability Compensation Act provides that compensation is paid only after your injury or illness causes wage loss for a period of at least one week (7 consecutive days). If your wage loss lasts beyond one week, you are entitled to benefits as of the eighth day after the start of the wage loss. If your wage loss continues for two weeks or longer, then you are entitled to be paid compensation for the first week of wage loss. Your first check is due and payable on the 14th day of wage loss. However, a benefit check is not considered late until 30 days after the due date.

Your benefits continue so long as you suffer wage loss, which could be for the rest of your life. However, your benefits can be reduced by other employer funded benefits, old age social security, and when you turn 65 at 5% per year up to age 75.

KEY DEFINITIONS:

Q: What does “Arising out of and in the course of employment” mean?

A: Workers' compensation is designed to provide benefits to workers whose injuries "arise out of and in the course of the employment." In essence this means that work must be the cause of the injury or disease.

Q: Michigan is a “wage loss state.” What does that mean?

A: Michigan is a "wage loss compensation" state, meaning the establishment of an injury or occupational disablement is only the first step. The next step is determining if the injury or illness causes a wage loss, either by restricting the number of hours you can work or keeping you from working altogether. Section 301 of the Workers' Disability Compensation Act states the following:

An employee, who receives a personal injury arising out of and in the course of employment by an employer who is subject to this act at the time of the injury, shall be paid compensation as provided in this act. A personal injury under this act is compensable if work causes, contributes to or aggravates pathology in a manner so as to create a pathology that is medically distinguishable from any pathology that existed prior to the injury. In the case of death resulting from the personal injury to the employee, compensation shall be paid to the employee's dependents as provided in this act.

Q: What is "Wage Earning Capacity?"

A: Section 301 of the Workers' Disability Compensation Act defines “wage earning capacity” as the wages the employee earns or is capable of earning at a job reasonably available to that employee, whether or not wages are actually earned. In order to determine the wages you’ve earned at your present job, known as your Average Weekly Wage or AWW, the insurance carrier would look at the highest 39 of the last 52 weeks of your gross wages leading up to the date of injury/illness. The AWW is then determined by adding together those 39 weeks and dividing by 39. Generally, you should receive 80% of the after-tax value of your AWW as a weekly workers’ compensation benefit payment.

INFORMATION FOR EMPLOYERS

Q: Can my employee, who is diagnosed with COVID-19, make a workers' compensation claim?

A: Yes. If you employ a person or persons designated as **First Response Employee** and that employee is diagnosed with COVID-19 either by a physician or as a result of a test, and unless proven otherwise, that employee is considered to have a personal injury that arises out of and in the course of their employment.

If your employee is not defined as a First Response Employee, you as the employer or your employee may also file a workers' compensation claim using the normal statutory claim filing process. If you are not considered a First Response Employee, you can still make a claim for an injury or occupational disease if diagnosed with COVID-19.

Q: What if I employ a First Response Employee and their claim is denied?

A: Denial of a claim made by a First Response Employee diagnosed with COVID-19 violates the workers' disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, and is subject to penalties, unless the denial is based on specific facts demonstrating that the first response employee was not exposed to COVID-19 at work.