



Workplace Covid-19 Exposure and Infection Claims. What Employers Need to Know.

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For the past ten months, the world has dealt with the reality of the novel coronavirus (COVID-19). At the time of publishing this article, over 19 million cases have been reported in the United States, with approximately 500,000 of those in Indiana. The population of Indiana is just over 6.7 million people. Thus, more than one out of every 14 Hoosiers has contracted COVID-19. Daily, Indiana employers are forced to deal with issues as novel as this virus. Procuring personal protective equipment, managing capacity restrictions, and organizing health screening for employees are new endeavors to many Indiana employers.

This article addresses another novel decision facing many Indiana employers: what to do if an employee files a claim for benefits related to alleged COVID-19 exposure or infection?

COVERAGE UNDER THE INDIANA OCCUPATIONAL DISEASE ACT

When an employee is injured by an accident in the course and scope of his or her employment, the employee may seek medical and disability benefits through the Indiana Worker's Compensation Act. When an employee suffers from illness or disease occurring at work, the employee may seek benefits through the Indiana Occupational Disease Act – not the Worker's Compensation Act.

Although similar to the Worker's Compensation Act in many respects, the Indiana Occupational Disease Act features some important differences. For example, an occupational disease is defined as:

A disease arising out of and in the course of employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where such diseases follow as an incident of an occupational disease as defined in this section.

Ind. Code § 22-3-7-10(a). Unlike injuries under the Indiana Worker's Compensation Act, there is no requirement that the occupational disease be contracted "by accident." Rather, an occupational disease arises out of a worker's employment where there is a direct causal link between the disease and the conditions under which the work was performed, such that the disease may be regarded as having naturally resulted from the exposure. *Baker v. Westinghouse Elec. Corp.*, 637 N.E.2d 1271 (Ind. 1994). In many cases, it is difficult for an employee to establish the required causal connection between an alleged occupational disease and a particular irritant or exposure in the work environment.

Another significant difference involves the definition of "disability/disablement." To recover disability benefits or secure payment of medical expenses under the Occupational Disease Act, an employee must establish that he or she suffers from an occupational disease resulting in "disablement." Disablement is the state of being unable to earn full wages at the work the employee performed when last exposed to the hazardous condition or full wages in other suitable employment. *Spaulding v. Int'l Bakers Serv.*, 550 N.E.2d 307 (Ind. 1990). In other words, disability

exists while the person is unable to earn equal wages in the person's work or in work for another employer. Consequently, an employee who has an allergic reaction to an irritant may not be able to establish disablement if that employee could earn equal wages for another employer where that irritant would not be present. However, an employee who is hospitalized or in mandatory quarantine for a COVID-19 infection would likely be considered "disabled" during any period while the employee was unable to work for any employer. If the employee is asymptomatic, or is not subject to quarantine, he or she would not be considered "disabled" once permitted to return to work.

What remains to be seen is how the Occupational Disease Act will apply to potential long-term effects of COVID-19. Nevertheless, if an employee can establish the required direct causal link and inability to earn full wages due to COVID-19 infection, he or she may be entitled to benefits under the Occupational Disease Act.

STATE GUIDANCE FOR TREATMENT OF COVID-19 CLAIMS

On April 2, 2020, the Worker's Compensation Board of Indiana (which also governs Occupational Disease Act claims) issued a notice providing guidance for COVID-19 claims. The notice states as follows:

In Indiana, workers' compensation benefits [and occupational disease benefits] are paid by employers, not the State. Under our laws, the State cannot tell employers they must automatically cover employees who contract Covid-19. Whether an individual contracts the virus in the course and scope of their employment is a determination that must initially be made by the employer. This decision is routinely made at the time the employee notifies the employer of the injury, or in this case, contraction of the virus.

It is well accepted that first responders . . . as well as others directly involved in the provision of services to those exhibiting symptoms of Covid-19 are more susceptible to contraction of the disease as a direct result of their work duties. Others whose jobs necessarily entail close interaction with many people in a public setting are also more vulnerable to exposure and possible infection than those working remotely or in a limited office setting.

Employers are urged to consider making a prospective decision as to whether any vulnerable segment of their workforce will be presumptively covered under the provisions of the Indiana Worker's Compensation Act should they:

- a) Be quarantined at the direction of the employer due to a confirmed or suspected Covid-19 exposure,
- b) Receive a Covid-19 diagnosis from a physician without a test,
- c) Receive a presumptive positive Covid-19 test, or
- d) Receive a laboratory-confirmed Covid-19 diagnosis.

Employers are encouraged to relay such decisions to their workforce and worker's compensation insurance carrier/third party administrator as soon as possible in order to allay fears and expedite the claims process. Plans of action upon any occurrence listed above should also be communicated.

Contrast the guidance from the Worker's Compensation Board of Indiana with the April 13, 2020 emergency rule issued by the Illinois Workers Compensation Commission (later withdrawn), which stated that a COVID-19 "exposure will be rebuttably presumed to have arisen out of and in the course of the petitioner's . . . employment and, further, will be rebuttably presumed to be causally connected to the hazards or exposures of the petitioner's . . . employment." The Worker's Compensation Board of Indiana has strongly indicated that COVID-19 claims

will not be treated differently than any other Occupational Disease Act claim.

ADDRESSING EMPLOYEE COVID-19 EXPOSURE AND INFECTION CLAIMS

Exposure Claims

Although the Indiana Occupational Disease Act references “exposure,” a claim requires a disease. If the employee has been exposed but does not test positive, the employee does not have the requisite disease to make an Occupational Disease Act claim.

Infection Claims

Infection claims should be carefully analyzed to determine whether an employee has established that his or her infecting exposure occurred in the course and scope of employment, rather than at home or in public. Where the employee was equally exposed to other sources of COVID-19 outside of the work environment, the employer should consider denying the claim after seeking the advice of counsel.

Under the Indiana Occupational Disease Act, “[t]he burden of proof is on the employee. The proof by the employee of an element of a claim does not create a presumption in favor of the employee with regard to another element of the claim.” Ind. Code. § 22-3-7-2(a). Thus, employees still must establish the causal link between the alleged occupational exposure and infection.

All Indiana Occupational Disease Act claims should be evaluated on a case-by-case basis, and the facts of each claim should be investigated by the employer and its counsel before determining whether the claim will be accepted or denied. If you have questions regarding these issues, please contact the attorneys at Riley Bennett Egloff, LLP, who have counseled employers in numerous COVID-19 Indiana Occupational Disease Act claims since the start of the pandemic.



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ABOUT THE AUTHOR

Drake T. Land is a litigator practicing in multiple substantive areas. Drake represents employers in defense of employment-related and worker’s compensation claims brought before state and federal courts and administrative agencies. Drake also represents a variety of healthcare providers in the defense of medical malpractice claims and medical licensing complaints, and counsels businesses with litigation matters.

Prior to joining Riley Bennett Egloff, Drake served as a Deputy Attorney General for the State of Indiana, where he prosecuted medical licensing actions before the State Board of Pharmacy, Medical Licensing Board, and State Board of Nursing. While serving as a Deputy Attorney General, he reviewed and prosecuted over one hundred medical licensing cases in all stages of administrative review. Additionally, Drake pursued civil recovery of Medicaid overpayments under the Indiana False Claims Act.

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