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COVID-19: Workers Compensation

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Employees who believe they have been exposed to COVID-19 at work, or who are diagnosed with COVID-19, may pursue workers' compensation claims for post-exposure testing or the treatment of the disease and related periods of disability. Such claims will be governed by the workers' compensation or occupational disease laws of the state of employment. A couple of general principles apply.

First, for disease claims, workers' compensation laws usually require that the employee prove the disease arose out of and in the course and scope of employment. Often, the statutes include additional requirements that the employee prove the disease was uniquely related to the hazards of his employment, or that the employment increased the risk of exposure to the disease. As a result, transmission of a communicable disease like COVID-19 among employees is likely not to be covered by workers' compensation, as the disease is not uniquely related to any occupation or industry. However, employees in healthcare, emergency response or retail pharmaceutical fields may have stronger claims because interacting with sick individuals may be part of their duties.

Second, employees who believe they have been exposed to COVID-19 in the workplace may file workers' compensation claims for the cost of testing, even if not diagnosed with the disease. Some states do not address the costs of testing when the employee is not diagnosed with the disease. Other states will cover the costs of testing as long as the employee can prove a work-related exposure.

Ultimately, employees will be required to prove it is more likely than not that any exposure is work-related and they acquired the disease from a work-related exposure, rather than some other source.

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