TOP 5 COVID-19 WORKERS' COMPENSATION QUESTIONS ANSWERED: NORTH CAROLINA

1) **How are COVID-19 claims treated in North Carolina?**

Claims are only compensable by two means: "injury by accident" or "occupational disease." We anticipate most COVID-19 claims will be claimed under an occupational disease theory of compensability. However, our courts have interpreted the term "accident" loosely, so we would not be surprised if we see claims arise as the result of exposure from a single event.

2) **Are COVID-19 claims compensable under the NC Workers' Compensation Act?**

Pursuant to NCGS 97-53 (13), an occupational disease can be compensable if (1) the employment caused the disease to develop AND (2) the employment put the employee at a greater risk of developing the condition than a member of the general public. Thus, ordinary diseases of life to which members of the general public are equally exposed do not tend to be compensable. We think it would be much easier for someone, such as a first responder or health care worker to succeed under this theory, however, the claimant will still have to prove that the exposure occurred at work and not elsewhere. There is some talk in the legislature about amending our occupational disease statute to include pandemic diseases, but no changes yet.

3) **What should employers do if an employee contracts COVID-19 and files a workers' compensation claim?**

We recommend denying the claim. Depending on the outcome of things, you can always go back and accept a claim later, but you cannot go back and make a change once a claim is accepted. Once a claim is filed, we further recommend a detailed investigation, including a recorded statement of the claimant asking about places the employee has been, whether he/she has been exposed to people with COVID-19, etc. Also, an investigation of the workplace should be conducted to determine if any other workers/clients, etc. are known to be positive, what precautionary measures are in place, etc. We also note that during this process, benefits can be paid without prejudice pursuant to a Form 63, although a denial must be made within 90 days of the report of injury. Since most COVID-19 cases are mild, nominal medical expenses and lost time could be paid and the employee could be back at work before the denial is made. In this scenario, the employee is taken care of (if that is a concern of the employer) and the employer is not liable from a legal standpoint.

4) **What should employers do if an employee who has an existing workers' compensation claim and is working light duty contracts COVID-19?**

   Do not automatically start temporary benefits. Whether benefits should be re-instated is an extremely fact-related scenario. Contact a workers' compensation attorney before making a decision to reinstate benefits, as it may not be necessary.

5) **What should employers do if an employee who has an existing workers' compensation claim refuses to return to a light duty position offered because of COVID-19 risks?**

   Depending on the circumstances (as noted above, these situations are extremely fact-specific), a Form 24 Application to Terminate Benefits can be filed and, hopefully, approved by the Commission. It will depend upon whether the refusal was justified under the circumstances. For example, a person returning to work in an environment where he/she is the only worker in the area is considerable different than returning to a cashier position with regular public contact.