



COVID AND WORKERS COMPENSATION Q&A

from the PEF TELE-TOWN HALL aired 4/23/20 and 4/25/20

Message from PEF President Wayne Spence:

We recently held two tele-town halls to PEF members with information on Workers Compensation and COVID. Using a panel of experts, we provided training on what you need to know, and how to file a claim for a work-related COVID-19 exposure or illness.

It is vitally important for PEF members to document their on-the-job exposures to COVID-19 as they are happening. We learned some key lessons after the 911 World Trade Center disaster about the importance of documenting exposures, even if there was not a specific injury at the time. Legislation was passed years after the tragedy that provided additional workers compensation benefits to workers who were exposed. However, many workers had not reported their exposures at the time, making it very hard for them to claim benefits later when they were eligible. We want to make sure that doesn't happen again. If you have additional questions please use the Contact Us form on the PEF Website. The call was recorded and is posted on the PEF website, along with factsheets and other resources from PEF, and from the Workers Compensation Attorneys who were on the panel. Thank you, and stay safe.

Workers Compensation and COVID resource documents are available on the PEF website in the section <http://www.pef.org/covid-19>

1. What information is available from my union?

- A.** If you or one of your members has an exposure, or becomes ill from a workplace exposure, contact your Union Steward, Council Leader, Field Representative, Regional Coordinator or the PEF H&S Department for information and support. If you don't know who that is, call the main PEF number at 800-342-4306 or look on the PEF website for contact information at www.pef.org.

On the website, you will find information on your different rights and benefits under the Workers Compensation law, the PEF /NYS Contract and Civil Service Law benefits including:

Workers Compensation and COVID factsheet – provides an overview of workers comp and COVID, and the additional steps needed to file a claim for workers compensation following a COVID exposure or illness

Exposure Reporting Form - you may use this to use to track and document your COVID-19 exposures. If you don't have a specific exposure, you can fill it out and then note the dates and hours you worked. You may use this form for your Workers Compensation claim. Make sure to keep a copy of the form, give one to your workers compensation attorney, and if you'd like you may also send a copy to the PEF H&S Department at

HealthAndSafety@pef.org. **NOTE** that giving a copy of the form to your workers compensation attorney or to the PEF H&S Department **DOES NOT file a workers Compensation Claim for you**. You still need to go through the usual steps to file a claim.

Steps to take to File a Claim - this is for any workers compensation claim and walks you through the process

Q&A on your contractual and civil service rights – you have additional rights and benefits under your contract and the Civil Service Law

COVID-19 (Coronavirus) Health and Safety Report – You may use this form to notify administration that in your professional opinion an assignment is unsafe due to lack of proper PPE or other exposure control measures. You may also give a copy of this form to your workers compensation attorney as further evidence of your exposure

FAQs from Workers Compensation Attorneys from The Law Firm of Alex Dell, Grey & Grey, LLP, and Fine, Olin & Anderman – Each has developed useful information on COVID and Workers Compensation.

Panelist contact information – for the 3 expert Workers Compensation Attorneys who participated on the panel for the Workers Compensation and COVID training. These law firms have offices all across the state. Because the COVID claims will be difficult to navigate, we are recommending you contact a workers compensation attorney to help you with your claim. These three firms have agreed to take every PEF case, and we appreciate that. You do not have to use them, you may have a trusted Workers Comp attorney you have used before, but we want to make sure that PEF members across the state can count on having a comp attorney available to them.

Resource list – websites and resources

2. Why should I file for workers compensation?

A. It does not cost you anything.

You do not pay for copays, medical care, or prescriptions. You are also reimbursed for travel and medical devices related to you injury/illness.

You don't have to stop working to receive full WC medical benefits. Your WC payments and medical care may continue even if you get a new job, retire, or leave the state.

You are entitled to WC no matter whose fault it was.

Your injury may occur again.

3. Why should I file for a COVID exposure or illness?

A. The employer has a responsibility to provide a safe workplace free of recognized hazards. In New York State, if a worker is injured or made ill on the job then they are

entitled to W Comp. A great many PEF members were deemed to be essential workers, and continue to report to work and are at higher risk of contracting the virus and becoming ill. It is unknown what the long-term effects of COVID-19 will be. If your case is compensable, you will have lifetime medical coverage for your COVID related health problems.

There are also survivor benefits under the worker's compensation law and the PEF/NYS contract should that workplace exposure lead to death.

4. I am out on Quarantine for an exposure, but I am not sick - should I file for Workers Compensation?

- A.** During your Quarantine for up to 14-days you are receiving your full pay. If you file for WC during that period, you will be put on Workers Compensation Leave and will have to charge accruals for the first 5 days. After that, if your agency does not controvert your claim you will be on Leave Without Pay pending a determination by the Workers Compensation Board. At best you might receive a maximum pay of 60% of your pre-disability gross between the statutory benefit and the contractual Supplemental pay. Very likely, the NYSIF and your agency will controvert the claim, and you would have to charge accruals the whole time you are out. Our advice would be to wait to file a Comp claim until after that 14 day period.

5. Am I covered for an exposure or illness from COVID-19?

- A.** If you had a workplace exposure or you become ill from that exposure, you are entitled to file a claim for workers compensation. Under the current workers compensation system, Healthcare workers will likely have an easier time establishing that their illness was due to a specific workplace exposure. Other workers, however, may have a more difficult time pinpointing the source of their exposure. That is why it is vitally important for PEF members to document their on-the-job exposures to COVID-19 AS THEY ARE HAPPENING.

Even if you cannot pinpoint your exact workplace exposure, your record of potential exposures can be used to support your claim. And it is important to write down those details while they are fresh in your mind.

6. What do I have to do?

- A.** It is vitally important that workers document their exposures as they happen, even before they file a workers compensation claim. Use the PEF Exposure Report Form and keep good notes

Save any correspondence and record the dates, times and who you spoke with, especially if you were contacted for an exposure trace by the Health Department and your employer.

File an incident report if you have a workplace exposure, using your agency's incident reporting forms if possible, or send an email to your supervisor.

Report to your supervisor if become ill from a workplace exposure to COVID-19. Do so within 30 days of the onset of illness. You should also contact the Accident Reporting System (see "Steps to Take" factsheet).

Contact your medical provider. Have them provide you with medical documentation diagnosing your illness as COVID-19 and that it may be related to your work.

File a C-3 Employee Report of Workers' Compensation - you may also file it online at www.WCB.ny.gov/content/main/forms/c3.pdf

Consult with a Workers Compensation Attorney. You may look for one in your area using the NYS Injured Workers Bar Association link below.

Benefits beyond Workers Compensation – Retirement, unemployment, Social Security Disability (OSC site). You may have claims in addition to a comp claim.

Disability Retirement through the NY State and Local Retirement System (NYSLRS) members who become seriously ill from the COVID-19 virus may wish to file for retirement in order to provide a continuing pension benefit to their beneficiary if they were to die, rather than the one-time in-service death benefit.

Preplan by having a Durable Power of Attorney (you can get on the OSC website) to make decisions if you become incapacitated. It may make the difference between getting a

This is a matter of estate planning. A safety net for your family. If the member dies after applying, the disability retirement application would be effective upon death. If the member recovers, he or she would be allowed to withdraw the disability retirement application before it is approved.

You should contact the NYSLRS for more information:

<https://www.osc.state.ny.us/retire/members/disability-benefits.php>

Keep in touch with your Council Leader, Steward and Regional Coordinator. We will want to know how you are doing, and can provide additional information and support. If you don't know who that is, call the main PEF number at 800-342-4306 or look on the PEF website for contact information at www.pef.org

7. If I get sick with COVID-19, is it an accident or an illness? And why does that matter?

- A.** An "accident" is generally considered to be an illness or injury that arises from a specific work-related event or exposure, over a reasonably definite period of time.

An “occupational disease” is an injury or illness that is associated with the nature of the occupation – a condition that many people in that line of work are prone to develop. Why does it matter? In this case, the most important thing to know is that you want to make sure that you have satisfied any of the time frames needed regardless.

To file for an accident, the claimant must notify the employer within 30 days, and file a claim within two years of the date of the accident. For COVID that would be the date of the exposure – not the illness. For an occupational disease, the claim runs from the “date of disablement,” which the Workers Compensation Board may designate as the date of the initial diagnosis, the last day of work, or the date the worker learned of the connection between their work and the illness.

Under the current workers compensation system, Healthcare workers will likely have an easier time establishing that their illness was due to a specific workplace exposure. Other workers, however, may have a more difficult time pinpointing the source of their exposure.

Health care workers may have more flexibility in establishing COVID as an occupational disease. But others including non medical positions and other workers it may be treated as an accident.

To complicate matters more, OSHA just released a guidance document that changed how workplace exposures are reported by employers – that in most cases limits COVID exposure reporting requirements to healthcare, corrections, and emergency response (e.g., emergency medical, firefighting, and law enforcement services). We believe this will lead to controverting (denial) of exposure claims by workers outside those sectors.

We are actively working to change that. PEF has joined with the AFL-CIO and other worker advocate groups to fight for worker’s compensation benefits, and broaden the coverage for occupational exposures to COVID-19 so workers are fairly compensated for putting their health at risk on the job.

8. How do I document my exposure? Why is that information necessary?

- A.** PEF has developed a COVID-19 Exposure Tracking Form, which along with a factsheet on Workers Compensation for COVID is posted on our website. Documenting your exposure creates a record for a future Workers Compensation claim should you become ill from your exposure.

If you do not have a specific exposure, you will want to fill out the form as completely as possible, and note the dates of your potential exposure. You do not have to pinpoint the exact time / date of the exposure. But be sure to include any details and identifying symptoms you saw. Give as many details as you can, including if people in your family or home were not sick. You may not have witnesses to

corroborate your exposure, so the more details you can give the better.

9. What happens if I die from my exposure before I file a claim?

- A.** We pray that does not happen. But if you do then additional benefits may be available under the NYS Workers Compensation Statutory Death and Survivor Benefits in this order:

Spouse and dependent children (children under 18, under 23 and in school, totally blind or disabled. Followed by totally blind or disabled dependent of any age, dependent brothers, sisters and grandchildren under 18, then dependent parents. Awards are based on 2/3 of the workers wages, dependency payments and funeral expenses. If there are no dependents of any kind there is a \$50,000 to the parents and if parents pre-deceased, then to the estate.

A death claim is independent of a Comp claim filed on exposure or illness. The Comp claim belongs to individual. The death claim belongs to those who would be a beneficiary, and does not depend on if the original claim was filed, or was successful. It also does not have to be filed close in time to the exposure or illness.

There are also benefits for the family of a deceased member who has an established death claim including health insurance coverage and an accidental death benefit payment and SUNY tuition for dependent children through Article 11 of the PEF NYS Contract,.

10. Do I need an Attorney?

- A.** You do not need to retain an attorney for your workers compensation claim. However, because of the complexities of a COVID-19 exposure and illness claim, you may want to consult with one. While PEF cannot represent you in a comp claim, there are a number of well qualified Workers Compensation Attorneys who can. You do not pay the workers comp attorney up front. Any fee is set by the Workers Compensation Board, and is usually between 10-15% of the award, capped at 20%. If there is no monetary award and just medical benefits, then no payment is made to the attorney.

We expect that most COVID cases will be controverted. The employer and the insurance company have a representative at every hearing, and you should have one too. A list and contact information for the attorneys is posted on the PEF website.

Please see the Article 13 Q&A factsheet for more information on your workers compensation and contractual rights and benefits. If you have additional questions please use the Contact Us form on the PEF Website <http://www.pef.org/covid-19>