



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

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

Most job-related work conditions are either an “injury by accident” or “occupational disease”. In Georgia, most COVID-19 claims will be evaluated under the occupational disease statute (O.C.G.A. 34-9-280) 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. Potentially, a one-time exposure to exposure in the workplace could be pursued as an “injury” claim instead of a disease claim, in which case the burden of proof will be lower. An occupational disease claim in Georgia must meet all the following criteria:

1. A direct causal connection between the conditions under which the work is performed and the disease;
2. The disease followed as a natural incident of exposure by reason of employment;
3. The disease is not of a character to which the employee may have had substantial exposure outside of the employment;
4. The disease is not an ordinary disease of life to which the general public is exposed; and
5. The disease must appear to have had its origin in a “risk connected with the employment and to have flowed from that source as a natural consequence.”

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

Potentially, yes. However, the burden of proof will be difficult. Ordinary diseases of life to which the general public is equally exposed will likely not be deemed compensable under O.C.G.A. 34-9-280. The burden of proof is on the employee to prove COVID-19 was contracted at work versus the grocery store, gas station, restaurant, etc. 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?**

Because COVID-19 can infect individuals at any time, under any circumstances, after the employer files a claim it is recommended that such claim be denied. An interview or recorded statement of the employee is also advisable, seeking to find out the nature of the employee's alleged contracture, the places where 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 TTD or TPD benefits. This would be akin to any employee who is working light duty and is out of work due to sickness or other reasons. So long as the COVID-19 contracture is not itself deemed compensable as a result of the employee's light duty circumstances, the employee is not automatically entitled to TTD or TPD. They would have to perform a diligent job search for suitable work within their restrictions, first. If they cannot do so due to contracting COVID-19, they may not be able to prove their entitlement to indemnity benefits.

**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 TTD benefits. If the employer is taking precautions and the light duty job appears otherwise safe, the employee may face a challenge in demonstrating their refusal of the light duty job is justified.