

Risk Management

WORKERS COMPENSATION DURING THE COVID19 PANDEMIC Claims Management in a Changing Environment

The COVID19 pandemic will present new challenges to employers and the insurance companies that provide this coverage.

In order to obtain Workers' Compensation benefits, the injury or illness must arise both out of and in the course of employment. Insurers base premiums on two major factors: payroll and loss experience. An increase in either will raise the cost of Workers Compensation. This is also true for employers in pools or self-insured programs.

The COVID19 pandemic has far-reaching effects that extend to all lines of casualty insurance and Workers Compensation is no different. The insurance industry will be compelled to react to this developing issue:

One: The Question of Compensability. For most claims arising from construction, compensability (whether the injured party is entitled to Workers Compensation benefits) is fairly straightforward. However, claims by workers alleging a work-related COVID19 illness may be problematic, since the burden is on the employee to prove their claim is compensable if the case is controverted. Cases are generally fact-specific – employees in healthcare, first responders, or employees working when a breakout occurred at their workplace will have an easier time proving compensability. Others will not. Expect many controverted cases from COVID19 claims.

Two: Longer Disability Periods. Concern that the pandemic would push hospitals to over-capacity compelled Governor Cuomo to announce in March that the state was canceling all elective, non-critical surgery. The cancellation, along with the surge of COVID19 patients, also reduced other hospital-based patient services and therapies. More controverted cases due to verification issues (is treatment required because of the open Workers Compensation claim), poorer outcomes, and longer and prolonged recoveries (and extended disability periods) are expected. The total loss amount for existing claims may trend higher than for similar cases that were reported before the pandemic.

Three: Lower Payroll and Losses – Lower Workers Compensation Premiums. Payroll and loss experience determine the cost of Workers Compensation. The downturn in

construction will reduce payroll and loss frequency, lowering premiums during the economic downturn.

Four: Workers Compensation Fraud. As of the last week in April, American workers filed more than 30 million initial unemployment claims. Workers facing layoffs have a greater incentive to file Workers Compensation claims since the benefits are better. Additionally, the temptation to stay out longer than necessary – malingering – is also prevalent, especially if the worker expects to be laid off after returning to work. Expect a greater focus on fraud and more scrutiny by claims examiners.

A different and innovative approach to Workers Compensation underwriting and claims handling will be needed during and after the pandemic. Expect additional questions from brokers and claims professionals.