

*Project

SE.N.S.O.R.

News

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COVID-19 and Workers' Compensation

The first COVID-19 case was identified in Michigan on 3/10/20.

As part of the public health response, changes were made in the workers' compensation rules for first responders, who are at increased risk of COVID-19 exposure because of their work. On 3/30/20, an emergency rule was promulgated by the Workers' Disability Compensation Agency (WDCA) in the Department of Labor and Economic Opportunity (LEO) ¹, which was replaced on 6/18/20, by Governor Whitmer's executive order 128,² which was replaced on 10/16/20 by a new emergency rule promulgated by LEO.³ The most recent emergency rule is effective through 3/2/21. The exact wording has differed among the two emergency rules and executive order, but all three changed the workers' compensation rules to ensure that a first responder who develops COVID-19 is presumed to have a work-related condition unless there are "specific facts to the contrary". The wording of the current regulation states that injuries to COVID-19 first response employees are:

"For purposes of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, and subject to rebuttal by specific facts to the contrary, a COVID-19-first response employee who is confirmed as COVID-19 positive on or after March 18, 2020, either by physician or by test, shall be presumed to have suffered a "personal injury," as that term is defined by section 401(2)(b) of the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.401."

A COVID-19 first responder is defined as: 1) someone who is required to report to work in an ambulance operation, emergency response service, home for the aged, hospice, hospital, nursing home, or home health agency; 2) person working as a physician, physician assistant, licensed practical nurse, registered professional nurse, medical first responder, nurse, emergency medical technician, emergency medical technician specialist, paramedic, or respiratory therapist who is required to provide in-person medical care to patients; 3) law enforcement officer; 4) firefighter 5) motor carrier officer within the State Police; 6) member of an emergency response team; 7) volunteer civil defense worker; 8) on-call member of a life support agency; 9) and state or local government employee of a penal institution who works within the secured perimeter.

All other Michigan workers who develop COVID-19 would not be presumed to have a work-related condition but would be covered by the regular Michigan workers' compensation criteria if a doctor concluded, within a reasonable degree of medical certainty (51% or more likely) that exposure at work caused or was a significant contributor to the development of the patients' COVID.

From 2/28/20 to 12/12/20, 4,694 individuals received workers' compensation for COVID-19 with seven or more consecutive days away from work (regular time off for two weekend days is included in the seven day total). Data about paid claims for medical reimbursement only or less than seven consecutive days off work are not available since this data is not computerized. To put this number into perspective, there were 16,000 paid workers' compensation claims for seven or more consecutive days away from work for all of 2018, 17,300 for 2019 and 14,801 from 1/1/20-12/12/20. There is not enough information in the computerized records to determine the severity of the paid claims, except that 10 of the paid claims were for deaths from COVID-19.

In the 1st quarter of 2020 22%, in the 2nd quarter 48%, and in the 3rd quarter 18% of all paid workers' comp claims with seven or more days were for COVID-19. Along with the decreased economic activity and increase in number of individuals working at home that has been associated with the pandemic, non-COVID-19 workers' comp cases in Michigan were down 31% in the first quarter, 43% in the second quarter and 39% in the third quarter of 2020 as compared to 2019.

Table 1. Industry Worked of Individuals who Received Workers' Compensation for COVID-19 for Seven or More Consecutive Days Away from Work, Michigan 2/28/20 -12/12/20.

	#	%
Industry		
Construction	5	0.11
Food Manufacturing	1	0.02
Chemical Manufacturing	4	0.09
Plastic Pipe Manufacturing	2	0.04
Foam Manufacturing	11	0.23
Precision Turned Product Manufacturing	2	0.04
Machinery Manufacturing	1	0.02
Vehicle Manufacturing	7	0.15
Wholesale Trade	5	0.11
Retail Trade	7	0.15
Transportation	2	0.04
Real Estate	16	0.34
Legal, professional, scientific services	7	0.15
Administrative and Support Services	226	4.82
Educational Services	19	0.41
Health Care	3,612	77.01
Hospital – 2,001 (42.7%)		
Nursing Home – 1,016 (21.7%)		
Ambulance, Outpatient, Home Health Care - 595 (12.7%)		
Accommodation and Food Services	9	0.19
Other Services	5	0.11
Public Administration	749	15.97
Correction Officers - 293 (6.2%)		

Although minimization of work-related exposure is only one component of the response to the COVID-19 pandemic, it plays an important role in the overall public health response. In addition to individual cases, outbreaks attributed to workplace exposures have been reported throughout

The average age was 41.8 (range 17-82), 72.9% were women, and 27.1% were men. The industries where the individuals worked are shown in Table 1.

Over 95% of the individuals with COVID-19 workers' compensation paid claims worked in industries, health care or government, where first responders would be employed. The rules that presumed that first responders with COVID-19 have a work-related infection clearly affected who received workers' compensation.

Table 2 shows the month of injury of the paid claim. That 60% were last spring and only 10% this past fall when cases again increased suggest the possibility of better controls with the latest surge of COVID-19 cases this past fall.

Table 2. Month that Individuals Received Workers' Compensation for COVID-19 for Seven or More Consecutive Days Away from Work, Michigan 2/28/20 -12/12/20.

Month	#	%
January	0	--
February	1	0.02
March	973	20.7
April	1,603	34.1
May	441	9.4
June	138	2.9
July	204	4.3
August	203	4.3
September	162	3.5
October	424	9.0
November	507	10.8
December	38	0.8

the United States⁴⁻⁷. In a detailed analysis from Utah, 210 of 276 (76%) outbreaks identified in Utah occurred in workplaces ⁴. These outbreaks were as common in manufacturing, construction, food services, retail, and offices as in health care. Seventy-three percent of the COVID-19 cases in these outbreaks were among minorities.

The authors of this report suggested a number of reasons for the marked overrepresentation of the cases among minorities: "... the overrepresentation of Hispanic and nonwhite workers in frontline occupations (i.e., essential and direct-service) where risk for SARS-CoV-2 exposure might be higher than that associated with remote or non-direct-service work, less flexible work schedules and fewer telework options..., lack of job flexibility (i.e., ability to vary when to start and end work), lack of telework options, and unpaid or punitive sick leave policies might prevent workers from staying home and seeking care when ill..."(6). For the time period April 9-27/20, 19 states reported 4,913 infected workers including 20 deaths from COVID-19 in 115 meat or poultry processing facilities. This was updated up to May 31, 2020; 23 states reported 16,223 infected workers including 86 deaths from COVID-19 in 239 meat or poultry processing facilities⁵⁻⁷.

To assure that workers have adequate resources if they do develop COVID-19, medical providers should advise their COVID-19 patients to apply for workers' compensation when the infection was more likely than not to be work-related (51% or more likely). The workers' compensation data for Michigan shows that other than health care workers and emergency responders or correction officers this is generally not happening. Facts that would suggest that COVID-19 in a non-first responder was work-related would include; a cluster of cases in the workplace, work that involves repeated face-to-face interaction with the public (i.e. retail, bus driver) and no known contact with a COVID-19 case outside the workplace.

Interventions that reduce the risk of exposure to coronavirus in the workplace remain the primary approach to minimize spread of the disease; proper personal protective equipment (PPE), work practices and home isolation for contacts and symptomatic workers. Overall and industry specific guidance documents on PPE and work practices are available on the Michigan OSHA web site (<https://www.michigan.gov/leo/0,5863,7-336-100207---,00.html>). Guidance for health care provider offices can be found at https://www.michigan.gov/leo/0,5863,7-336-100207_101279---,00.html.

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*Michigan State University
 College of Human Medicine
 West Fee Hall
 909 Wilson Road, Room 117
 East Lansing, MI 48824-1316
 Phone (517) 353-1846*

In this issue: V32n1: COVID-19 and Workers' Compensation

***PS** Remember to report all cases of occupational disease!
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