



Employers, insurance companies, and TPAs have been calling and emailing us with Coronavirus claims to handle, questions to answer, and issues to discuss. We think the below will help you. Contact us with questions regarding this guidance and to discuss your particular factual situation. We've relocated our office to our homes in compliance with CDC guidelines, operating at a normal capacity. A few staff members are in the office to handle mail and other in-person functions. The transition has been smooth.

REQUIRED DISCLAIMER

This guidance is for general, educational purposes and not intended to be legal advice. Seek legal advice on your specific cases and facts. The legal analysis of your specific question or claim depends on facts which might alter, or completely change, what you will read below. The below analysis covers only Tennessee's workers' compensation claims.

POTENTIAL ISSUES

Coronavirus claims are difficult to prove. A worker who slips and falls on a pallet has no problem proving mechanism of injury. Injury was caused by direct trauma from the fall. Coronavirus is invisible, transmitted from unknown carriers via airborne particles, or left behind on a surface. How can an employee prove transmission?

Issues rotating around that central question of transmission include:

- Is quarantine a compensable injury?
- When do we file a First Report of Injury ("FROI")?
- When is a claim potentially compensable? and
- Are mental injuries (fear of Coronavirus) compensable?

Coronavirus is not obviously transmitted, and transmission is key to causation. This guidance makes assumptions about Coronavirus transmission. Assumptions may be proven false by medical experts when a case is tried. We assume Coronavirus is transmitted by contact with an infected person via water droplet respiratory transmission (cough, sneeze, etc.) that is airborne or left on a touched surface then transported to the claimant's face/mucus membrane. Coronavirus is transferable from asymptomatic, untested people to unsuspecting people. In most cases it may be difficult for anyone to know how they got Coronavirus. It's contagious and widespread, a classic case of risk to the general public. If Coronavirus continues to "community spread" at an exponential rate, your claimant could have obtained it from thousands of other possible sources in their community.

Good faith investigation should be conducted into each claim. No two claims are the same. Recorded statements and appropriate investigations should be taken in every case when necessary.

CLAIMS BASED ON QUARANTINE

Workers’ compensation claims require “injury,” including “disease,” but you must have it to claim it. Quarantine-only is safety, not injury, and does not give rise to a claim.

Exposed, then quarantined, employees may suffer economic loss, but economic loss without injury is not covered under the workers’ compensation statute. Generally speaking, quarantine-only claims could be denied as “No injury as defined by statute.”

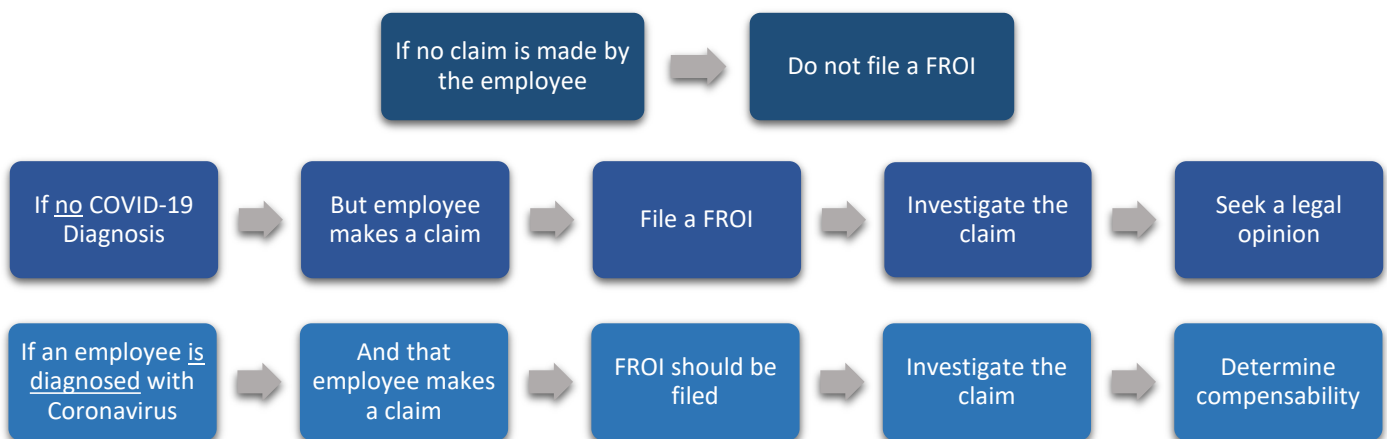
WHEN TO FILE A FIRST REPORT OF INJURY

The general rule when there’s no claim, and there’s no injury, no First Report of Injury should be filed. First Reports of Injury (FROI) should be filed when an injured worker makes a workers’ compensation claim or the employer has reason to know an employee suffered a compensable injury. Bureau Rules clarify “‘claim’ means a demand for something as due; an assertion of a right or an alleged right.” Rule 0800-02-14-.02(5). Employees make claims; without an employee making a claim, no FROI should be filed.

However, an employer cannot stick its head in the sand. If an employer is aware of facts obviously supporting compensability, an employer should file a FROI with the state; but without compensability-supporting facts, a FROI is not required.

We recommend that employers not file FROIs based *only* on information an employee was diagnosed with Coronavirus. Employers do not file FROIs for colds, flus, or other airborne or contact-transferable viruses. FROIs are for claims made by Employees *or* claims where an employer has good faith reason to believe the Coronavirus claim is work related. In most cases, no FROI should be filed.

The charts below address common situations regarding FROIs and compensability:





If FROIs have been filed, a series of obligations are triggered including but not limited to:

- mailing employee a Notice of a Reported Injury and a copy of the Beginner's Guide to Tennessee Workers' Compensation,
- conducting a recorded statement and witness interviews,
- offering a panel,
- gathering all relevant medical records in a short amount of time,
- securing wage information, and
- making a compensability determination.

Call us if you're unsure whether to file a FROI.

POTENTIAL COMPENSABLE CLAIMS

Compensable claims require *both* that an employee prove he or she (1) obtained the virus at work *and* (2) contracting the virus is a hazard of employment.

Employees can allege at-work transmission by showing he or she was coughed or sneezed on by a Coronavirus patient, or he/she came into direct, close, and extended contact with a Coronavirus positive patient. These situations are likely rare and probably confined only to medical facilities and first responder situation. For *most cases*, we think exposure "at work" is a difficult for an employee to prove. Coronavirus is easily transmitted; employees could contract the virus from any number of sources outside the workplace. Therefore, most claims are likely properly denied. It is unlikely an employee can prove, considering all causes, that they contracted the virus while working for an employer. Employees carry this burden of proof.

Employers and insurers satisfied an employee can make a compelling case of "at-work" transmission might consider offering a panel. This decision will be heavily influenced by the employment type. An injury only "arises from employment" if the nature of the employment subjected the employee to a higher exposure to Coronavirus than he or she encounters in the general public. Being "at work" does not make a claim "arise out of" employment. Employers are cautioned, however, if a denial is grounded in a medical causation opinion, to offer a panel and seek that medical causation opinion. Employers are not physicians and cannot create medical causation opinions. If you encounter this situation, we can help construct causation questions for the doctor.

The last great American pandemic was "Spanish Flu" in 1918, one year before Tennessee installed its workers' compensation system. Smaller pandemics litter our history, but nothing like this. Legal precedent on compensability is scarce. Thus, current information reflects the best available information, a projection of how our laws deal with these issues.



Every claim made by an employee should be investigated. One important distinction between compensable and noncompensable claims involves employees placed in employment at a higher rate of virus exposure versus employees who have numerous other, non-work related, generalized and likely unknown exposures to Coronavirus.

Investigations should involve recorded statements: what were the individual's daily, non-work-related activities? Where have they been? How many people have been in their household? Are they sick? Find out what they've been doing outside work that would have exposed them to the public. These are not all the questions that should be asked, but instead demonstrate the types of questions adjustors and employers should be asking.

EXPOSURE AND MENTAL INJURY

What do you do about an employee claiming mental injury from fear of exposure to Coronavirus? Tennessee allows mental injury claims, but courts have denied "fear of exposure" claims. *Guess v. Sharp Mfg. Co. of Am., a Div. of Sharp Elecs. Corp.*, 114 S.W.3d 480, 485 (Tenn. 2003). Compensable mental injury claims require two things.

First, a compensable injury must have resulted from an identifiable stressful work-related event that produced a sudden mental stimulus such as fright, shock, or excessive unexpected anxiety. Second, the stress produced must be unusual stress, in comparison to the stress ordinarily experienced by an employee in the same type duty.

We think it will be difficult for an employee to win these claims based on what we know about Coronavirus at this time. Again, if a claim is made, an investigation should be conducted, however, in most cases these claims will likely result in denial.

QUESTIONS?

Please contact Manier & Herod with questions, comments, and concerns. Remember each claim, if/when denied, should be investigated on its own facts, in accordance with the Workers' Compensation Rules and Regulations. We are happy to consult on all potential claims to determine the best course of action based on your particular facts.