

SHEILA CHAVIS | Workers' Compensation

Is COVID-19 a Work-Related Injury Eligible for Workers' Compensation?

As a lawyer who has represented injured workers for the past 15 years, I believe that the law should favor coverage for those who contract COVID-19 in their workplace. If you find that your lost work time due to COVID-19 is extended beyond 14 days and you are continuing to suffer lost wages while your medical bills pile up, you should contact an experienced workers' compensation attorney.

The Family First Coronavirus Relief Act (FFCRA) states that employees who are unable to work due to COVID-19, and who work for employers who have less than 500 employees, are entitled to paid sick leave at their full rate of pay for up to 80 hours. In this scenario, if you recover well and can return to work after the 14-day period, then your potential workers' compensation claim is likely not worth pursuing.

If after the 14-day period you are still ill and out of work due to treatment, hospitalization, etc., you may be eligible for ongoing benefits under one or a combination of several government-funded unemployment programs. You may select to pursue the assistance available from these sources while you speak to legal counsel (recommended) or weigh the potential for pursuing your COVID-19 exposure as a legal claim.

WHAT EXPENSES CAN I RECOVER?

In North Carolina, workers' compensation generally pays for three things: (1) medical treatment (with

doctors chosen by the insurer/employer); lost wages (at 2/3 of the average weekly wage); and payment for any permanent impairment sustained by the injured worker.

If the claim for COVID-19 exposure is accepted, benefits should commence right away with the carrier directing medical treatment and paying lost wages.

If the claim is denied, then a request for a hearing may be filed with the NCIC. Unfortunately, that process is lengthy and may take 12-24 months or longer to obtain a decision (win or lose) that will be final (not appealable).

If the COVID-19 claim is denied as a workers' compensation claim and there are identifiable elements of negligence on the part of the employer, it may be advantageous to file the claim as a civil lawsuit. In the civil arena, the remedies for an injured person are greater. In addition to compensation for medical treatment, the plaintiff in a civil lawsuit may be entitled to reimbursement of their full lost wages and may also recover compensation for pain and suffering, loss of enjoyment of life, and a number of other elements that go beyond the remedies available in a workers' compensation claim.

WHAT RECORDS DO I NEED TO KEEP?

To prove an occupational disease claim, specific facts and details are needed. You should preserve any documentation and witness statements that will confirm the number of people infected, quarantined, etc. due to COVID-19 in the workplace. Make

note of actions taken to protect employees who have not tested positive; cleaning procedures in areas where infected people had contact; the types of personal protective equipment (PPE) issued or required for those coming into the workplace; and the limitations, if any, placed upon the public interacting with people inside the workplace.

EXAMPLE OF A POTENTIAL CLAIM

A nurse in a nursing home tests positive for COVID-19 after being exposed to several residents who are sick and tested positive. The nurse potentially has an "occupational disease" claim. With an occupational disease claim the employee must prove two things in order for their claim to be accepted as a workers' compensation claim: (1) work was the cause of their getting COVID-19; and (2) their work with the employer put them at an increased risk of getting COVID-19 over and above the average person not so exposed. Without an expert (doctor) stating "more likely than not" that these two things are true, it is unlikely that the nurse's claim will be successful.

WHAT SHOULD I DO IF I HAVE TESTED POSITIVE?

If you have tested positive you will have to be quarantined from all non-infected individuals for a minimum of 14 days. If you are not symptomatic and your employer provides the option for you to telework, then that is your quickest and simplest remedy. If you can recover from the illness within the two-week period, then you will likely not have a workers' compensation claim that is worth pursuing.



Sheila Chavis is a partner with Brent Adams & Associates, a personal injury firm with offices in Raleigh, Fayetteville, Dunn and Clinton. She has 20 years of litigation experience, and has, for the past 15 years helped injured workers put their lives back together as the firm's workers' compensation lawyer. Chavis is admitted to practice before all NC trial and appellate courts and the U.S. District Court for the Eastern District of NC. She earned her undergraduate and master's degrees at Duke University and her Juris Doctor from North Carolina Central University School of Law. sheila@brentadams.com, 919-781-7590.