

# COVID-19 Effects on Workers' Compensation

Below is a summary of topics related to workers' compensation affected by COVID-19. We will continue to update this document and add topics as needed.

We are all experiencing information overload. That is why W3 is ensuring you have the valuable information you require and a place to find that information when you need it. Please feel free to reach out to your advisor or our Risk Services team with questions or individual requests.

## ***Compensability of COVID-19 Claims***

As you know, workers' compensation laws vary from state to state.

In Florida, disease and sickness, like the common cold and flu, are excluded from workers' comp coverage. However, Florida statutes do provide for occupational diseases.

The first test for compensability is the occupation of the claimant. The disease must result from the *nature of the employment*; that is, the claimant must contract the disease while working, and the nature of the employment must be the major contributing cause. All three of these elements must be met for the claim to be compensable. By *nature of employment*, the statute indicates that there must pose a higher risk of virus contraction than through other occupations.

Additionally, on regular workers' compensation claims, the employer has the burden to prove the incident did not happen at work. For exposure claims, like those surrounding the coronavirus, the burden of proof is on the claimant to prove that the disease was contracted at work.

Usually, the only exception is for first responders. However, Florida's CFO recently issued a directive stating that frontline state employees who have tested positive for COVID-19 through a reliable method will be processed as compensable workers' compensation claims unless the state of Florida can show it was contracted outside the scope of employment. A copy of the directive and who is considered a frontline state employee can be found [here](#).

Employees in the healthcare field will have met at least 2 of the 3 criteria for exposure. However, they will still have to link their illness by clear and convincing evidence to their work. For these situations, we recommend the claim be reported to the carrier. Let the carrier make a compensability decision.

This does not mean we will not advocate on behalf of the employer.

### ***Experience Rating - Updated***

NCCI has specific reporting requirements for carriers regarding claims attributable to COVID-19 for accident dates of 12/1/19 and forward. The organization submitted a proposal that all COVID-19 claims be excluded from experience rating. This has yet to be approved.

### ***Drug Testing***

Most insurance carriers are being very lenient regarding drug screens. If you have a question regarding your carrier, please call us. Random testing is not necessary, due to current conditions. Please keep in mind the current crisis and its duress can lead to increased substance abuse. Employers can still administer a rapid drug screen to avoid walk-in clinics. The labs are continuing to operate if you would like to send an employee directly to the lab. LabCorp keeps their pathology and toxicology labs separate, meaning the toxicology labs that do drug screening are not testing for COVID-19. S1-Safety 1st Drug Testing Team can supply rapid screens and has an MRO service as well. We have a link to Safety 1<sup>st</sup> on our website. They can provide a guide to employers on how to use a rapid test and the necessary training.

### ***Lay Offs***

W3 recommends an employer notify the handling adjuster immediately of any employees who have been or soon will be laid off, furloughed or experience any other work stoppage due to COVID-19, and who have an active workers compensation claim and are at any type of modified duty. This is to avoid any penalties and fees states could assess the carrier for missing or late payment of benefits. This will also help to mitigate the potential of the employee hiring an attorney due to lack of wages.

### ***Audit Issues and Changes in Exposure - Updated***

[With FFCRA going into effect April 1, 2020, now is the time to set up your payroll system to differentiate any wages paid under the Act.](#)

[There are two reasons to prepare now. You will need to be able to run a report for tax purposes; you will also need to be prepared for your workers' compensation audit.](#)

Currently, any sick or personal leave paid by employers is included at audit for workers' compensation premium calculations. At this time, there is no indication that wages paid under the FFCRA will not be subject to workers' compensation premiums. In fact, NCCI references two rules in the NCCI Basic Manual which would suggest the wages could be included under the classification normally assigned to the employee. NCCI references this as "idle" time. These are employees who are being paid, but who are not physically working. However, being able to separate this payroll will enable employers to provide these wages to an auditor if they are exempted for workers' compensation purposes.

If an employer has a change in operations or an employee's occupation has changed due to an employee working remotely, the wages could be placed in a more appropriate class code. For example, a service technician who would normally go to a client and is now taking Internet sales calls from their home or your office could be classified under 8810 rather than their normal service code.

W3 recommends setting up two additional payroll codes beginning April 1: One for EFMLEA, and another for EPSLA. Along with keeping the wages separated, we recommend noting what type of duties the employee is performing for the employer.

Having this information separated from regular PTO will save time and enable employers to offer an argument for payroll exclusion or reclassification on their workers' compensation audit.

Update – NCCI's proposed rule change, Filing B-1441, has been approved with changes. As long as employers keep separate, accurate and verifiable records, payments made to employees who have been furloughed will be excluded from premium calculations and the experience mod rating. Any payroll paid to employees for time not worked can be reported under code 0012 with a corresponding rate of 0. This includes any money the employer received from the Payroll Protection Program (PPP) and wages paid under FFCRA. The rule is effective March 1, 2020.

### ***Telemedicine***

If you have a workplace injury that is not an emergency or an employee who does not want to go to the clinic for fear of exposure, several walk-in clinics are offering telemedicine. Concentra has a guide on how to set up a telemed visit. BayCare Urgent Care is offering telemed visits on a case by case basis. Information for both providers is posted on our website. Also, if you have an employee who has been treated for a workers' comp injury, please contact the adjuster for the claim to see if the medical provider will consider a telemed visit as to not delay care. Most workers' comp carriers will pay for telemed visits.

### ***Premium Payments***

Many insurance carriers will work with you regarding your premium payments. If you need assistance regarding whom to contact, please reach out to your advisor or account manager for the contact information. Any agreement with the carrier as to delaying payment should be obtained in writing for your own protection. If your payroll has changed drastically, we can request an endorsement to the current policy to help lower premium payments.