



Coronavirus Implications and Workers' Compensation

By Kandace L. Watkins

WHAT YOU NEED TO KNOW ABOUT THE CORONAVIRUS DISEASE (COVID-19)

The coronavirus disease (COVID-19) is a respiratory illness that can spread between persons in close contact with one another through respiratory droplets produced when the person with the virus coughs or sneezes. It is also possible that a person can get the virus by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes. Patients with COVID-19 have had mild to severe respiratory illness with symptoms of fever, cough, and shortness of breath. Severe complications with the virus can result in pneumonia in both lungs, multi-organ failure, and, in some cases, death.

To protect against respiratory illnesses, like COVID-19, (1) avoid close contact with people who are showing symptoms of respiratory illness and who are sick; (2) avoid touching your eyes, nose, and mouth with unwashed hands; (3) wash your hands often with soap and water for at least 20 seconds, or use an alcohol-based hand sanitizer that contains at least 60% alcohol if soap and water are not available; and (4) clean and disinfect frequently touched objects and surfaces.

See also: <https://www.cdc.gov/coronavirus/2019-ncov/about/index.html>

THE IMPLICATIONS IN THE NORTH CAROLINA WORKERS' COMPENSATION SYSTEM

In January 2020, the World Health Organization (WHO) declared the outbreak of COVID-19 a "public health emergency of international concern." Consequently, many employment-related issues may be implicated as the virus spreads, including an increased number of workers' compensation claims filed by employees who allege exposure to the virus during the course and scope of their employment.

According to the Centers for Disease Control and Prevention (CDC), the risk of infection is higher for people who are in close contact with someone who is infected with COVID-19, like healthcare workers and caregivers for those infected with COVID-19.

CHECKLIST OF STEPS TO TAKE TO HELP PROTECT AGAINST RESPIRATORY ILLNESSES SUCH AS COVID-19:

- ✓ Avoid close contact with people who are showing symptoms of respiratory illness and who are sick.
- ✓ Avoid touching your eyes, nose, and mouth with unwashed hands.
- ✓ Wash your hands often with soap and water for at least 20 seconds, or use an alcohol-based hand sanitizer that contains at least 60% alcohol if soap and water are not available.
- ✓ Clean and disinfect frequently touched objects and surfaces.



Coronavirus Implications and Workers' Compensation (continued)

Pursuant to section 97-53(13) of the North Carolina Workers' Compensation Act, to establish compensability, the employee bears the burden of showing that the COVID-19 diagnosis was "due to causes and conditions [that] are characteristic of and peculiar to a particular trade, occupation or employment, but excluding all ordinary diseases of life to which the general public is equally exposed outside of the employment."³ A disease is *characteristic of a profession* "when there is a recognizable link between the nature of the job and an increased risk of contracting the disease in question."⁴ A disease is *peculiar to the profession*, if "the conditions of that employment result in a hazard which distinguishes it in character from the general run of occupations."⁵ Accordingly, an employee's COVID-19 diagnosis "must be so distinctively associated with the employee's occupation that there is a direct causal connection between the duties of the employment and the disease contracted."⁶

An employer is not liable when an employee contracts COVID-19 by merely being on the job. For example, an employee at a warehouse who contracts COVID-19 simply by standing next to an infected co-worker would likely not be entitled to workers' compensation benefits, as the employee's exposure to COVID-19 would have occurred regardless of the nature of the occupation in which she was employed. In addition to bearing the burden of showing that COVID-19 is a disease "characteristic of and peculiar to a particular trade, occupation, or employment," the employee also bears the burden of proving a *causal connection between the disease and the employee's occupation*.

As the number of confirmed cases of COVID-19 in the U.S. continues to increase, employers must prepare for issues that will arise as the virus spreads, including potential workers' compensation liability. While there are numerous industries and professions that may have an increased risk of exposure to COVID-19, liability is contingent upon whether COVID-19 is so uniquely associated with the employee's occupation and proof that the employment is the cause of the contraction of the disease.

WHAT EMPLOYERS SHOULD DO TO MITIGATE THE IMPACT OF COVID-19

- ✓ Keep abreast of information provided by WHO and CDC, and communicate that information to employees.
- ✓ Encourage good hygiene practices in the workplace.
- ✓ Train employees on key facts, risks, and symptoms associated with COVID-19.
- ✓ Ensure the use of facemasks for healthcare workers treating patients with the virus.
- ✓ Update any policies or procedures, including sick leave, absences, dependent care, and telecommuting, which may be affected by an outbreak of COVID-19.

For more information, visit: <https://www.cdc.gov/coronavirus/2019-ncov/about/prevention-treatment.html>

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¹ N.C.G.S. § 97-52.

² N.C.G.S. § 97-57.

³ N.C.G.S. § 97-53(13).

⁴ *Booker v. Duke Medical Center*, 297 N.C. 458, 472, 256 S.E.2d 189, 198 (1979).

⁵ *Booker*, 297 N.C. at 473, 256 S.E.2d at 199.

⁶ *Booker*, 297 N.C. at 473, 256 S.E.2d at 199.