



WEST VIRGINIA INSURANCE BULLETIN

No. 21 – 01

Insurance Bulletins are issued when the Commissioner renders formal opinions, guidance or expectations on matters or issues, explains how new statutes or rules will be implemented or applied, or advises of interpretation or application of existing statutes or rules.

► Workers' Compensation Claims for COVID-19 ◀

Every employee of an employer that is required to insure for workers' compensation liabilities in this state who has sustained an occupational injury in the course of and resulting from his or her covered employment has the absolute right to file a claim for workers' compensation benefits. See W.Va. Code § 23-4-1. In this context, the term occupational injury includes an occupational disease. Every employee who sustains an occupational injury must immediately, or as soon thereafter as practicable, give written notice of the injury to his or her employer. See W.Va. Code § 23-4-1a. Generally, employees have six (6) months from the date of injury, or death, to file a workers' compensation claim for an occupational injury. See W.Va. Code § 23-4-15(a). However, it is recommended that employees file their workers' compensation claim as soon as possible after reporting the injury to their employer. Specifically, pursuant to W.Va. Code R. § 85-1-3.1:

Immediately after sustaining an occupational injury, a claimant should (1) seek necessary medical care; (2) immediately on the occurrence of the injury or as soon as practicable thereafter give or cause to be given to the employer or any of the employer's agents a written notice of the occurrence of the injury; and (3) file a workers' compensation claim or request that one be filed on his or her behalf.

Further, it is the duty of every employer to report every injury, including claims of occupational disease, sustained by any person in its employ to its workers' compensation insurer within five (5) days of the employer's receipt of the notice of an employee's desire to file a workers' compensation claim or an employee's report of injury. See W.Va. Code § 23-4-1b and W.Va. Code R. § 85-1-4. Upon receipt of a properly filed workers' compensation claim, the insurer or self-insured employer is to use due diligence to timely investigate the claim pursuant to West Virginia law to determine compensability.

The COVID-19 pandemic has raised unique concerns and questions regarding the filing and compensability of workers' compensation claims. Insurers and self-insured employers will investigate workers' compensation claims for COVID-19 to determine whether the injury occurred in the course of and resulting from the employee's covered employment, which would necessarily include a determination of the cause and place of the injury. Employers may not conduct causation investigations or other screening of employees' COVID-19 claims prior to reporting the claims to their workers' compensation insurers or, in the case of self-insured employers, prior to processing the claim.

Employers and healthcare providers must cooperate with those investigating workers' compensation claims for COVID-19 by providing medical records or other necessary information to the insurer or the self-

insured employer in a timely manner so that investigations are not unnecessarily delayed. However, workers' compensation claims for COVID-19 should not be summarily refused, denied or rejected outright due to the nature of the injury alone without proper investigation.

Importantly, employers may not advise employees that they cannot file workers' compensation claims for COVID-19 and/or threaten to retaliate or discriminate against employees who do file workers' compensation claims for COVID-19. W.Va. Code § 23-5A-1, specifically provides that "no employer shall discriminate in any manner against any of his present or former employees because of such present or former employee's receipt of or attempt to receive [workers compensation] benefits ..." Additionally, W.Va. Code § 23-5A-3 provides that it is a discriminatory practice to terminate an injured employee while the injured employee is off work due to a compensable workers' compensation injury and is receiving or is eligible to receive temporary total disability benefits, unless the injured employee has committed a separate dischargeable offense; and W.Va. Code § 23-5A-2 prohibits an employer from decreasing or cancelling an employee's medical insurance benefits while an employee is receiving workers' compensation benefits for a temporary disability. Violations of these provisions are enforceable by an employee in any Circuit Court having jurisdiction over the employer.

When a workers' compensation claim for COVID-19 is filed, the insurer or self-insured employer shall properly investigate the claim and issue a timely written decision on compensability. It is not likely that every workers' compensation claim for COVID-19 will be ruled compensable after investigation. However, if an employee disagrees with the decision made, the employee may protest the decision to the Workers' Compensation Office of Judges within 60 days of receipt of the written decision pursuant to W.Va. Code § 23-5-1, *et seq.*

Finally, employers should be reminded that W.Va. Code § 23-2C-15(c) mandates that "every employer shall post a notice upon its premises in a conspicuous place identifying its workers' compensation insurer. The notice must include the name, business address and telephone number of the insurer and of the person to contact with questions about a claim." Additionally, the Insurance Commissioner maintains a Coverage Verification System (CVS) that is accessible through its website at www.wvinsurance.gov/employer-coverage. The purpose of the CVS is to assist consumers in determining whether an employer has workers' compensation insurance in this state on a specific date.

If a claimant needs assistance in identifying an employer's workers' compensation insurance policy, or determining whether an employer was self-insured or uninsured on a specific date, he or she may contact our Employer Coverage Unit at (304) 414-0539 or OICEmployerCoverage@wv.gov. Consumers needing other assistance may contact our Consumer Services Division at 1-888-TRY-WVIC or OICConsumerServices@wv.gov.

Issued: January 19, 2021

