

LONG COVID:
**EDUCATION ON WORKERS' COMPENSATION
 COVERAGE FOR PEF HEALTH & SAFETY OFFICERS**

Joe Cavalcante, NYSWCB Advocate for Injured Workers
 Robert Grey, Grey and Grey
 Katie Vorwald, PEF Director of Field Services

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1

Our Agenda


- ▶ Workers' compensation benefits
 - Lifetime medical care
 - Lost wages
 - Fatality
- ▶ Process to report incident and file a claim
- ▶ Define Long COVID
- ▶ Explore low claim-filing rates for work-related COVID
- ▶ Find solutions to help educate workers about WC benefits for COVID
- ▶ Overview of Available Benefits and Issues for PEF Members

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2

**Workers' Compensation Benefits and
 System Overview**

Joe Cavalcante
 NYSWCB Advocate for Injured Workers



**Workers'
 Compensation
 Board**

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3

Workers' compensation: Your rights

- ▶ Workers' compensation is a no-fault insurance system
- ▶ Employers must provide this insurance for workers in the event of an on-the-job illness or injury
- ▶ Employees do not contribute to the cost of this insurance
- ▶ If you're injured or made sick at work, you're entitled to workers' compensation - no matter how the injury or illness occurred - it is your legal right

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4

The Advocate for Injured Workers

- ▶ Ombudsman - helps workers with difficult and complex claims
- ▶ Handles fatality claims
- ▶ Works with the 9/11 community
- ▶ Reports directly to the Chair of the Board

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5

Workers' compensation after incident

- ▶ Get necessary medical treatment promptly
- ▶ Tell your employer in writing, including ARS, as soon as possible, but no later than 30 days, of the incident
- ▶ File an Employee Claim (Form C-3) with the Workers' Compensation Board as soon as possible, either online, by phone, by mail, or at a Board office
- ▶ Continue receiving necessary treatment
- ▶ Workers have two years after incident to file Form C-3

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6

**Workers' compensation:
Your medical benefits**

- No cost to you for medically necessary treatment of your work-related injury or illness – lifetime benefit
- All medical expenses covered – including tests, hospital visits, medicines, physical therapy, equipment, and home care attendants
- Transportation costs for travel to doctors are reimbursable – use Form C-257

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7

Best practice: Medical care

- ▶ Arrive at all appointments with your
 - WCB case number
 - Insurer case number
 - Insurer name
- ▶ See your doctor every 90 days in cases of ongoing disability
- ▶ Understand your degree of disability

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8

Best practice: Independent Medical Exams

- ▶ You may bring a witness to an independent medical exam (IME)
- ▶ You may record an IME, video and audio
- ▶ You should review the IME report
- ▶ You may claim travel reimbursement to and from an IME
- ▶ Complaints about IME conduct should be made to the Advocate for Injured Workers - Joe

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9

Workers' compensation: Your cash benefits

▶ **Lost wages**

- Two-thirds the average weekly wage; all compensation counts
- New maximum benefit as of July 1, 2023: \$1,145.43
- Current minimum \$150 per week
 - Jan. 1, 2024: \$275 per week
 - Jan. 1, 2025: \$325 per week
 - July 1, 2026: 1/5th NYS average weekly wage
 - *In all instances, if the worker earned less, full wage*

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10

Workers' compensation: Your cash benefits

▶ **Lost wages**

- Temporary benefits if you lose wages
- Time limited benefits for some permanent partial disabilities
- Permanent benefits if you can never work again
- Payments for loss of use of a limb

▶ **Please consider direct deposit**

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11

Workers' compensation: Fatality benefits

- ▶ **Funeral expenses**
 - Up to \$12,500 reimbursed in NYC, LI, Westchester and Rockland
 - Up to \$10,500 reimbursed in the other NYS counties
- ▶ **Weekly payments to surviving family** - spouse, children up to age maximums, disabled or blind dependents
- ▶ If no survivors, \$50,000 is paid to parents
- ▶ If no family, \$50,000 is paid to the estate
- ▶ [Triangle Shirtwaist Factory Fire Memorial](#) provides scholarships
- ▶ [Kids Chance](#) is a nonprofit that also provides scholarships

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12


File claims for COVID-19!

- ▶ Medical reports are key
- ▶ File a positive PCR test result or diagnosis
- ▶ Discuss with provider details of your workplace
 - Public contact?
 - Are masks worn?
 - Is COVID-19 prevalent in the workplace?
 - Any other circumstances the provider should know about potential exposure?
- You can review a fact sheet and a short video at wcb.ny.gov/COVID-19

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13

Details on Long COVID-19 by Robert E. Grey - Grey & Grey, LLP



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360 Main Street Farmingdale, New York 11735 (516) 249-1342	646 Main Street Port Jefferson, New York 11777 (631) 249-1342

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14

When Does WC Cover COVID?

1. Specific Exposure
 - Symptoms/diagnosis develop a reasonable time afterwards
2. Public-facing job
 - High degree of exposure to the public during the pandemic
3. COVID-Prevalent environment
 - Outbreak in the workplace



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15

Consequential Injuries Can Be Added To An Established Workers' Comp Claim

- ▶ Once a workers' compensation case is established for an injury, secondary problems can be claimed as "consequential" injuries.
 - ▶ One typical example is an injury to one knee causing limping that leads to a problem in the other knee. The second knee can be claimed as a "consequential" injury.
 - ▶ Another typical example is the pain, disability and loss of income from a physical injury leading to a consequential mental health problem such as depression, anxiety or adjustment disorder

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16

16

COVID and Long COVID: You Can't Have One Without the Other

- ▶ Long COVID is a consequential injury that results from an initial COVID infection.
- ▶ Long COVID CANNOT be filed as an independent claim; it can only be established as a consequential injury in an existing COVID claim.
- ▶ **TAKEAWAY: IT IS CRITICAL TO FILE A TIMELY CLAIM FOR COVID IN ORDER TO PRESERVE WORKERS' COMPENSATION COVERAGE FOR POTENTIAL LONG COVID.**

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17

17

What is Long Covid? (Mt. Sinai)

- ▶ Post COVID-19 condition occurs in individuals with a history of probable or confirmed SARS-CoV-2 infection, usually 3 months from the onset of COVID-19 with symptoms that last for at least 2 months and cannot be explained by an alternative diagnosis. Common symptoms include fatigue, shortness of breath, cognitive dysfunction but also others which generally have an impact on everyday functioning. Symptoms may be new onset, following initial recovery from an acute COVID19 episode, or persist from the initial illness. Symptoms may also fluctuate or relapse over time.

▶ David Putrino, PT, PhD: Associate Professor of Rehabilitation and Human Performance; Director of Rehabilitation Innovation; Director, Abilities Research Center; Director, Charles Lazarus Children's Abilities Center; Director, Performance360

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18

18

What is Long Covid? (NYSIF)

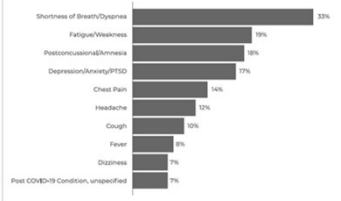
▶ Long Covid is associated with multiple organ systems, tissue damage, and wide-ranging symptoms with various causes that patients often experience simultaneously. The symptoms can vary in terms of duration, type and severity, and include headaches, neurological or cognitive problems, chronic pain, palpitations, shortness of breath, fatigue, depression, and anxiety.

▶ NYSIF: Shining a Light on Long COVID: An Analysis of Workers' Compensation Data, January 2023.

19

What Are The Most Common Symptoms of Long COVID? (NYSIF)

Figure 8: Share of top 10 Long Covid symptoms



20

How Many COVID Infections Result in Long Covid?

- ▶ Almost one-third of all claimants, 31%, suffered or are suffering from Long Covid, though the percentage has fallen sharply over time, inversely correlating with increased vaccination rates.
- ▶ The percentage of Long Covid among female workers (37%) was 11% higher than in male workers (26%).
- ▶ Nearly all claimants with comorbidities or those hospitalized for their initial infection experienced Long COVID.

▶ NYSIF: Shining a Light on Long COVID: An Analysis of Workers' Compensation Data, January 2023.

21

How Disabling is Long COVID?

- ▶ Approximately 18% of claimants with Long Covid—about 5% of Covid-19 claimants—have been unable to return to work for more than one year, with most claimants in this group under 60 years of age.
- ▶ Forty percent of claimants with Long Covid returned to work within 60 days of infection while still receiving medical treatment for Covid-19.
- ▶ Adults over 60 with Long Covid experienced significant difficulty returning to regular work life, with their challenges intensifying with age.

▶ NYSIF: *Shining a Light on Long COVID: An Analysis of Workers' Compensation Data, January 2023.*

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22

How Many COVID Cases Are There?

- ▶ **2.7 million infections** among working age adults (19–64 years) in the first two years of the pandemic
 - ▶ <https://coronavirus.jhu.edu/us-map>
- ▶ **93,867 hospitalizations** among working age adults
 - ▶ CDC: <https://data.cdc.gov/Case-Surveillance/COVID-19-Case-Surveillance-Public-Use-Data-with-Ge/n8mc-b4w4>
- ▶ **6,321 deaths** among working age adults

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23

How Many Cases of COVID Are Likely Work-Related?

- ▶ Between 10% and 30% of COVID infections among working age adults are likely to be work-related
 - ▶ Research by Analysis of New York State workers' compensation (WC) claims data Laskaris, Z., Markowitz, S. "Industry-specific profile of COVID-19-related workers' compensation claims in New York State". *Journal of Occupational and Environmental Medicine (accepted)*.
 - ▶ See also System Failure: Essential Workers and COVID-19 in New York State, Grey, R. <https://secureservercdm.net/166.62.114.250/cd.ca9.myftpupload.com/wp-content/uploads/2021/04/System-Failure-Release.pdf?time=1619533803>
- ▶ 10% would mean there are **272,000** cases of work-related COVID
- ▶ 30% would mean there are **816,500** cases of work-related COVID

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24

How Many Cases of Long COVID Are Likely Work-Related?

- ▶ Between 10% and 30% of the field of 10% and 30% of all COVID cases that are likely work-related.
- ▶ Low end estimate: 2.7 million COVID cases x .10 = 272,000 work-related COVID cases x .10 = 27,200 work-related Long COVID cases.
- ▶ Mid-range estimate: 2.7 million COVID cases x .20 = 540,000 work-related COVID cases x .20 = 108,000 work-related Long COVID cases.
- ▶ High end estimate: 2.7 million COVID cases x .30 = 816,500 work-related COVID cases x .30 = 244,950 work-related Long COVID cases.

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25

How Many Workers' Compensation Claims Were Actually Filed for COVID?

- ▶ Through the end of 2021: 31,673.
 - ▶ Somewhere between one-third of 1% and 1% of the total number of cases of work-related COVID.
- ▶ Only 2% of the deaths among the 6,321 working-age adults who died from COVID in the first two years of the pandemic resulted in a workers' compensation claim
- ▶ Only 1.4% of Nursing Home staff infections resulted in a claim, including only 8 out 111 reported deaths.
- ▶ **QUESTION 1: WHY WERE SO FEW CLAIMS FILED?**

Data from research by Laskaris and Markowitz

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26

What Kinds of Work Resulted In COVID Claims?

- ▶ Public Administration = 145 claims per 10,000 workers
- ▶ Transportation and Warehousing = 117 claims per 10,000 workers
- ▶ Health Care and Social Assistance = 71 claims per 10,000 workers
- ▶ Retail = 28 Claims per 10,000 Workers

Data from research by Laskaris and Markowitz

- ▶ **QUESTION 2: WHAT EXPLAINS THIS FILING PATTERN?**

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27

Who Filed Workers' Compensation Claims for COVID-19?

- ▶ About 87% of the claims were filed by essential workers
- ▶ From 2020 to 2021 the pool of applicants changed and became:
 - ▶ Younger
 - ▶ More male
 - ▶ Less attorney representation
 - ▶ More non-health-care-sector claims

Data from research by Laskaris and Markowitz; See also <https://www.nytimes.com/2021/01/15/nyregion/filipino-nurses-coronavirus.html> and <https://www.nytimes.com/2020/03/01/upshot/coronavirus-sick-days-service-workers.html>

▶ **G&G QUESTION 3: WHY DID THE FILING PATTERN CHANGE?**

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28

What Happened to Workers Who Filed Claims for COVID?

- ▶ 25% received an award
- ▶ Workers with an attorney were 5 times more likely to receive an award than those who were unrepresented
- ▶ What about the other 75%?
 - ▶ Most did not "pursue their claims"
 - ▶ Submit medical evidence
 - ▶ Ask for a hearing

▶ **QUESTION 4: WHY DIDN'T WORKERS PURSUE THEIR CLAIMS?**

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29

What Happens... When Workers Don't File?

- ▶ Costs for COVID that are not claimed or covered by WC are transferred to other benefit programs - union, private insurance, social safety net programs.
- ▶ Long COVID claims are and will be associated with significant medical treatment and costs
- ▶ Claims that are not filed and established as workers' compensation will not be covered in the future, further exacerbating cost transfer from WC to other programs
- ▶ This results in significant loss of coverage and costs for workers with long COVID and their families

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30

**QUESTION 1:
WHY WERE SO FEW CLAIMS FILED?**

- ▶ Lack of knowledge that workers' compensation covers COVID
 - ▶ Lack of visibility of the workers' comp system
 - ▶ Assumption that WC is only for "injuries"
 - ▶ Assumption that they can't meet the burden of proof
- ▶ Disincentives created by other benefit systems
 - ▶ Use of "COVID pay" and other health benefits for short-term illness may have disincentivized filing

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31

**QUESTION 2:
WHAT EXPLAINS THE FILING PATTERN OF COVID CLAIMS BY INDUSTRY?**

- ▶ Degree of Hazard?
 - ▶ Should be the top factor ... but isn't.
- ▶ Union Density
 - ▶ More access to occupational injury information
 - ▶ More access to legal representation
 - ▶ Less fear of retaliation
- ▶ Education
- ▶ Why is Health Care an outlier?

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32

**QUESTION 3:
WHY DID THE COVID-19 FILING PATTERN CHANGE OVER TIME?**


- ▶ Fewer health-care sector claims probably = more male claimants
- ▶ Younger - increased contagiousness of Delta variant vs. Alpha
- ▶ Less attorney representation = increased general knowledge of WC availability

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33

**QUESTION 4:
WHY DIDN'T WORKERS PURSUE THEIR CLAIMS FOR WORK-RELATED COVID?**

- ▶ Complicated forms
- ▶ Technical claim process
- ▶ Lack of clear guidance to workers
 - ▶ Language and literacy barriers
- ▶ Administrative closure
 - ▶ Lack of outreach/notification to the worker
- ▶ Decisions issued without a hearing
 - ▶ Lack of effective communication with the worker



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34

How Can We Reach Workers More Effectively?

- ▶ Improve Visibility of the System and Benefits
 - ▶ Presumption bill?
- ▶ Outreach
 - ▶ Employer-based notice to workers in at-risk industries
 - ▶ Public Service Announcements (like the WTC registration campaign)
 - ▶ Contact workers who applied for other COVID benefits

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35

How Can We Better Protect Workers?

- ▶ Reopener Legislation
 - ▶ To allow time-barred workers to file
- ▶ Improve the System
 - ▶ Reduce technical claim filing requirements
 - ▶ Hold an initial hearing in every case
 - ▶ Provide better access to medical specialists
 - ▶ Approve treatment for COVID and long COVID by non-WC-authorized doctors at widely accepted reimbursement rates
 - ▶ Increase resources via the NYS Occupational Health Clinic Network


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36

Long COVID And The PEF Contract

- ▶ Article 13 of the PEF/State Agreement - Supplements WCL Benefits
 - ▶ Waiting periods
 - ▶ Use of leave accruals
 - ▶ Supplemental payments
 - ▶ Medical Evaluation Program
 - ▶ Mandatory Alternative Duty assignments
 - ▶ Restoration of Accruals
 - ▶ Wage Replacement
 - ▶ Accidental Death Benefits (Article 11)

- ▶ Covers people with "Attendance Rules Coverage" - Part Time/Per Diem - Complicated!




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37

Long COVID And The PEF Contract

- ▶ Accruals or SL ½ pay can only be used during the following time periods:
 - ▶ First seven calendar days of initial waiting period after claim filed
 - ▶ Partial day absences due to WC incident (to finish out shift)
 - ▶ During pendency of controverted claim (that disability did not arise out of or in the course of employment NOT whether disability exists)

- ▶ Accruals restored proportional to the net monetary award credited to NYS by the WCB or 60% of pre-disability gross wages, whichever is greater.
- ▶ Cannot use accruals if disability exceeds 12 months.
- ▶ Must look at CBA in effect at time of injury




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38

Civil Service Law - Sec.71 & Rule 5.9

- Employees on WCL will be terminated after one cumulative year of being out on WCL (2 years for Assaults) OR if determined to be 100% disabled.
 - For members: If you disagree with assault designation, call PEF!
 - Notice requirements - 30 Days Written Notice
 - Employees entitled to a hearing to challenge agency determination of unfitness
 - PEF will provide legal representation in this hearing if you have a doctor willing to testify that you are fit.
 - Employee can request to return to work if they believe they are fit at least every 6 months and within last 30 days of leave.
 - Agency can send to IME to confirm.




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39

Reinstatement Rights After Termination

- ▶ Employees terminated under Section 71 may reapply within one year **from the end of the disability**
 - ▶ Apply to the Civil Service Department for a medical exam
 - ▶ Results in reinstatement or placement on preferred list




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40

Working with Long COVID - Reasonable Accommodations

- ▶ Any decision about whether an employee can be placed on leave, refused reinstatement from leave or terminated must be consistent with ADA and NYSHRL standards.

Great reference for employees, management and unions alike:
AskJan.org




- ▶ RA denials - DCS Appeals, DHR, EEOC, Litigation

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41

More Information - Grey & Grey



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42

**More information -
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WEBSITE: WCB.NY.Gov

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43

43

**More information -
For PEF Members**



PEF Health and Safety - 518-785-1900 x254
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To Find Your Regional Office: <https://www.pef.org/regions/>

Or call: 518-785-1900 and ask for your Field Representative

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44

44
