

In light of the recent health crisis involving COVID-19, the Municipal League Workers' Compensation Program ("MLWCP") has received multiple questions concerning the compensability of claims of *exposure* or *potential exposure* to COVID-19. After reviewing Arkansas's workers' compensation laws, discussions with multiple attorneys, and seeking guidance from other states, we have determined that a claim for *exposure* or *potential exposure* to COVID-19 is not a compensable workers compensation injury. The basis for this decision is described herein.

Arkansas workers' compensation law determines what qualifies as an "occupational disease" and thus what is compensable. The relevant law is set out below:

A.C.A. §11-9-601

(e)(1)(A) "Occupational disease", as used in this chapter, unless the context otherwise requires, means any disease that results in disability or death and arises out of and in the course of the occupation or employment of the employee or naturally follows or unavoidably results from an injury as that term is defined in this chapter.

(B) However, a causal connection between the occupation or employment and the occupational disease must be established by a preponderance of the evidence.

(2) No compensation shall be payable for any contagious or infectious disease unless contracted in the course of employment in or immediate connection with a hospital or sanitorium in which persons suffering from that disease are cared for or treated.

(3) No compensation shall be payable for any ordinary disease of life to which the general public is exposed.

The three underlined phrases are the primary legal reasons that *exposure* or *potential exposure* claims are not compensable. First, mere *exposure* does not necessarily "result in disability or death." See *section (e)(1)(A)*. Without an actual diagnosis of COVID-19 there can be no "Occupational Disease" and thus no claim.

Second, to have a compensable injury, a connection between the employee's job duties and the injury must be established. Mere *exposure* to someone who may or may not have COVID-19 does not satisfy this causation requirement. See *section (e)(2)*.

Third, finally, and perhaps most importantly, as established in section (3) of the recited law above, "an ordinary disease of life to which the general public is exposed" is not compensable. As evidenced by the extent of the outbreak, COVID-19 is an

“ordinary disease of life to which the general public is exposed.” Thus, claims for *exposure* to COVID-19 are not compensable under the law.

We are mindful of the risks first responders are taking daily during this crisis. With that in mind, we encourage cities to review the Arkansas Department of Health rule related to *exposure* to a communicable disease:

*Any emergency response employee who fears that he or she has been exposed to a communicable disease may notify the Department. Upon notification, the Department shall determine if the exposure requires additional investigation. In the event that it is determined that the exposure is one which should not create the risk of transmission of a communicable disease, the emergency response employee shall be so notified. If requested, he or she will be instructed as to additional steps that may be taken to confirm that no exposure to actual disease has occurred. If the Department determines that the exposure was one that could have caused the transmission of a communicable disease, the Department shall immediately contact the treating physician to determine if the patient was infected with a communicable disease. If it is determined that the individual was infected with a communicable disease, the emergency response employee shall be contacted immediately by the Department and counseled concerning the recommended course of action.*

Even though the MLWCP has determined that claims for *exposure* or *potential exposure* to COVID-19 are not compensable, make sure to allow employees to continue to file their workers compensation claims, if they wish to do so. While this may seem contradictory, by filing a claim the employee will preserve his or her rights under Arkansas law. If you have questions about this matter, please call 501-978-6133 or email Katy Busby, MLWCP Manager at [kbusby@arml.org](mailto:kbusby@arml.org).