

Compliance Briefing: The 5 Things HR Needs to Know about Coronavirus & Workers' Compensation



Among the challenges HR managers face in dealing with coronavirus, aka COVID-19, are employees' workers comp claims. Thanks to recent coronavirus guidance and previous outbreaks, we can get a pretty good sense of how these claims will be handled. Here are the 5 things HR managers need to know about COVID-19 and workers comp.

Workers Comp Coverage of Infectious Illness

Workers comp covers employees who suffer work-related illnesses, including illnesses designated as "occupational diseases" under the workers comp law. Coronavirus is *not* one of the "occupational diseases" that are automatically covered. But the workers comp board (WCB) of each province and territory has a general policy on coverage of work-related infectious illnesses.

Practical Pointer: There is no WCB for the federal jurisdiction. Instead, federally-regulated employees are subject to the workers comp rules of their place of employment.

1. Just Getting COVID-19 Work Isn't Enough

The operative term for workers comp coverage of illnesses is "work-related." Simply catching coronavirus at work isn't enough. WCBs revealed their thinking on this issue in guidance issued during the 2009 H1N1 swine flu pandemic. They reasoned that the flu is a "community" disease to which employees are exposed at not only work, but home and while shopping, traveling by mass transit and engaging in other activities in public. Accordingly, pinpointing work as the source of H1N1 infection was extremely difficult. Of course, the exact same reasoning applies to COVID-19.

2. The Criteria for Coronavirus Coverage

Employees filing claims for COVID-19 have the burden of showing they contracted the illness as a direct result of their employment, i.e., that:

- The nature of their employment involves sufficient exposure to the source of infection; and
- The nature of employment either:
 - Is the cause of the condition; or
 - Creates a greater risk of exposure to the employee than faced by the general public.

The Alberta WCB offers the following example:

- **COVID-19 is work-related:** An acute care hospital worker has patients coming in for treatment of COVID-19 and are thus at a greater risk than the general public of contracting the disease;
- **COVID-19 is not work-related:** A cafeteria worker at a hospital's employment is not directly related to looking after sick people even if he/she comes in contact with them; ditto for a grocery store clerk whose job involves contact with people but not necessarily *sick*.

3. No Workers Comp for Workers in Preventive Quarantine

Workers comp covers only work-related injuries and illnesses and not employees who choose to stay home or are kept from working for preventive or precautionary reasons, e.g., as a result of a quarantine imposed after returning from a business trip to a high-risk location. Of course, those employees may still qualify for sick benefits from their employer and/or federal Employment Insurance, which was recently broadened in response to COVID-19.

4. What Is Reportable

OHS and workers comp laws require employers to report certain cases of occupational illnesses to the WCB or OHS agency. While the reporting criteria differ by jurisdiction, things that would have to be reported include:

- COVID-19 cases that are work-related, i.e., satisfy the coverage criteria discussed above; and
- Cases where employees have work-related COVID-19 but then develop problems related to their treatment.

5. What Is Not Reportable

You don't have to report COVID-19 cases if:

- The illness isn't clearly work-related, i.e., doesn't satisfy the coverage criteria above;
- An employee is exposed to COVID-19 but doesn't develop symptoms (although you should keep written records of the exposure); or
- An employee is sent home for precautionary reasons but doesn't actually develop the illness.

Practical Pointer: Keep in mind that beyond OHS and workers comp requirements, many jurisdictions are calling on employers (and employees) to report COVID-19 cases to public health authorities.

Coronavirus & Workers Comp: Jurisdiction-Specific Guidance

As they do with all claims, workers comp boards will have to decide on COVID-19 coverage case by case. Coverage may also vary by jurisdiction. So, it's useful to look at what, if anything, various workers comp boards in different parts of Canada have said about COVID-19 claims:

ALBERTA: The WCB issued separate fact sheets providing detailed guidance on coverage and claims, one for Employers and one for Workers.

BRITISH COLUMBIA: WorkSafeBC issued very general guidance on COVID-19 prevention and claims that doesn't provide much detail.

MANITOBA: The WCB links to a general page on reporting injuries that includes a couple of limited references to COVID-19 at the top.

NEW BRUNSWICK: WorkSafeNB published a one-page COVID-19 briefing that discusses OHS and work refusal issues but says with respect to workers comp claims only that they'll be decided case by case, while linking to the general infectious illness coverage policy.

NEWFOUNDLAND: WorkplaceNL issued separate one-page guidance sheets for Employers and Workers that address infection control but not workers comp issues.

NOVA SCOTIA: The WCB's brief COVID-19 web page summary does specifically discuss workers comp coverage and includes links to other information.

ONTARIO: The WSIB update page just says COVID-19 claims will be decided case by case and includes links to sources of non-workers comp-related information.

PRINCE EDWARD ISLAND: The WCB published FAQs providing specific, detailed guidance on COVID-19 claims and reporting.

QUÉBEC: CNESST has published the most extensive guidance in the form of 25 FAQs covering not just workers comp but other employment aspects of COVID-19.

SASKATCHEWAN: The WCB hasn't yet provided COVID-19 guidance, so the best place to go for information on coverage is the general policy, Policy: Injuries – Communicable Disease (POL 02/2010).

NORTHWEST TERRITORIES & NUNAVUT: The WSCC issued a one-page update providing general information and links to outside sources.

YUKON: The YWCHSB hasn't yet provided COVID-19 guidance, so the best place to go for information on coverage is the general policy, Policy EN-01 – Arising Out Of and In The Course Of Employment (scroll down to page 3).