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CORONAVIRUS (COVID-19) AND WORKERS' COMPENSATION BENEFITS

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The news that cases of the COVID-19 Coronavirus have appeared in New York has raised questions about the availability of benefits for those who either become infected or are subject to quarantine as the result of exposure.

I. Workers' Compensation Versus Disability Benefits

New York law provides workers' compensation benefits for work-related injuries or illnesses, while disability benefits are payable for disabilities that are not work-related. There are significant differences between the two types of benefit. Workers' compensation benefit rates are considerably higher than disability benefits, and are payable for a much longer period of time. In addition, workers' compensation includes coverage for medical treatment (potentially for life), whereas disability benefits provides no medical treatment coverage at all.

As a result, it is always advisable to file a workers' compensation claim instead of a disability benefits claim if there is reason to believe the injury or illness is work-related. If the workers'

compensation claim is contested, then the worker can apply for disability benefits, and those benefits will be repaid out of any workers' compensation award that is entered later on.

II. Potential Workers' Compensation Coverage

The Workers' Compensation Law covers "accidents" and "occupational diseases." An "accident" is generally considered to be an illness or injury that arises from a specific work-related event or exposure, over a reasonably definite period of time.[1] By contrast, an "occupational disease" is an injury or illness that is associated with the nature of the occupation – a condition that many people in that line of work are prone to develop.[2] Whether the claim is one for an "accidental" injury or for an "occupational disease" is important for one critical reason: the legal time frames for claim filing. This issue is discussed in Section III.

It is likely that workers' compensation coverage for the COVID-19 Coronavirus will follow a pattern similar to that of tuberculosis and other communicable diseases, for which the courts and the Workers' Compensation Board ("the Board") have developed a reasonably clear set of legal rules. Those rules generally divide workers into two categories: health care workers, and all other workers. In general, health workers who contract illnesses may be covered under either an "accident" theory or an "occupational disease" theory, and potentially benefit from longer claim-filing time frames. All other workers are covered only for "accidental" exposures, and have more limited claim-filing time frames.

[1] Matter of Johannesen v. New York City Dept. of Hous. Preservation and Dev., 84 N.Y. 129, 615 N.Y.S.2d 336 (1994)
[2] Goldberg v. 954 Marcy Corp., 276 N.Y.313 (1938)

A. Health Care Workers

There is little question that a health care worker is eligible for workers' compensation on the basis of an "accident" claim provided that they:

(1) have documented exposure to a particular patient with a communicable disease;

(2) contract that disease; and

(3) submit a medical report stating that their contraction of the disease was likely due to exposure to the patient.[3]

A health care worker may also be eligible for workers' compensation benefits if they can demonstrate that they were exposed to patients with the condition in the course of their employment, even if they cannot trace their own illness to a single specific exposure.[4]

For example, in Matter of L.I. Chiropractic Pain Cont., the Board found that a chiropractor who developed tuberculosis after treating a patient who was infected with the disease was entitled to coverage as an "occupational disease" because "[c]learly, the nature of being a chiropractic physician includes possible exposure to infections diseases because chiropractors come in close contact with their patients during the course of their hands-on office visits and treatment of their patients, 'which attach to that occupation a hazard which distinguishes it from the usual run of occupations and is in excess of the hazard attending employment in general.'"[5]

The Board has also found that a nurse who "contracted tuberculosis as the result of exposures to patients at the health care facility at which she worked" was entitled to workers' compensation coverage as an "accidental" injury, instead of an "occupational disease."[6] In another case, it found that the claim

[3] Matter of Williams v. Buffalo General Hosp., 28 A.D.2d 777, 280 N.Y.S.2d 699 (3rd Dept. 1967); Matter of River Mede Health Care, 2006 NY Wrk. Comp. LEXIS 7378, WCB 9040 5377 (2006).
[4] Matter of Sisters of Charity Hosptial, 1999 NYWCLR (LRP) LEXIS 157, WCB 8960 2718 (1999); Matter of L.I. Chiropractic Pain Cont., 2000 NY Wrk. Comp. LEXIS 108998, WCB 2942 3886 (2000).
[5] Matter of L.I. Chiropractic, *supra*.
[6] Matter of River Mede, *supra*.

of an operating room nurse who came into contact with many patients and developed a positive tuberculosis test "could be established for either an accidental injury or occupational disease."[7]

B. All Other Workers

Workers in occupations outside of the health care field are eligible for workers' compensation benefits resulting from an "accident" in the same way as health care workers: with a documented exposure to an infected person, a diagnosis, and a medical opinion that they likely contracted the disease from the workplace exposure.[8]

However, the Board has also found that workers outside of the health care field are generally not covered for communicable diseases as an "occupational disease." For example, in Matter of New York City Dept. of Social Services, the worker "was employed as the director of social services for the Human Resources Administration," where he was routinely exposed to residents of the shelter, many of whom he understood had tuberculosis. His claim for compensation when he developed that disease was disallowed because the Board found that his "employment as a social worker is not one which is generally recognized as being at risk for exposure to tuberculosis."[9]

Similarly, where the worker is unable to provide any work-related basis for his or her illness beyond the fact that their job involves significant exposure to the general public, the Board will not extend workers' compensation coverage as either an accident or an occupational disease.[10]

[7] Matter of Auburn Memorial Hospital, 1990 NYWCLR (LRP) LEXIS 240, WCB 6890 4522 (1990).
[8] *See*, Matter of Middleton v. Coxsackie Correctional Facility, 38 N.Y.2d 130, 379 N.Y.S.2d 3 (1975).
[9] Matter of New York City Dept. of Social Services, 1998 NYWCLR (LRP) LEXIS 343, WCB 0930 4541 (1998).
[10] Matter of NYCTA, 2009 NY Wrk. Comp. LEXIS 16503, WCB 0080 8319 (2009).

III. Claim Filing Time Limitations

The Workers' Compensation Law requires a worker who is injured in an accident to (1) notify the employer within 30 days; and (2) file a claim with the Board using a C-3 Employee Claim form within two years of the date of the accident.[11] Failure to take these steps can result in the complete denial of benefits.

For an occupational disease, however, the Board will determine the "date of disablement," which may be the date of the initial diagnosis, the last day of work, or the date the worker learned of the connection between their work and the illness. As long as the employer was notified and the claim was filed within two years before the date of disablement, the claim will be found to be timely filed.

As a result of these time frames, health care workers who contract illnesses and whose claims qualify as occupational diseases are not only more likely to be qualified for workers' compensation benefits (since they may be covered without proof of a single "accidental" exposure), but also benefit from more liberal claim-filing time frames. All other workers must not only to identify a specific exposure (or a specific time period of exposure), but also notify the employer within thirty days.

IV. Exposure Without Disease.

One remaining issue is whether the law provides any coverage for a worker who is exposed and required to undergo a quarantine period, but does not develop the illness. The Workers' Compensation Law generally requires that the worker suffer an "injury" as the basis for filing a claim, and provides compensation for a period of "disability" flowing from the injury.[12] Thus, without an injury (a medical diagnosis), the Board could potentially make a finding of "exposure," but not provide compensation for

[11] New York Workers' Compensation Law §§ 18, 28.
[12] New York Workers' Compensation Law §§ 2(7), 12.

lost time.[13] Similarly, in this situation it might conclude that in the absence of an "established" workers' compensation claim the employer (or workers' compensation insurer) was not liable for medical testing associated with the exposure.

However, the Board could also choose to find that the exposure itself is an "injury" within the meaning of the law, thus triggering employer liability for both medical testing and lost time once the one-week statutory waiting period has passed.

V. Conclusion.

It appears likely that the COVID-19 Coronavirus will have an impact on New York workers both in the health care field and otherwise. It is important that workers who believe they have contracted the virus either as a result of occupational exposure to infected patients in the health care field or as the result of a specific workplace exposure take the necessary steps to protect their potential benefits. Those are:

1. Notify the employer
2. File a C-3 Employee Claim form with the Workers' Compensation Board.
3. Seek medical attention and provide the physician with information about the workplace exposure.
4. Obtain further legal advice.

[13] Matter of Phoenix House Foundation, 1997 NYWCLR (LRP) LEXIS 132, WCB 9940 8573 (1997).