



## **TOP 5 COVID-19 WORKERS' COMPENSATION QUESTIONS ANSWERED: SOUTH CAROLINA**

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

Most job-related work conditions are either an “injury by accident” or “occupational disease”. We think most COVID-19 claims should be evaluated under the occupational disease statute because the viral nature and process of COVID-19 is more akin to an occupational disease. On the other hand, an “injury by accident” is generally a specific, single event. We anticipate any Form 50/Complaint filed with the SC Workers’ Compensation Commission will allege both.

### **2) Are COVID-19 claims compensable under the SC Workers’ Compensation Act?**

Ordinary diseases of life to which the general public is equally exposed and contagious diseases resulting from exposure to fellow employees or hazards the employee would have been equally exposed to outside of work are not compensable under the occupational disease statute. COVID-19 seems to fit in both categories. The burden of proof is on the employee to prove COVID-19 was contracted at work versus the grocery store, gas station, restaurant, etc. Moreover, in most instances, employees are equally at risk to exposure at work as they are in the general public. First responders and other essential workers may argue their risk is higher at work due to the particular circumstances of their jobs.

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

Due to the nature in which COVID-19 spreads, we recommend denying the claim. Once notified of the claim, we recommend conducting a detailed phone interview of the places the employee has been and the people the employee has been in contact with for the two weeks preceding their positive test.

### **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. Although, benefits are generally due to an employee on light duty until they reach maximum medical improvement, the employee’s inability to work is unrelated to the worker’s claim.

### **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?**

Do not automatically begin temporary benefits. Generally, benefits are due to an employee on light duty until they reach maximum medical improvement. However, if the employee refuses reasonable employment offered to them, no benefits are due.