

COVID-19 and Its Impact on Ohio Workers' Compensation Claims

A WEBINAR PRESENTED BY:
EASTMAN & SMITH LTD.

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ATTORNEYS AT LAW

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Industrial Commission Hearings in the age of Covid-19

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A solid green horizontal bar at the bottom of the slide.

Try to adapt, not to change....

– Dharani Pugazhendiran

OIC Telephone Hearings—Continue to Evolve

March 18, 2020—OIC moved to telephone hearings only—limited types of hearings

- Permanent total disability
- Temporary total disability
- Termination of temporary total disability (MMI hearings)
- Wage loss
- Allowance of claim
- Additional Allowance

April 15, 2020—added Permanent Partial Disability hearings

April 27, 2020—Notice of Hearings Changed

- Includes a toll free number and access code for parties and representatives to call in order to participate
- Docket—two hearings per hour—six hours per day

Witness Testimony

Cross-Examination
of Witnesses

Video Surveillance

Court Reporters

Unique Issues
with OIC
Telephone
Hearings

BWC's Response to the Pandemic

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\$1.6 Billion in
Dividends to Ohio
Employers

BWC is Still
Processing Claims

Certain
Compensation
Payments
Extended

Medical Exams and
Services


Other Waivers,
Extensions, and
Suspensions

BWC's FAQ Page

The BWC is open for business.



Claims are being filed and processed.



The BWC is regularly updating its website with COVID-19 related information.

Conclusion

COVID-19 Claim Compensability

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What if my employee files a COVID-19 workers' compensation claim?



Coronavirus (COVID-19) Frequently Asked Questions

Q 5: If I contract COVID-19, is it a compensable workers' compensation claim?

A: It depends on how you contract it and the nature of your occupation. Generally, communicable diseases like COVID-19 are not workers' compensation claims because people are exposed in a variety of ways, and few jobs have a hazard or risk of getting the diseases in a greater degree or a different manner than the general public. However, if you work in a job that poses a special hazard or risk and contract COVID-19 from the work exposure, BWC could allow your claim.

OSHA Enforcement Guidance for Recording Cases of COVID-19

Under OSHA's recordkeeping requirements, COVID-19 is a recordable illness, and employers are responsible for recording cases of COVID-19, if the case:

1. Is confirmed as a COVID-19 illness;
2. Is work related as defined by 29 CFR 1904.5; and
3. Involves one or more of the general recording criteria in 29 CFR 1904.7, such as medical treatment beyond first aid, days away from work, etc.

In areas where there is ongoing community transmission, certain employers may have difficulty making determinations about whether workers who contracted COVID-19 did so due to exposure at work.

OSHA will not enforce its recordkeeping requirements to require these employers to make work-relatedness determinations, unless: 1) there is objective evidence that a COVID-19 case may be work-related; and 2) the evidence was reasonably available to the employer.

Employers in the healthcare industry, emergency response organizations and correctional institutions must continue to make work-relatedness determinations.



Tolling Ohio Time Limits

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House Bill 197: Eff. March 27, 2020

Uncodified Section 22, tolls (freezes) running of any statute of limitation *set to expire* between 3/9/2020 (eff. date of state of emergency) and 7/30/2020 (or until emergency ends) for:

- Administrative actions or proceedings arising under the Revised Code or the Administrative Code and any other civil or administrative time limitation or deadline under the Revised Code
- Applications: administrative appeals; appeals to court; time limits to meet minimum self-insuring requirements; cooling off period for settlements; claim filing and expiration; etc.

No known guidance from IC or BWC

State of Emergency is open ended and different than Stay-at-Home Order

No known precedents, but note historically liberal application of R.C. Section 4123.522 and liberal construction statute, R.C. 4123.95.

Ohio Supreme Court March 27 Tolling Order

Issued to be consistent with HB 197; required by separation of powers; same relevant dates (i.e. *set to expire* between 3/9 - 7/30).

Tolls time requirements imposed by “Rules of the Court.”

FAQs define “tolling” as freezing time from the date tolling begins until it expires; e.g., if your deadline was set to expire 3/19 it will now expire 10 days after the tolling order is lifted.

New (post 3/9/2020) scheduling orders unaffected and local courts may issue orders superseding the tolling order (See, Wood County).

One year superintendence rule tolled (recall: *set to expire* limitation).

Independent Medical Examinations (IMEs) in the Age of Covid-19

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- In most instances obtaining defense medical evidence is still advisable
- Individual doctors have taken different approaches to doing exams in light of Covid-19
- IME companies also taking different approaches
- Covid-19 questionnaire and notice advising of possible delays and pre-exam protocol
- Many April IMEs cancelled and rescheduled
- Dr. Michael Rozen – performing virtual exams
- Expanded use of medical file reviews in lieu of IMEs

Thank you for attending!

Questions?

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