



States Adapt Workers' Compensation Systems Under COVID-19

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As states continue to respond to the challenges presented by COVID-19, many are adapting their workers' compensation systems. Changes include virtual hearings, expanded benefits, and refunds. Below is a snapshot of some of the workers' compensation changes for Ohio and Kentucky.

Ohio

The Ohio Bureau of Workers' Compensation ("BWC") is anticipating a lot of activity as a result of the pandemic. On April 9, 2020, the BWC updated its FAQs to cover many of the questions surrounding how the BWC is responding to the pandemic. [Click here](#) to review the FAQs in full.

In summary, Governor Mike DeWine asked the BWC board to refund up to \$1.6 billion to Ohio employers to reduce the economic impact of the virus on employers. The BWC will apply the dividend to an employer's outstanding balance first (including the recent installment deferrals). Any amounts exceeding the deferrals will be sent directly to the employer. The BWC also reiterated that generally communicable diseases like COVID-19 are **usually** not compensable workers' compensation claims because people are exposed in a variety of ways. However, if an employee's work poses a special hazard or risk of contracting the disease, then the BWC **could** allow the claim.

The BWC also clarified that just because a claimant isn't working doesn't mean they will receive temporary total disability ("TTD") compensation. But, to minimize the disruption of TTD compensation, BWC staff have been instructed to continue payments through April 30, 2020. Additionally, the job search requirement to receive wage loss compensation has been suspended through April 30, 2020.

The BWC staff is continuing to work from home, and although in person exams have been cancelled, the BWC is still processing various requests, performing independent medical reviews (“IMRs”), and is exploring alternative means to obtain medical evidence, including “virtual” exams. The BWC has also expanded the use and reimbursement of telemedicine visits. Finally, the BWC is extending the reporting requirements for many policy discount programs, such as Drug-Free Safety Program, Experience Modifier Cap, Grow Ohio, etc. The BWC has also suspended its audits and extended the public employer taxing district “true-up” grace period.

Kentucky

On April 9, 2020, the Kentucky Department of Labor Department of Workers Claims (“DWC”) confirmed that the cancellation of in-person hearings has been extended through May 17, 2020. To address claims with cancelled hearings and to prevent a backlog, the DWC is temporarily permitting videoconference proceedings. They are currently working with the Commonwealth Office of Technology to determine and implement secure methods for conducting these proceedings. Once an administrative law judge (“ALJ”) has videoconference capacity, the DWC will make an announcement to that effect. At that point, counsel wishing to participate in videoconference proceedings for a hearing that has been cancelled should contact the assigned ALJ for scheduling and instruction regarding the videoconference process. Going forward, the scheduling of videoconference hearings will be handled at the benefit review conference.

Kentucky Governor Andy Beshear also issued an Executive Order, [available here](#), that provides worker’s compensation benefits to employees who are removed from work by a physician due to occupational exposure to COVID-19. For exposure to be “occupational,” there must be a causal connection between the conditions under which the work is performed and COVID-19, and which can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment.”

The Order presumes that certain occupations will be covered, including first responders, medical workers, grocery workers, and daycare providers. Employees who qualify would get benefits even if the employer denied liability for the claim.

For more information, please contact [Julie Bruns](#), [Joanne Glass](#), [Noel Shepard](#) or any attorney in Frost Brown Todd's [Workers' Compensation](#) Team. You can also refer to our prior article, "[COVID-19 and Its Impact on Ohio Workers' Compensation](#)."

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a [Coronavirus Response Team](#). Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

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