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COVID-19: Wisconsin Worker's Compensation Benefits

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The COVID-19 pandemic has impacted nearly every facet of our society. Collectively, we have had to modify the ways in which we work, shop, dine, travel, and socialize in order to slow the spread of the virus. Wisconsin's worker's compensation program is not immune to the coronavirus' influence, and it is important for employers and insurance carriers to stay current with the evolving legal landscape. This *Legal Update* provides a brief overview of some of these changes and discusses the unique challenges Wisconsin employers and worker's compensation carriers are facing during the pandemic.

Compensability of COVID-19
With the gradual reopening of the State's economy, many businesses that were previously closed have begun operations and more employees are returning to work. Understanding the extent to which COVID-19 is compensable under Wisconsin's worker's compensation law is an important consideration for employers in evaluating safety measures and potential health and legal risks associated with remaining operational during the pandemic. Like other injuries and illnesses, the contraction of COVID-19 is compensable under Wisconsin's worker's compensation law, but only if an opinion of a medical expert establishes that an employee contracted the virus within the course and scope of his or her employment. With COVID-19's relative ease of transmission, establishing that an employee contracted the virus while at work, in most cases, is challenging. That said, in the event that a particular workplace experiences a concentrated outbreak, the ensuing worker's compensation liability exposure can be daunting. It is strongly recommended that employers adhere to federal, state, and local guidelines for workplace safety to protect their workforce and minimize legal exposure.

First Responder Presumption No Longer in Effect
On March 12, 2020, Governor Evers declared a Public Health Emergency (Executive Order #72) in the State of Wisconsin due to COVID-19. On April 15, 2020, Governor Evers signed 2019 Wisconsin Act 185 into law, which among other things, made changes to Wisconsin worker's compensation law. In doing so, the law created a rebuttable presumption that a first responder's contraction of COVID-19 is presumed to be work-related during the Public Health Emergency and 30 days after Executive Order #72 ended on May 11, 2020. Accordingly, as of June 10, 2020, the first responder presumption is no longer in effect.

Worker's Compensation Hearings and Mediations
Since March 23, 2020, the Office of Worker's Compensation Hearings stopped conducting in-person hearings, prehearings, and mediations until further notice. Hearings that were scheduled prior to this date have been converted to telephonic settlement conferences between the parties and the presiding administrative law judge. These procedures may be modified in the future, but at present, how or when this will occur is unknown.

Best Practice Recommendations
The interests of protecting the health of employees and reducing liability exposure are perhaps no more closely intertwined than within the worker's compensation context. In the furtherance of both of these interests, employers are encouraged to adopt safety protocols that are based on the guidance provided by the CDC, OSHA, and other federal, state, and local authorities. Doing so will help protect the health of the employer's workforce, which in turn will help prevent large-scale workforce shortages, and reduce worker's compensation liability resulting from a workplace outbreak of COVID-19.

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