



UPDATE ON COVID-19 CLAIMS

January 26, 2021

How has the Commission handled COVID-19 claims to date?

Almost 1,000 COVID-19 claims for benefits were filed in 2020. However, only a few of these claims have been litigated. There are no Full Commission or appellate opinions addressing COVID-19 workers' compensation claims. We believe it remains very difficult for an employee to successfully pursue a COVID-19 workers' compensation claim. We continue to recommend that you evaluate the timing of the alleged exposure vs. appearance of symptoms, whether the employer's safety protocols were followed by the employee during the period of possible exposure, the employee's possible exposures outside of work, and whether COVID-19 is "characteristic of the employment," as required in Virginia Code 65.2-401.

Our office recently handled a claim for COVID-19 as an ordinary disease of life. The claimant proved she was diagnosed with COVID-19 a few days after meeting with someone at work; that coworker began showing symptoms of COVID-19 hours after the meeting and was diagnosed with COVID-19. The Deputy Commissioner denied the claim, finding the claimant did not meet her heightened burden of proving that the disease was caused by her employment and did not result from causes outside of her employment. He cited to the claimant's possible exposures to COVID-19 outside of her employment and noted that the medical records did not prove causation.

What can we expect in the future?

The General Assembly is currently considering several bills that would establish a presumption that COVID-19 is a compensable occupational disease for certain groups of workers.

Some bills create a presumption for public safety employees. One bill establishes a presumption for health care workers who are diagnosing or treating persons known or suspected to have COVID-19. No legislation was passed on this issue during the 2020 special session.

Can an employee bring a claim for an adverse reaction to a COVID-19 vaccine?

This issue has not yet been litigated. We recommend denying these claims, as there is very little case law regarding reactions to common vaccines, and we think it will be difficult to prove that an adverse reaction to the vaccine was a unique risk of the employment and/or characteristic of the employment.

In the case of *Douglas v. Inova Health Systems*, VA00000709803 (Dec. 5, 2013), the Commission considered a claim for an adverse reaction to the flu vaccine, a common, widely distributed vaccine arguably similar to the COVID-19 vaccine. The Deputy Commissioner found that the flu vaccine is something to which the general public at large is exposed, in addition to finding the claimant did not prove causation. The Commission affirmed, but did not specifically state whether they agreed with the Deputy Commissioner on the issue of the vaccine not being a risk unique to the employment.