

FEBRUARY 16, 2020

# COVID Claims Development webinar

## *Frequently asked questions*

Thank you for attending our Out Front Ideas webinar on COVID Claims development on February 16, 2021. As promised, below are our panelists' responses many of the questions that were asked during the webinar. If there are additional things you would like the panel to comment on please reach out to me at [mark.walls@safetynational.com](mailto:mark.walls@safetynational.com)

### **QUESTION:**

How are the COVID workers comp claims identified? Meaning how do you prove that the employee got COVID from work?

### **ANSWER:**

In order for a communicable disease to be compensable under workers' comp, the worker has to show that their exposure to the disease was greater in the workplace than in the general public, AND that they contracted the disease. Several states have created presumptions that certain workers who contract COVID are presumed to have caught in at work unless proven otherwise. (Healthcare workers for example)

### **QUESTION:**

If an employee refuses the vaccine and gets COVID, is that still a workers' compensation claim?

### **ANSWER:**

Whether or not a person gets a vaccine will not likely impact their ability to pursue a workers' compensation claim. Workers' compensation is a no-fault system. For example, you cannot deny claims if someone violates safety rules.



### QUESTION

COVID claims data shows over half the claims reported had zero payments made. However, we know many of these people missed time from work and received sick leave as mandated by federal law. With that in mind, what do we consider to be a COVID indemnity claim?

### ANSWER:

We define any COVID-19 or Non-COVID-19 indemnity claim as an accepted workers' compensation claims with paid indemnity (TD, PD, Other) benefits.

### QUESTION

Several states are considering enacting tort liability limits pertaining to COVID claims. Why is this so important for the business community?

### ANSWER:

It appears there are 3 primary reasons this are being considered or done:

1. Economies that are trying to re-open and re-ignite;
2. Continually evolving direction as to what should be done for business to ensure a safe workplace as well as a safe place for customers; and
3. A virus to which any of us could be exposed to anywhere.

Several states have passed some form of tort liability laws specifically with regard to COVID 19 during their respective state emergency order declarations. Most are focused on business immunity aside from willful, reckless, or intentional misconduct or require gross negligence. Some additionally require that businesses post a notice / warning outlining the establishment.

### QUESTION

Many states have passed COVID presumptive legislation, and many others are considering such legislation which would be retroactive going back to the start of the pandemic last year. What concerns do you have about this?

### ANSWER:

The problem with any presumptive legislation is that it creates a different class of injured worker who is treated differently under the system. Traditionally, the injured worker has to show their claim is work related, but a presumption flips that to where the employer has to prove it is not work related. This is a fundamental change in the workers comp system. Retroactive application of these laws is challenging because you are changing the rules on claims that were submitted and reviewed months ago. This may require the claims administrator to go back and reevaluate any claims they disputed.



## QUESTION

Will we see PPD and PTSD claims arising from COVID in the workplace?

## ANSWER:

Thus far, there has been very little litigation on COVID claims. This includes pursuit of PPD. However, there are certainly indications that this could become a significant factor in the future.

The awareness and publication of articles regarding the long-term effects of COVID is on the rise. Terminology such as “Long COVID”, “Long Hauler”, and “COVID Syndrome” and “Post-Acute COVID Syndrome” (PACS), as coined by Dr. Fauci, will likely become part of the claim discussions.

The challenge for any allegation is what proof must be presented to validate or substantiate a causal connection to the virus. Several noted complications have a variety of “causes” so I anticipate the connection may be challenging to establish.

## QUESTION

In recent years, many states have enacted legislation indicating PTSD is a presumptive condition for first responders. Many states also allow claims for a mental injury with no physical injury. Do you think we will see PTSD claims from workers relating to the COVID pandemic? Have you seen such claims?

## ANSWER:

There is no doubt that the virus has had a huge effect on the psyche of everyone, regardless of the WC system. We are all experiencing a new reality seemingly taken out of an episode of the Twilight Zone.

We have yet to see any claims alleging some form of stress related to COVID19 in the workers' compensation environment. It is highly likely that we will see this allegation made. But as with the PPD question the challenge will be establishing it to the “injury” and not the general environment under which we are all existing. It will likewise be very state specific.



### QUESTION

In California, some group health carriers are denying COVID claims and pushing those people to file a workers compensation claim. Do you think we will see more of this? What are the implications of this when it comes to Medicare Set Asides and CMS?

### ANSWER:

There are some emerging anecdotes relating to subrogation on COVID-19 claims between health plans and workers' compensation. California workers' compensation healthcare costs are approximately 1% of the overall state healthcare economy. There are basic inequalities in expecting the California workers compensation system to shoulder a disproportionate share of the responsibility of a national, societal pandemic. There will very likely be an expectation from CMS that MSAs reflect future medical costs relating to workers' compensation COVID-19 infection claims.

### QUESTION

There's so much disinformation/misinformation. Where can individuals search for factual data regarding vaccination efficacy and adverse effects?

### ANSWER:

The CDC has excellent information on their website <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/index.html>

### QUESTION

Are you seeing claims where caregiver costs are being made to be part of those extensive medical claims?

### ANSWER:

Thus far, the caregiver component has not been a significant cost on the more severe claims. However, we do recognize that there is potential for some claims where a person is not capable of the normal activities of daily living and attendant care might be required.

### QUESTION

If someone has had COVID, should they get the vaccine and, if so, is there a certain period of time they should wait to get it?

### ANSWER:

The CDC advises that an individual should wait 90 days after a positive diagnosis for COVID19 to be vaccinated. It is one of the screening questions the vaccination center will ask before vaccinating.



### QUESTION

There is a lot of talk of those more vulnerable to COVID-19, however are there any co-morbidities that stand out in resulting in more significant severity?

### ANSWER:

Comorbidities affecting the cardiovascular system and pulmonary system can lead to more severity. This virus makes the outcomes very difficult to predict as those who appeared to be in great health have also been severely impacted, including small healthy children. We really need more research to understand the factors that lead to severe illness.

### QUESTION

My biggest question is how can we relate a health concern for an employee directly to COVID if it happens months or years later? For example, if someone gets pneumonia two years later, how can you prove it is because of the COVID exposure? If someone gets depressed 5 years later, how can we prove it is because of COVID years before? What will be our liability and how can anything be proven?

### ANSWERS:

This will be a very challenging process for the industry. One of the keys will be the medical evidence that establishes a causation to the original virus. Questions surrounding subsequent contractures of the virus outside of the occupational setting and variations to the virus will likely become relevant.

The concept that an aggravation of preexisting condition can be deemed compensable will create additional hurdles for the industry.

The level of proof for the above will be state dependent. In some states the courts generously interpret the law in favor of covering additional complications to the original "injury". In others it is much more difficult. Yet in all a causal connection will need to be established by some form of medical evidence.



### QUESTION

How has the pandemic impacted disability and treatment on non-COVID claims? Are you seeing delays and extended disability?

### ANSWER:

We did see an initial delay in medical treatment in the first few months when state's shut down any elective or non-emergency treatment. That delay for medical was somewhat offset by telehealth and seemed to have lasted a few weeks. However, at this time we are not seeing any delays. As to disability, yes it increased for a brief period of time the length of those benefits. This was mainly due to no jobs available to return to for industries that were not operating or forced to close their doors.

### QUESTION

If side effects from the vaccine do manifest themselves in employees that are required to receive the vaccine by their employer will this be a workers' compensation claim?

### ANSWER:

There is extensive case law out there on the issue of compensability of vaccine reactions. While every case stands on its own facts, the answer is generally yes this would be a compensable claim.

Here is an excellent blog post on the subject from Thomas Robinson

<https://www.workcompwriter.com/opinion-mondays-do-employers-face-additional-liability-for-covid-19-vaccination-side-effects/>

### QUESTION

Are the symptoms from vaccination contagious?

### ANSWER:

In general no the symptoms from the side effects of the vaccine are not contagious. The trick is knowing what a side-effect vs a contagious disease. Usually the side effects clear up within one to three days. Without a test we do not know if a person is contagious and would still want those individuals to remain cautious and diligent about avoiding others when they have symptoms.