

COVID & COMP

THE PANDEMIC'S IMPACT ON WORKERS' COMPENSATION CLAIMS HAS BEEN MINIMAL AS STATES MOVE TO PROTECT FIRST RESPONDERS, BUT CONCERN PERSISTS ABOUT ITS LASTING EFFECT ON A NUMBER OF TANGENTIAL ISSUES

Written By Bruce Shutan

For more on this topic join the LIVE session “COVID-19 Complications for Self-insured Employers” at SIIA’s Virtual National Conference. The COVID-19 pandemic presents a unique circumstance where workplaces that were not typically considered hazardous have suddenly become very dangerous for workers. In response, at least 14 states have expanded workers compensation benefits to cover COVID-19 as a work-related illness for certain types of front-line employees including health care workers, mass transit operators and grocery store clerks.

This presumption places the burden on employers to prove that the infection was not work-related, making it easier for those workers to file successful claims. As such, employers have raised concerns that these presumption laws will increase work comp program costs at a time when businesses are already facing significant financial hardship due to the pandemic. This session will explore the impact expanded work comp benefits for COVID-19 infections is having on self-insured workers compensation programs.

What is the frequency and severity of COVID-19 claims? How much are they costing self-funded employers? How do the treatment protocols for COVID-19 compare with other types of occupational illnesses? What protocols should employers deploy within their return-to-work strategies? What processes can they implement to screen and test their employees regularly, and what care continuums can they build with clinical or primary care partners? What precautions should employers implement for employees recovering from COVID-19?

The session will also address reserving for potential future medical expenses for claimants who suffer complications. Speakers: Andrea Buhl, Will Kimbrough, Kim Pfingst, Don Lipsy

As was the case almost two decades ago when 9/11 terrorist attacks turned the world upside down, the nation’s first responders have re-emerged as heroes and heroines in the age of COVID-19.

This time, fear of catching the fastest-growing infection since the Spanish Flu while they help save lives has replaced horror over search-and-rescue missions imploding right along with the World Trade Center’s crumbling twin towers.

Police, fire and emergency medical technicians are clearly on the frontlines and more susceptible to the worst pandemic in a century as are health care professionals, teachers and service-sector employees. And a number of states have taken action to protect them financially from exposure.

While the implications for self-insured workers’ compensation insurance is still uncertain, there’s growing concern about the long-term impact on treatment costs and health outcomes for all infected workers. As this issue went to press, nearly 25 million people (and counting) have been infected by COVID-19 worldwide, roughly one-quarter of whom reside in the U.S.

How the pandemic affects work comp claims depends on numerous variables. “It matters what type of underlying business the self-insurer is operating,” says Fred Karlinsky, co-chair of insurance regulatory and transactions for Greenberg Traurig, LLP.

For example, a lockdown that substantially limited business will likely decrease claims because people weren’t on the job or jobsites, whereas a self-insured local government covering first responders might have seen a spike in claims. He notes that early data indicates that as COVID-19 claims grew, “initially reports for injuries related to other causes shrunk. We’ll obviously have to wait for the claims data to mature before we see if there is any actual impact.”

Casually connecting COVID-19 to occupational disease, whose statutes differ across all 50 states, can be difficult due to the broad reach of the pandemic. Thus far, the financial impact has been less than expected, reports David Ives, chairman of Northshore International Insurance Services, Inc., which provides excess claims management, audit and consulting services to a range of risk-bearing clients.



David Ives

“Those states where people are finding connections, the exposure

is definitely remaining within the retained self-insured

layer,” he says. In recently reviewing a large workers’ comp national insurer, Ives learned that the total gross COVID exposure was \$6.1 million, while net exposure was just \$640,000. The reason? A large national accounts program featuring self-insured retentions up to \$100,000, \$250,000 and \$500,000 with exposure kept below retention.

STATES SPRING INTO ACTION

The pace of illness, treatment and recovery is playing out very differently across the U.S. as trouble spots literally change in real time. In nearly all states, workers who are infected with the coronavirus on the job must show proof of such an occurrence to qualify for work comp.

Fewer than one-third of states have shifted the burden of proof for coverage of job-related COVID-19 to ease the burden on first responders and nurses who report for risky assignments. More than a dozen red and blue states alike have relieved essential workers of this step.

The National Conference of State Legislatures (NCSL) recently identified 52 executive orders and administrative policy changes addressing work comp coverage of COVID-19 that were enacted, failed or are pending. Some of those actions involved multiple activities within certain states and one was enacted in Puerto Rico, while 15 states targeted first responders.

NCSL also notes that 14 states have included COVID-19 as a work-related illness and half a dozen states have created a presumption of coverage for various types of workers. In addition, COVID-19 coverage is limited to first responders and health care workers in Alaska, Minnesota, Utah and Wisconsin, while Illinois covers all essential workers and Wyoming covers all workers.

“Some states have bifurcated the presumption of compensability for COVID-related claims between first responders and all other workers,” according to Karlinsky.

He says California, Kentucky, Illinois and Minnesota enacted policies that created a rebuttable presumption that COVID arose out of work performed by first responders and health care workers. California also issued a related executive order for residents who contracted the virus while working outside of their homes during the stay-at-home order. Another key development occurred in Florida, where he says work comp claims related to COVID that front-line state employees submit are being accepted as those being covered by the state Division of Risk Management.

Since there have been presumptive state statutes for years, if not decades,

regarding policemen and firemen being more prone to developing heart disease, hypertension and certain cancers, Ives says “the idea that special eligibility provisions were being created for first responders is not new; it’s just new to the COVID environment.”

Lack of uniformity across all states on removing any burden of proof that first responders or other essential workers became infected while working can be attributed to forces that have nothing to do with the law, disease state or employment. For example, Ives points out that many state legislatures don’t meet full time and aren’t in session over the summer. Another factor to consider is that police and fire unions have stronger advocacy levels in some jurisdictions over others, he adds.

But first responders aren’t the only ones who are potentially in harm’s way. Health care workers who use personal protective equipment (PPE) are three times more likely to be infected with COVID-19 compared to the public, according to a recent study by researchers from Kings College in London and Harvard University. Risks also were found to dramatically increase for workers with inadequate PPE.

While the National Council on Compensation Insurance expects to compile data on COVID-19’s impact on work comp claims by the fourth quarter of 2020, NCCI is projecting a drop in work comp premiums that exceeds the nation’s unemployment rate. The organization offers a tool to gain insight into the potential implications of states enacting legislation related to the compensability of COVID-19-related claims in certain occupations.

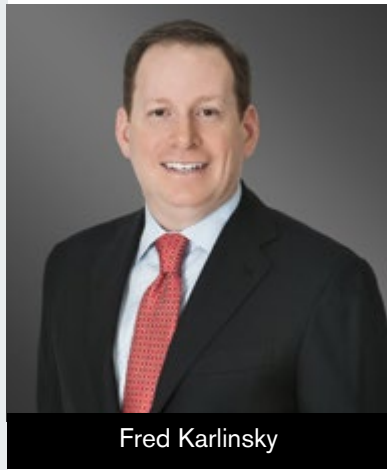
With many school systems weighing remote learning and a hybrid option involving limited classroom instruction, Ives believes the next big question for states to answer with regard to COVID-19’s impact on workers’ comp will affect teachers and other school personnel.

LONGER RECOVERY TIMES

However, there may be longer-term concerns associated with deferred treatment at hospitals where emergency care has been largely confined to anything threatening life or limb. For example, Ives worries that putting off back surgeries or total knee replacement could prolong disabilities and extend indemnity periods of benefits, as well as delay recovery or return to work.

On top of that, administrative hearings and procedures addressing treatment protocols and eligibility issues have been put on hold because of pandemic restrictions. He says not having access to a complete set of data or knowing when

it will be made available surely will affect data capture, tracking claim patterns and trends, ratemaking, reserve establishment and other elements of important management relative to a self-insured work comp program



Fred Karlinsky

“We’re in unprecedented times,” Karlinsky notes. “Employers on both the self-insured and traditional carrier side are going to have to pay more attention to risks and losses

related to illness and disease. We’ll likely see a heightened standard of care for maintaining a safe workplace as it pertains to disease control. Carriers will begin to look at how a company protects its employees from disease in the underwriting process.”

In a blog post by Jeff Seibert and Mike Kenitz of Willis Watson Towers on how the pandemic will affect any backlog of work comp claims, several steps were suggested to soften the blow of increased claim costs.

They include a review of all reopened claims to ensure validity, light-duty claims to determine if current restrictions meet regular job functions and high-value claims to ensure an effective resolution strategy is set up and being implemented.



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Other recommendations include regular communication with employees who haven't been released to full duty to remove any barriers they're facing, as well as checking into the availability of telemedicine.

Telemedicine certainly will continue to promote safe distances between patients and medical providers for both work comp and group health. "It's convenient, and 90% of what happens in the doctor's visit is you explaining your issues and them asking you questions, so that if you need testing or some sort of follow-up, that can be arranged," according to Ives, noting that it will continue to evolve.

Looking ahead, Ives believes the work environment will be forever altered. "Work-at-home has become a far more common and accepted experience, and I don't see that rolling back completely," he says. In addition, "all information indicates that masking, social distancing and even travel restrictions are going to remain in place well into 2021, if not throughout the entire next year." ■

Bruce Shutan is a Portland, Oregon-based freelance writer who has closely covered the employee benefits industry for more than 30 years.

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