

Commonly Asked Coverage Questions related to COVID-19

Workers' Compensation Claims

Every workers' compensation case is different, and this is general guidance only. Please call your TMLIRP Claims Representative if you have questions or would like to discuss a specific case. It is important that you call prior to submitting a COVID-19 workers' compensation claim so that you understand how the process will work.

What if an employee is exposed to COVID-19?

The exposure to COVID-19 is similar to an exposure to other illnesses (like tuberculosis or the flu) in that exposure itself does not constitute an injury. An "injury" from a workers' compensation standpoint, (in this case, a potential occupational disease) occurs when someone contracts that disease and can demonstrate that their exposure was work related. **Note: the analysis for first responders is different, and is addressed below.**

Who should be tested?

Guidance on who should be tested has been published by the Centers for Disease Control (CDC), and can be found here: [Current Interim Guidance from the CDC on Testing for COVID-19](#)

When should a member report a workers' compensation claim?

Historically, the Pool encourages members to report the claim to the Pool when the member knows about an *injury*. This unprecedented pandemic has created confusion on when to report the claim to the Pool if there is an exposure to a known case of COVID-19.

The best option is for the member to call the Workers' Compensation Claims Department to discuss the facts of the exposure with their respective adjuster, supervisor or claims management. The facts will determine the response to the fund member. Generally speaking, the mere exposure to COVID-19 will not trigger a workers' compensation claim. The Pool asks its members to document any exposures they may become aware of, but there is no need to submit those exposures to the Pool as a First Notice of Loss (FNOL). Prematurely filing a claim could result in an administrative denial for lack of a diagnosis and create additional misunderstanding and confusion.

Is self-quarantining covered under workers' compensation?

Generally, the answer is no. Just because an employee is potentially exposed to COVID-19 and self-quarantines does not in and of itself meet the threshold of a compensable workers' compensation claim. If the employee later develops symptoms, and a treating medical professional recommends testing, the claim could possibly be compensable under workers' compensation if there is a positive diagnosis and work-relatedness can be demonstrated.

If an individual is quarantined without a diagnosis, that individual will need to inquire of their governmental entity as to the applicability of the Emergency Paid Sick Leave Act that was included in the Families First Coronavirus Response Act passed by Congress and signed into law the week of March 23, 2020.



One of our employees has symptoms of COVID-19 and tests aren't available in my area. What do I do?

Have the employee contact their doctor. As the pandemic continues, there are efforts by the State and Federal government to make tests more readily available. Follow the recommendations of the doctor, your county health department and/or the Centers for Disease Control (CDC). Information is available at [coronavirus.gov](https://www.coronavirus.gov).

When does a workers' compensation claim for COVID-19 become compensable?

Again, every workers' compensation case is different, and this is general guidance only. Simply stated, an evaluation of compensability begins with a diagnosis; then an investigation can ensue to determine if contraction of the virus is work-related. A diagnosis of an injury or illness is a requirement under the Workers' Compensation Act for all claims.

The investigation will hinge on whether the worker experienced a work-related exposure. As noted below, first responders are at a greater risk than the ordinary public and different statutes apply to them. For non-first responders, the more widespread the outbreak, the more difficult it becomes to identify a specific time, place and event for when the exposure occurred.

Those employees who work in an office will have a more difficult time demonstrating their jobs put them at a higher risk than the ordinary public. As employees go to public places like the grocery store, pharmacy, etc. the greater chance employees could be exposed during their time away from work. A workers' compensation investigation for benefits will ask those types of questions.

What about a first responder who is exposed to COVID-19? How are their claims handled?

The same analysis set out above *does not apply* in all respects to first responders (including police and fire). First responder employees are on the front lines of this virus outbreak and are at a greater risk to contract COVID-19 than the ordinary public (and most other employees). Call your workers' compensation provider FIRST to discuss the facts of the exposure.

The mere exposure to COVID-19 will not trigger a workers' compensation claim. Exposure to the virus does not mean the first responder has contracted the disease. There must be a positive diagnosis. If the first responder does not have a positive diagnosis, there is no need to report the claim. Doing so can cause additional confusion. A positive diagnosis includes a positive test, a presumptive positive test (as determined by the CDC), or in the absence of a test, a diagnosis of COVID-19 by a doctor.

For first responders that have been on duty and who contract COVID-19 during this time, TMLIRP will pay for any medically recommended testing and provide all workers' compensation benefits provided to first responders under the workers' compensation statute and the presumption statute (Chapter 607 of the Texas Government Code).



Real and Personal Property Coverage:

Is there any coverage for loss of revenue due to COVID-19?

In order for property coverage to apply, there must be direct physical loss of covered property due to a covered peril. The existence or potential existence of COVID-19 is not a direct physical loss to property, and does not qualify as a covered peril. As such, loss of revenue or other business interruption expenses are not covered.

Liability Coverage

We recently designated a quarantine area for City staff members who are exposed to COVID-19 while performing their job duties. Does TMLIRP provide coverage for this location?

If you currently have general liability coverage with the Pool, this location is considered part of your coverage.

We recently passed an emergency order to provide City-sponsored daycare for essential employees during a difficult time. Does TMLIRP provide coverage for daycare operations?

Yes. In order for the Pool to provide coverage for daycare operations, the Pool would need to add it to the member's current coverage and contribution would be owed. The Pool understands that your current priorities may not allow an opportunity to notify the Pool of new operations during this time. The Pool will provide coverage for any emergency daycares to assist your employees until local authorities lift the stay-at-home orders, at no additional charge.

What if an entity receives a claim by an individual who asserts that they contracted Coronavirus while at a city-sponsored event?

The Risk Pool cannot provide an opinion regarding any potential liability (or waiver of governmental immunity) the City may or may not have for claims made by individuals who contract the coronavirus at a City sponsored event. That analysis will need to be completed by the city attorney or an attorney the City directly contracts with.

With respect to any applicable coverage, it is difficult for the Risk Pool to answer abstract questions about the applicability of certain coverage. That is because the Risk Pool's obligation to provide a defense or pay damages is determined by the particular facts of each individual case. The Risk Pool's obligation to provide its Members with a defense is determined by comparing the allegations in the Plaintiff's pleadings (or demand letter) with the terms of the Liability Coverage Document. Without specific facts about an incident, the specific causes of action plead, or the specific damages sought, it is not possible to conclusively make any assurances the Risk Pool will provide the City with a defense or pay damages on its behalf.

The Liability Coverage Document should be consulted by the City's attorney and should contact the Pool if they have questions about the coverage itself. The general scope of the general liability coverage part of the Liability Coverage Document extends protection for "occurrences" (accidents or events neither expected nor intended by the City or its employees), which results in bodily injury, property damage, or personal injury, as long as the Plaintiff is seeking "damages." Later in the Liability Coverage Document, there is errors and omissions liability coverage which extends coverage for "wrongful acts" (any actual



or alleged error, misstatement, misleading statement, act or omission, neglect, or breach of duty including misfeasance, malfeasance, or nonfeasance) which result in “damages.” If the particular facts of a claim fall within the scope of an “occurrence” or “wrongful act” and seeks “damages,” then the City would be covered unless there is a specific exclusion. There are also exclusions in the Liability Coverage Document that may be applicable, such as suits that seek only injunctive or declaratory relief without seeking damages.

The two most likely causes of action a plaintiff may bring against a city if they contract the coronavirus at a city sponsored event are negligence and premises liability. If a plaintiff brought either one, or both, of these causes of action, and sought monetary damages, then it is likely the claim would be covered by the Risk Pool.

