Workers' Compensation and COVID-19: Can I file a claim?

April 1, 2021 | by Thomas F. Dorn, Jr

In general, workers' compensation courts in New Jersey permit the filing of two types of cases:

- Accident cases in which a worker is injured on a specific date and time, and
- Occupational cases in which a worker develops an injury performing repetitive and/or strenuous work or is exposed to fumes or chemicals

An employee who is exposed to the coronavirus while working falls under the second category, an occupational case.

If an employee in New Jersey contracts COVID-19, does that employee have the right to pursue a workers' compensation claim in New Jersey workers' compensation court? The answer: it depends.

Increased Risk of Virus for "Essential Workers"

In September 2020, Governor Phil Murphy signed a law that if an essential worker contracts COVID-19, there is a rebuttable presumption that the essential worker contracted the virus at work. This law was designed to protect essential workers who face an increased risk because their jobs involve direct contact with the public during the ongoing health emergency. The law was made retroactive to March 9, 2020, the date that Governor Murphy declared a state of emergency based upon the coronavirus outbreak in New Jersey.

Essential workers are defined as:

- Public safety workers or first responders,
- Those involved in providing medical and other healthcare services, emergency transportation, social services, and other care services, including services provided in healthcare facilities, residential facilities or homes

- Those who perform functions which involve physical proximity to members of the public and are essential to the public's health, safety, and welfare, including transportation services, hotel and other residential services, financial services and the production, preparation, storage, sale and distribution of essential goods such as food, beverages, medicine, fuel and supplies for conducting essential businesses and work at home, or
- Anyone deemed an essential employee by the public authority declaring the state of emergency.

Proving an Occupation Case Requires a Legal Cause and a Medical Cause

The standard of proof in a workers' compensation occupational case is that an injured worker must demonstrate both a legal cause and a medical cause.

Legal Proof is the Employer's Burden if the Employee is an Essential Worker, but is the Employee's Burden if a Non-Essential Worker

Legal cause means that there must be proof that the injury is connected or related to your work.

This proof is not "beyond a reasonable doubt" as in a criminal case; the necessary proof in an occupational case is whether the injury more likely developed due to the nature of an employee's work or an exposure at work as opposed to activities performed or an exposure at home or in an employee's spare time.

For the **essential worker**, as defined above, the burden of proof is shifted to the employer because the worker is presumed to have contracted the virus during the course of their employment. The employer has the right to present evidence to dispute that their employee contracted the virus at work. For example, if the employer has evidence that the employee visited a family member who contracted the virus in a nursing home, the employer will attempt to rebut the presumption.

However, for the **non-essential worker**, the worker has the burden of proving that it is more likely than not (preponderance of the evidence) that they contracted the virus from an exposure at work, as opposed to being exposed to the virus from a family member or friend or while grocery shopping for example.

Medical Proof is Required by Essential Workers and Non-Essential Workers

To demonstrate the medical cause, both the essential worker and non-essential worker must produce medical evidence that the injury was actually caused by the work-related event or exposure. Specifically, a report from a medical doctor must be produced that states that the employee contracted the virus as a result of being exposed at work.

If Proof Standards are Met, Does an Employee Have the Right to File a Workers' Compensation Claim?

An employee who can meet the legal and medical standards has the right to file a workers' compensation claim petition in workers' compensation court.

The employee can seek medical treatment for COVID-19, lost time from work benefits and permanent disability benefits.

To prove permanent disability or permanent residuals from COVID-19 exposure there has to be objective medical proof (pulmonary function test, for example). The employee must prove a work-related impairment that restricts the function of the body and causes a lessening of working ability or a substantial impairment of non-work functions.

Clearly, if the employee has completely recovered from the virus with no side effects or residual problems, proving permanent disability would be difficult. Employees who have ongoing breathing problems, coughing or other side effects may be able to prove permanent disability. Dependents of an employee who passes away from the virus are entitled to dependency benefits.

The Workers' Compensation Case Must be Filed in a Timely Manner

An occupational exposure case must be filed within two years of a worker knowing that his/her injury was job related.

The determination of whether an employee can pursue a workers' compensation claim is fact sensitive. Consulting an attorney early who is knowledgeable and experienced in occupational exposure matters will ensure that employees are properly informed regarding their rights, including the time period to file a claim.

See additional resources for managing COVID-19 in the workplace.