

BULLETIN: LONG COVID: WORKERS' COMPENSATION COVERAGE AND BENEFITS

In the spring of 2020, New York faced a fast-moving health crisis with the onset of COVID-19 and responded quickly with all the means at its disposal. As the winter of 2022 approaches, New York is facing a slow-moving health crisis, but has brought none of the urgency that is needed to address the problem. As a result, workers who contracted COVID must take action to protect themselves – and the data on that front is alarming.

Nearly five million New Yorkers have been diagnosed with COVID-19 (the real total is almost certainly much higher). Over half of the cases involved working adults, and research suggests that about one in five of them contracted COVID as the result of a workplace exposure. This means that between 300,000 and 500,000 New York workers could and should have filed for workers' compensation for work-related COVID. Shockingly, the state Workers' Compensation Board has received less than 40,000 claims and has compensated less than 4,000 workers.

Meanwhile, there is increasing scientific evidence that even mild cases of the COVID virus can result in the long-lasting symptoms and chronic medical problems that are often described as "long COVID." Workers who filed and succeeded in claims for work-related COVID will be covered for wage loss and

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medical treatment by the workers' compensation system. Those who did not will be left unprotected.

How did we get here? There are several reasons. Most important is the fact that most workers never received adequate information about workers' compensation coverage for work-related COVID. In some cases, the availability of other pandemic-related benefits discouraged workers from filing for workers' compensation – which may prevent them from accessing benefits if they develop long COVID in the future.

When does workers' compensation cover COVID? Workers' compensation will generally cover COVID in three situations: (1) when someone has a specific workplace exposure and develops symptoms or tests positive a reasonable time after that; (2) when someone works in a job where they come into regular contact with members of the public or work placed them in a COVID-prevalent environment (such as an outbreak in an office or school); or (3) if they are a healthcare worker in a facility where there are patients with COVID.

When should I file? In most cases, COVID is treated as an "accident." For accident claims, the employer must be notified within 30 days of the date of the accident and the claim must be filed with the Workers' Compensation Board within 2 years. Although late notice to the employer may be excused, if the claim is not filed within two years then all benefits may be denied. **The time to file a claim runs from the original COVID diagnosis. If the worker does not file for the**

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original COVID infection, a claim for long COVID will be denied – coverage for long COVID depends on the original claim being timely filed.

Can I still file now? If your original COVID diagnosis was less than two years ago, then you can and should file immediately. If your original COVID diagnosis was more than two years ago, then your claim may be time-barred unless you can show that the employer paid you wages or paid medical bills with acknowledgement that your COVID was work-related.

What if I had COVID more than once? If both infections were within the past two years, then you can and should file both claims. Even if the first infection was more than two years ago, if the later infection was within the last two years, you can still file for the later infection.

How do I file? You must file a Form C-3 with the New York State Workers' Compensation Board. The form is available for paper or online filing at the Board's website, or you can contact Grey & Grey at www.GreyAndGrey.com or email us at info@GreyandGrey.com.

What are the benefits? Workers' compensation provides benefits for lost wages if someone is either totally or partially disabled from work. Depending on the case, those benefits can be paid for weeks, years, or even for life. Workers' compensation also provides medical coverage for work-related injuries – and that also lasts for life.

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What about long COVID? There are many different diagnoses and conditions that fall under the heading of long COVID. In some cases it involves brain fog or other psychological or cognitive problems. In others it is a spike in blood pressure or diabetes. Still others involve difficulty with speaking or even breathing. In order to make a claim for a medical problem that falls under the heading of “long COVID,” the worker must first establish that the original case of COVID was work-related. Then they must produce a medical opinion that the later problems were a result of the original work-related COVID infection. If the Board accepts that medical opinion, then any wage loss and medical treatment related to long COVID will be covered under the original claim. **Again, it is important to remember that the original COVID claim must be filed and proven first – a diagnosis of long COVID does not restart the clock on the time limits for filing a claim.** On the other hand, once the original COVID claim has been established, a claim for long COVID can be added to the original claim at any time.

What if my case was closed? A workers’ compensation case can be reopened to claim money benefits for 18 years from the date of the accident, and can be reopened for medical treatment for life. If the original COVID claim was established and the case was closed, and the worker later develops additional medical problems as a result of their COVID diagnosis, they can apply to reopen the case to add the new conditions to the claim.

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Do workers really win these cases? In a word: yes. The vast majority of claims that are filed for work-related COVID are found in favor of the injured worker. Secondary (or consequential) problems that result from COVID are also routinely established by the Workers' Compensation Board. Workers who get good legal advice and file claims are overwhelmingly successful. Those who do not file claims are left without protection against the consequences of long COVID.

Are there other benefits? In some cases, Social Security Disability, long term disability, or disability retirement benefits are available to workers who suffer with long COVID and cannot work.

Where can I get help? Call any of our six offices, find us on the web at www.GreyAndGrey.com, or email us at info@GreyAndGrey.com for more information and to discuss your particular situation.

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