

Fine, Olin & Anderman^{LLP}

Workers' Compensation & COVID-19

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FOA is proud to be CSEA's *only* endorsed, statewide law firm for all members needing help with:

- Workers' Compensation (WC)
- Personal Injury (PI)
- Social Security Disability Benefits (SSDB)
- Veterans' Disability

We have been working exclusively with union labor since 1963.

Our relationship with CSEA began over 25 years ago and is stronger than ever.

What is Workers' Compensation (WC)?

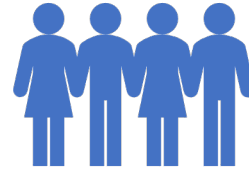
A statutory benefit, paid for by your employer, for New York State workers that experience workplace injuries or job-related illnesses



Who is eligible for WC?



Any worker who is determined by the Workers' Compensation Board as an employee



Employees of counties and municipalities



Nearly all organized volunteers such as members of fire and ambulance corps

Workers' Compensation is NOT a Lawsuit!

- It is administrative proceeding... However, it is adversarial!
- Fault is NOT an issue!
- An employer may not fire or otherwise discriminate against an employee because of a workers' compensation claim!



Defining a Work-Related Injury

Accident

- An event arising out of and in the course of employment

Occupational Disease

- Disabilities of a chronic nature that arise over time, out of and in the course of employment

Workers' Compensation & the Coronavirus (COVID-19) in New York State

- The Board's position regarding COVID-19 cases has evolved over time.
- In the past, for a case to be established, the Board required a medical report that met the following criteria:
 - A diagnosis of a medical condition
 - A history of a work-related accident
 - An opinion regarding causal relationship
- The Board clarified its position regarding COVID-19 cases in a decision called Matter of American Airlines which was decided on 9/11/2020. It changed the course of the WC Board's approach to COVID-19 cases...

A WC Change: Matter of American Airlines

In this decision, the WC Board set forth the following:

1. Generally, these cases will be treated as accidents as opposed to occupational diseases. The major difference between an "accident" and an "occupational disease" is that the time to file and give notice are different.
2. It is NOT necessary that the medical opinion regarding causal relationship be 100% certain. The burden of proof is a reasonable probability. It is permissible to provide lay testimony along with a medical opinion regarding the prevalence of COVID-19 at the workplace.
3. Recognizing that it can be difficult to prove that a worker contracted COVID-19 from work, the Board set forth a standard regarding the level of evidence needed in order to have the case established.
4. Must show that COVID-19 was "prevalent" in the workplace. Must show evidence of significantly elevated hazards of environmental exposure that are endemic to or in the workplace which demonstrates that the level of exposure is "EXTRAORDINARY".
5. The nature and extent of work activities must include SIGNIFICANT contact with the public and/or co-workers in an area wither COVID-19 is prevalent.
6. Examples of cases where a worker could show prevalence would be essential workers such as:
 - Nurse contracts COVID-19 while working in a hospital
 - Cashier working at a supermarket

FAQs: Workers' Compensation & COVID-19

1. If a worker is diagnosed with COVID-19, can they file for workers' compensation benefits?

- Yes. Employees who contracted COVID-19 at work can file a claim.

2. Can a worker file a claim if they have been exposed to Coronavirus at work but have not been diagnosed with COVID-19?

- Yes. A worker can file a claim without a diagnosis, but these cases will be more difficult to establish. A positive COVID-19 test result or medical report detailing the symptoms makes for a stronger case. They must also prove a direct exposure at work or a prevalence of positive cases at the workplace.

3. Is it a compensable case if a worker at a hospital was in contact with COVID-19 patients and then tests positive for COVID-19?

- Yes. In that situation, the worker should be able to prove that the coronavirus was prevalent in the workplace.

4. If a telecommunications equipment installer contracts COVID-19 as a result of performing work, is this considered a workplace accident?

- Yes. Generally, any worker exposed to the coronavirus in the course of their employment has a claim for an accident. The worker has 30 days from the exposure to notify their employer.

FAQs: Workers' Compensation & COVID-19

5. If a worker only has a positive test, would this be sufficient to file a claim?

- Yes, but they must be able to prove that COVID-19 was contracted resulting from their work activities by either showing a direct exposure or prevalence of positive cases.

6. If a worker suspects they have contracted COVID-19, what should they do to file for workers' compensation?

- A claim must be filed with the NYS Workers' Compensation Board within two years of the date of accident or in the case of an occupational disease, two years from the day they knew or should have known the condition was work-related. The worker should keep a record of the details of the exposure, such as dates and locations. The worker must also notify their employer within 30 days of the accident or two years in the case of an occupational disease.

7. Under the Workers' Compensation Law, what kind of benefits are workers who are diagnosed with the coronavirus entitled to?

- Medical benefits and a wage replacement benefit that is up to 2/3 of their average weekly wage. However, the appropriate statutory maximums will apply regarding the wage replacement benefit.

8. What should one do if they are not sure how to file for workers' compensation or there are questions?

- Contact *FOA Law* at 1-800-522-9001 or visit our website at www.foalaw.com

Keep in Mind

- 1) A medical report providing a diagnosis of COVID-19 is NOT necessary. Providing a positive test result or a medical report listing your symptoms may be sufficient.
- 2) If you have contracted COVID-19, your case can be established if you can show either a direct exposure **or** that there are significantly elevated hazards of exposure at the workplace.
- 3) If you are claiming a direct exposure, you must be able to provide information regarding the details of the exposure such as location and date.

Keep in Mind

- 4) In a claim for an accident, you have 30 days from the exposure to notify your employer. This 30-day requirement may be waived if your employer was not prejudiced by the lack of timely notice.
- 5) You must file a claim with the NYS Workers' Compensation Board within two years of the date of accident.
- 6) You may be entitled to other benefits provided under Federal or New York State laws for loss of salary or sick time.
- 7) This information is based upon the current state of the law and is subject to change and depends on the exact circumstances of each employee.

Why File for Workers' Compensation?

1. Costs you nothing to file
2. Your health insurance will *not* pay medical costs for workplace injuries
3. With a few exceptions, workers' compensation is the *only* remedy against employer
4. You do *not* have to lose time from work to file a claim
5. Your injury may re-occur and if your case was not established, you may not be able to get workers' compensation
6. Each new injury should be filed as a new claim



WC Benefits

- Medical benefits
- Cash payments for loss of earnings
- Mileage
- Section 32 Agreements
- Death benefits
- Awards for permanent injuries

Workers' Compensation Benefits

Medical Benefits

- Related medical expenses are paid

Cash Payments for Loss of Earnings

- Cash payments from first day of injury when out of work for 2+ weeks
- Cash benefits are based on up to 2/3 of your average weekly wage

Workers' Compensation Benefits

Death Benefits

- Surviving spouse and/or minor children are entitled to weekly cash benefits: up to 2/3 of deceased worker's average weekly wage
- Payments until spouse remarries
- If there are children, payments until youngest turns 18 or 23 if full-time student
- Funeral expense reimbursement

Workers' Compensation Benefits

Mileage

- Reimbursement for transportation costs to/from:
 - Doctor
 - Testing facility
 - Physical therapy

Section 32 Agreements

- Permits a claimant and the insurance carrier to settle a claim for a lump sum payment

Cash Payments for Loss of Earnings Maximum Weekly Benefits

Year	Maximum Benefit
July 1, 2015	\$844.29
July 1, 2016	\$864.32
July 1, 2017	\$870.61
July 1, 2018	\$904.74
July 1, 2019	\$934.11
July 1, 2020	\$966.78



WC Process

1. Report your workplace injury/illness
 - 30 days notice & 2 years to file
2. Must see WC doctor and have doctor submit C-4 form to WC Board
3. Complete C-3 form and submit to WC Board to file for benefits
4. Obtain legal representation

FOA will...



Submit the initial C-3 form



Manage the filing process



Provide legal representation at hearings



No attorney fee unless you have received a cash award from a Workers' Compensation Judge



Attorneys for
Workers™

FOA is dedicated to the education of workplace safety, workers' compensation, and disability rights.

- **Endorsed by CSEA for 25+ years**
- 55+ years of serving the legal needs of union members and their families
- Centrally located throughout New York State - 10 office locations
- Dedicated legal teams
- Complimentary legal consultations
- All cases reviewed... FOA never turns down a legitimate case!

1-800-522-9001
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