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How Has COVID-19 Impacted Workers' Compensation Insurance?

*What Brokers Need to
Know to Better Serve
Their Business Clients*

WHITE
PAPER



COVID-19 has significantly impacted a number of insurance lines, including Workers' Compensation (WC). As a retail broker, it's likely you have addressed some tough pandemic-related questions from your business clients – from liability challenges to claim-handling issues, and everything in between.

The fact is, no one saw the pandemic coming or had time to prepare for what lay ahead. But as we welcome in a new year, it's important to understand what your business clients are up against so you can help them better navigate this shifting WC landscape while maintaining business continuity. In this white paper, we'll look at the key issues in WC insurance that have developed as a direct result of COVID-19 and what you and your business clients should know moving forward.

CLAIMS COMPENSABILITY AND PRESUMPTION POLICIES

At the start of the pandemic, employers in nearly all industries questioned whether an employee who tests positive for COVID-19 and becomes ill has a compensable claim. Unfortunately, there remains no simple yes or no answer. According to the [National Council on Compensation Insurance](#) (NCCI), WC laws will only provide compensation for "occupational diseases" that arise out of and in the course of employment, with many state statutes specifically excluding "ordinary diseases of life" such as a cold or the flu.

Since the onset of the pandemic, some states have begun to allow exceptions for certain industries where workers are considered essential and may be at high risk for contracting COVID-19 while on the job. Such employees include those working in healthcare, emergency first responders, grocery store workers and delivery services personnel, among others. But despite the ongoing hazardous working conditions and the fact that certain occupational groups

As of December 2020:

- A total of 17 states and Puerto Rico have already acted to extend WC coverage to include COVID-19 as a work-related illness.
- Minnesota, Utah and Wisconsin limit the coverage to first responders and healthcare workers.
- Illinois, New Jersey and Vermont cover all essential workers, while California and Wyoming cover all workers.
- Four states have used executive branch authority to implement presumption policies for first responders and healthcare workers in response to COVID-19, while another four states, including [California](#) and [Kentucky](#), have taken executive action to provide coverage to other essential workers, such as grocery store employees.

Source: [National Conference of State Legislatures](#)

do indeed have a higher probability of exposure, there remains no guarantee that an employee who tests positive for the virus and becomes ill would have a compensable WC claim. The fact is, nearly every state has its own coverage requirements and standards regarding this issue, along with a dedicated WC court system that allows judges to make the final decision on claims and benefits awarded.

According to [the National Conference of State Legislatures](#) (NCSL), a common approach to this problem is to amend state policies so that COVID-19 infections in certain occupations are automatically presumed to be work-related and covered under a WC policy. These “presumption policies” essentially place the burden on the employer and insurer to prove that an employee’s infection was not work-related, and are making it easier for workers to file successful WC claims. As a result, the NCSL reports that employers may begin to experience an increase in lawsuits filed by employees who claim they became infected by COVID-19 due to the negligence of their employer. Moreover, many employers and insurers are becoming concerned that the uptick in presumption policies will likely increase insurance costs for businesses that are already facing financial difficulties as a result of the pandemic.

Rise in Comorbidities and Mega Claims

The pandemic has many health facilities operating at full or limited capacity. As a result, an employee who files a WC claim may likely experience a delay in getting approval for coverage, as well as a delay in getting the medical care he or she needs in a timely manner. In some cases, this delay in care can significantly complicate an already serious health concern, or create multiple health issues that could result in larger and costlier WC claims. The fact is, individuals who have multiple existing health conditions or comorbidities (the presence of one or more additional conditions often co-occurring with a primary condition) are not only at an increased risk for a WC claim, but will also generally take longer to recover from their injuries and are likely to develop complications. Unfortunately, this trend could increase claim frequency and severity, including costly mega claims.



The average cost of WC claims that have a direct connection to a comorbid condition is nearly double that of comparable claims that don’t involve comorbidities.

Source: [The National Council on Compensation Insurance](#)

Key Changes in Work Comp Labor Trends

As employers work to comply with state restrictions, they are having to find solutions that enable them to continue operations, while at the same time promoting safety for their employees. In some cases, employers are reevaluating job descriptions and shifting the roles of employees.

For example, a restaurant that closes its dining room to customers but remains open for delivery may have existing workers take on new roles, such as food delivery. This change in duties for employees who lack the proper training or experience can create new WC exposures for a business and, depending on the job, may also change the WC class code of the worker.

According to the NCCI, situations in which a change in classification could occur include when the employer’s operations have changed to a different classification or an employee’s occupation has changed to a different classification that may be applied to the employer’s policy.

SOURCE: [THE NATIONAL COUNCIL ON COMPENSATION INSURANCE](#)

Another recent labor trend is the increased number of employees who continue to work from home, as businesses strive to maintain productivity while limiting employee exposure to the virus. However, working remotely can expose a company to additional and often more severe WC risks, mainly because the business doesn't have control over the employee's work environment. For example, an in-office setting will likely have an ergonomically correct workstation – something that employees working from home often lack as they create makeshift workstations out of their spare bedroom furniture, family dining table or the living room couch. According to the [Centers for Disease Control and Prevention \(CDC\)](#), the most common WC claim issue involving the lack of ergonomic workstations is musculoskeletal disorders, and is a key contributor to high WC claim costs to employers.

This year, an estimated 26.7% of all employed persons will continue to work from home as a result of the pandemic.

SOURCE: [U.S. BUREAU OF LABOR STATISTICS](#)

As the COVID-19 vaccine becomes more widely available, considerations on state requirements – including whether employers can mandate that employees become vaccinated – will come into play. Businesses must prepare to ensure their safety policies and procedures are compliant with the current state, local, and CDC guidelines.

Source: [Paychex Inc.](#)

“Employees who aren't performing their regular jobs in their typical environment can be subject to injury occurrences in the home that include trips and falls, and can even exacerbate existing conditions such as carpal tunnel and back and neck issues,” Todd Pollock, Senior Vice President

of Workers' Compensation at Worldwide Facilities, said. *“Moving forward, it will be increasingly difficult for employers to defend against these types of claims as they determine if the injury occurred while the employee was actually performing work-related duties or when engaged in a household task.”*

As employers continue to integrate work-from-home policies, they must understand that WC obligations still apply for employees working off-premises. And because compliance rules for these types of arrangements are going through a number of updates, it's critical that your clients stay informed.

Stricter Workplace Safety Initiatives Aimed at Reducing Work Comp Claims

In 2020, President-elect Joe Biden advocated for the creation and enforcement of an Emergency Temporary Standard regarding COVID-19. According to research conducted by the regulatory and compliance experts at [Paychex Inc.](#), current Occupational Safety and Health Administration (OSHA) language on COVID-19 violations is not specific and enforcement has varied widely across the U.S. As of January, California, Michigan, Oregon and Virginia have already implemented emergency temporary standards, and a new national standard will likely result in the adoption of similar requirements for employers, including the development of an exposure control plan, stricter implementation controls and records maintenance, and the effective training of employees – all of which can help reduce WC claims. Once the new standards are enacted, businesses should expect greater enforcement and accountability.

Take Note!

Regulatory expectations for 2021 include individual states continuing to respond to COVID-19 by issuing directives and proposing legislation impacting WC. For a weekly state-by-state updated report on WC regulatory and legislative activity, your clients should refer to the [NCCI COVID-19 Regulatory and Legislative Activity Report](#).



Help Your Business Clients Better Mitigate Work Comp Risks in 2021

By partnering with your business clients early in the year, you can help them become more proactive in managing their COVID-19-related WC risk exposures by doing the following:

- ✔ Developing and implementing workplace health and safety measures to better protect employees from exposure to COVID-19 and lessen the likelihood of related claims.
- ✔ Recommending a regular review of [OSHA online guidelines](#) regarding worksite safety and wellness management, as well as a review of changes/updates from their respective state's WC board and the CDC.
- ✔ Reviewing WC policies to help clients better understand how their coverage may or may not respond to pandemic-related claims and to provide any applicable policy recommendations.

CONCLUSION

The COVID-19 pandemic has challenged, and will continue to challenge, your business clients in the new year. The best line of defense is to stay informed regarding industry and legislative changes, understand the impact these issues can have on your clients, and work to help them respond appropriately so they can make adjustments to their WC programs to better reduce claim frequency and severity.

At Worldwide Facilities, we have more than 50 years of expertise in the Worker's Compensation insurance space, knowledgeably serving a broad spectrum of businesses and industries for operations with debit and high-experience mods, new ventures with no mods and multistate exposures, as well as excess markets for companies that self-insure. No matter how challenging the environment, we have the market reach and strong carrier relationships to help our retail broker partners find the coverage and special programs that best fit their clients' changing needs.

To learn how Worldwide Facilities can help, please contact a Worker's Compensation specialist.

TODD POLLOCK

Senior Vice President, Workers' Compensation
(508) 625-3547
tpollock@wwfi.com

DANA KELLY

Vice President, Broker
(508) 625-3550
dkelly@wwfi.com



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**Worldwide
Facilities, LLC**

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HEADQUARTERS

725 S. Figueroa Street, 19th Floor
Los Angeles, CA 90017
(213) 236-4500

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