



CORONAVIRUS DISEASE (COVID-19) AND FILING FOR WORKERS' COMPENSATION BENEFITS IN NEW YORK

(Updated April 9, 2020)

Dear Friends and Clients,

Our firm is dedicated to providing you with support and guidance during this unprecedented time. We understand that there are many questions and concerns regarding workers' compensation in reference to COVID-19. Please take a moment to review some key points. We have recently been advised of recent developments with regard to the Workers' Compensation Board's treatment of COVID-19 cases. We are therefore, updating the information that we previously provided to you.

Under the workers' compensation law, a worker is entitled to benefits if they suffer an accident or occupational disease in the course of their employment. The standard for an accident differs from that of an occupational disease. Generally, in both situations, the injured worker must establish that they have been diagnosed with a specific condition. This means that the claimant must be able to provide a medical report that diagnoses the condition. The medical report must also specifically state that the condition was contracted as a result of the claimant's exposure to the virus at work. The Workers' Compensation Board normally will not establish a case simply based upon exposure. HOWEVER, as a result of the COVID-19 pandemic, the Board has advised that COVID-19 cases may be established based only upon exposure. A definitive diagnosis of the coronavirus is NOT necessary.

The next step is to determine if there was an accident or occupational disease as defined by the law.

Generally, in order to make a successful claim for an accident, an injured worker must establish that they suffered an accident arising out of and in the course of employment. As an example, if a social services case manager or telephone equipment installer contracts the disease after visiting the home of someone who has the disease, that worker could have a workers' compensation claim for that one-time exposure. The difficulty would be to prove that the disease was contracted due to the work exposure and *not* to an exposure at home or at the supermarket.

In an occupational disease claim, the injured worker's exposure occurs over the course of time and is unique to that workplace. As an example, a nurse who is responsible for caring for patients at a hospital who suffered from coronavirus, contracts the disease over time, would be eligible for worker's compensation benefits.

Keep in mind:

- 1) Being exposed to the coronavirus is NOW sufficient to establish a claim.
- 2) A medical report providing a diagnosis of the coronavirus is NOT necessary.
- 3) If you have contracted the coronavirus, you still must produce a medical report stating that you contracted the disease as a result of being exposed at work.
- 4) You must be able to provide information regarding the details of the exposure such as location and date.
- 5) In a claim for an *accident*, you have 30 days from the exposure to notify your employer. In a claim for an *occupational disease*, you have 2 years from the day you knew or should have known the condition was work related to notify your employer.
- 6) You must file a claim with the NYS Workers' Compensation Board within 2 years of the date of accident and 2 years from the day you knew or should have known the condition was work related.
- 7) You may be entitled to other benefits provided under Federal or New York State laws for loss of salary or sick time.
- 8) The Board has advised that this information is based upon the current state of the law and is subject to change and depends on the exact circumstances of each employee.

Please contact us in the event you believe you have a worker's compensation claim and we will gladly assist you.

T: 1.800.522.9001

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FAQs Regarding Workers' Compensation & the Coronavirus Disease (COVID -19)

(Updated April 9, 2020)

1. If a worker is diagnosed with the coronavirus, can they file for Workers' Compensation benefits?
 - Yes, workers can file for Workers' Compensation benefits if they have contracted the coronavirus from an accident or occupational disease that arises out of the course of their employment.

2. Can I file a claim if I have been exposed to the coronavirus at work but have not been diagnosed?
 - Yes, you can file a claim without a diagnosis, but you still must provide information regarding the details of the exposure at work.

3. If a worker at a hospital was in contact with coronavirus patients and then tests positive for the coronavirus, would this be considered an occupational disease?
 - Yes, if it arises out of the course of their specific job duties. If the hospital worker was responsible for direct patient care and develops the coronavirus, but the exposure happened over the course of time or they aren't sure of the exact date they would have a claim for an occupational disease. In a claim for an *occupational disease*, you have two years from the day you knew or should have known the condition was work related to notify your employer.

4. If a telecommunications equipment installer contracts the coronavirus as a result of performing work, is this considered a workplace accident?
 - Yes, generally any worker exposed to the coronavirus in the course of their employment has a claim for an *accident*. The worker has 30 days from the exposure to notify their employer.

5. If a worker states they have tested positive for the coronavirus, is this sufficient to file for Workers' Compensation?
 - No, you must be able to prove that you contracted coronavirus as a result of your work activities. The worker should keep a record of the details of the exposure, including the date and place of the exposure. A medical report giving a diagnosis and history of the exposure is also required.

6. If a worker suspects they have contracted the coronavirus, what should they do in order to file for Workers' Compensation?
 - A claim must be filed with the NYS Workers' Compensation Board within two years of the date of accident or in the case of an occupational disease, two years from the day they knew or should have known the condition was work related.

7. Under the Workers' Compensation law, what kind of benefits are workers who are diagnosed with the coronavirus entitled to?
 - Medical benefits and a wage replacement benefit that is up to 2/3 of your average weekly wage. However, the appropriate statutory maximums will apply with regard to the wage replacement benefit.

8. What do I do if I am not sure how to file for Workers' Compensation or I have questions?
- Contact FOA Law at 1-800-522-9001 or visit our website at: www.foalaw.com.

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