

Paul K. Caliendo, Esq.
Gill and Chamas, LLC.
732 324 7600 x 2310
PCaliendo@gillandchamas.com

COVID – 19 – Occupational Disease – If I contract COVID-19 is it covered by the NJ Workers’ Compensation Laws? The answer is “Yes”, here is why.

N.J.S.A 34:15-31 “Compensable occupational disease” defined. a. For the purpose of this article, the phrase “**compensable occupational disease**” shall include all diseases arising out of and in the course of employment, which are due in a material degree to causes and conditions which are or were characteristic of or peculiar to a particular trade, occupation, process or place of employment. b. Deterioration of a tissue, organ, or part of the body in which the function of such tissue, organ or part of the body is diminished due to the natural aging process thereof is not compensable.

In traditional occupational exposure cases for non-public safety workers the general questions to ask are:

- 1) Did it arise from the employment?
- 2) Was the disease due to causes or conditions which are characteristic of or peculiar to work or employment
- 3) The contribution of work to the illness must be in a material degree

In order to be compensable “non-essential” worker has the burden to prove illness was contracted in the course of employment.

HOWEVER: The Thomas P. Canzanella 21st Century First Responders Protection Act was to protect public safety workers. That law became effective in New Jersey on **July 8, 2019.**

N.J.S.A. 34:15-31.5. Requirements for public safety worker to receive compensation

b. If it is ascertained that the public safety worker has contracted a serious communicable disease or related illness under the circumstances set forth in subsection a. of this section, ***there shall be a presumption that any injury, disability, chronic or corollary illness or death of the public safety worker caused by, attributable to, or attendant to the disease is compensable*** under the provisions of R.S.34:15-1 et seq. This prima facie presumption may be rebutted by a preponderance of the evidence showing that the exposure is not linked to the occurrence of the disease. The employer may require the worker to undergo, at the expense of the employer, reasonable testing, evaluation and monitoring of health conditions of the worker which is relevant to determining whether the exposure is linked to the occurrence of the disease, but the presumption of compensability shall not be adversely affected by any failure of the employer to require such testing, evaluation, or monitoring.

Creates a presumption of compensability. To be covered by Workers’ compensation benefits you need to show a “potential” of exposure and that the you have COVID and there will be a presumption of compensability. Employer can rebut this presumption by showing by a preponderance of the evidence (more likely than not) it was not caused at or by work. This is difficult to do and favors the employee and thus compensability which means payment of benefits.

SENATE No. 2380 Adopted September 14, 2020

Creates a new legal presumption of compensability for “essential employees,” including public safety workers and virtually all health care workers who file COVID-19 workers’ compensation claims. This proposed presumption would require the Judge of Compensation to presume that any COVID-19 claim for public safety and health care workers must be found to be work related unless the employer could rebut the claim by a preponderance of the evidence.

N.J.S.A 34:15-32. Occupational disease; determining disability and amount of compensation. The compensation payable for death or disability total in character and permanent in quality resulting from an occupational disease shall be the same in amount and duration and shall be payable in the same manner and to the same persons as would have been entitled thereto had the death or disability been caused by an accident arising out of and in the course of the employment. In determining the duration of temporary and permanent partial disability, either or both, and the duration of payment for the disability due to occupational diseases, the same rules and regulations as are now applicable to accident or injury occurring under this article shall apply to the occurrence, but the presumption of compensability shall not be adversely affected by any failure of the employer to require such testing, evaluation, or monitoring. 34:15-31.7. Injury, illness, death caused by certain substance

BENEFITS AVAILABLE UNDER WORKERS’ COMPENSATION STATUTE FOR COVID -19

1)Medical Benefits

Not only for the treatment of COVID -19 but will most likely not pay for the testing to determine if you have the disease. This may vary on a case-by-case basis and will depend on Department protocol.

2)Temporary disability benefits while out of work

At least 70% of your gross base wage tax free.

Note: Some workers have incurred alternative lodging expense to self-quarantine away from loved ones. There is an argument that can be made and should be made that these expenses are no different than medical expenses. The trigger event for these benefits is a positive COVID -19 test. However, a medical diagnosis of COVID may be enough but not as favorable as a positive test.

3)Permanency Award

Compensation for any residual functional loss cause by COVID-19. For example, pulmonary or breathing issues from Pneumonia but can be any residual medical condition related to the COVID 19 disease.

4)NJSA 34:15-13

DEATH BENEFITS FROM WORK CAUSES

Benefits for dependents: who are dependents?

- 1) Children and Spouse living with decedent at time of death presumed dependent. Do not have to prove dependency.
- 2) All other children under 18; or 23 years of age while enrolled as a full-time student must prove dependency.

What are the benefits:

- 1) 70% of gross base wages at the time of death which will continue for the lifetime of the Spouse even if they re-marry.
- 2) Dependent children till they turn 18 years of age or 23 years of age if enrolled in full time school;
- 3) If incapacitated the child will receive benefit for 450 weeks (8.6 years);
- 4) Cost of medical care or expenses of the last sickness;
- 5) Burial and funeral expenses up to \$3,500

PLEASE NOTE: There are some nuances in the law not addressed above that may impact extent and duration of benefits that require a case by case analysis

Vaccines

While this seems a sure thing to be compensated for an adverse reaction to the COVID 19 Vaccine. The issue that will have to be decided by the Courts will be what does governmental program or recommendation for inoculation mean or even what a recommendation for the inoculation means. Seems clear cut but it will definitely be litigated before we will have a definitive answer. I have been asked what happens if the vaccine is not mandated by a department and the worker goes on his own and has an adverse reaction and misses time from work or worse. I can see a department arguing if it is not mandatory then it is not compensable. The counter to that would be that the State has a program that allowed first responders priority so there was a program. In addition, the act of getting the vaccine it can be argued was to the benefit of the employer and thus compensable.

N.J.S.A 34:15-31.6. Injury, illness, death resulting from administration of vaccine eligible for compensation Any injury, illness or death of any public safety worker, resulting from the administration to the worker of a vaccine including, but not limited to, smallpox vaccine, to prepare for, or respond to, any actual, threatened, or potential bioterrorism or epidemic, **as part of an inoculation program in connection with the worker's employment or in connection with any governmental program or recommendation for the inoculation of workers in the worker's occupation, geographical area, or other category that includes the worker**, or resulting from the transmission of disease from another employee or member of the public inoculated under the program, is presumed to arise out of and in the course of the employment and all care or treatment of the worker, including testing, diagnosis, surveillance and monitoring of the worker's condition, and all time during which the worker is unable to work while receiving the care or treatment, is compensable under the provisions of R.S.34:15-1 et seq. This section shall not be regarded as authorizing any requirement that employees participate in an inoculation program or as diminishing any requirement of law that an inoculation program be voluntary. This prima facie presumption may be rebutted by a preponderance of the evidence showing that the administration of the vaccine is not linked to the injury, illness or death. The employer may require the worker to undergo, at the expense of the employer, reasonable testing, rev. date February 24, 2020 42 evaluation and monitoring of health conditions of the worker which is relevant to determining whether the administration of the vaccine is linked