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### **COVID-19 Sunset Provision and the Future of COVID-19 Related Claims**

By Kyle R. Heim

The COVID-19 Pandemic brought a gauntlet of new challenges to employers as workers began to be exposed to the virus. Chiefly among these challenges was determining where an employee was exposed to the disease and if this exposure was compensable. In April of 2020, the Minnesota State Legislature passed Minn. Laws 2020, Chapter 72--H.F.No. 4537, which created a presumption that, for some categories of employees including nurses, doctors, and peace officers, the employee was presumed to have contracted COVID-19 through their employment, and the illness would therefore be compensable.

The statutory presumption expires on December 31, 2021. With COVID-19 cases continuing to be prevalent in the workplace, employers will now face uncertainty as to how to handle COVID-19 related occupational disease claims. Even though the presumption is expiring, an employer/insurer still need to properly investigate the claim for compensability.

If an employee makes a claim for COVID-19 exposure, an employer must still file a First Report of Injury and investigate where the alleged exposure occurred. MN Statute 176.011 Subd. 15 still applies to occupational diseases, including COVID-19 claim. This statute gives the definition of occupational disease and can be used to determine if the claimed exposure is compensable. This statute notes that the exposure to an illness while in the course and scope of employment that are:

- “Ordinary diseases of life to which the general public is equally exposed outside of employment are not compensable, except where the diseases follow as an incident of an occupational disease, or where the exposure peculiar to the occupation makes

the disease an occupational disease hazard. A disease arises out of the employment only if there be a direct causal connection between the conditions under which the work is performed and if the occupational disease follows as a natural incident of the work as a result of the exposure occasioned by the nature of the employment. An employer is not liable for compensation for any occupational disease which cannot be traced to the employment as a direct and proximate cause and is not recognized as a hazard characteristic of and peculiar to the trade, occupation, process, or employment or which results from a hazard to which the worker would have been equally exposed outside of the employment.”

Based on this statute, an employer is not liable for compensation for any occupational disease which cannot be traced to the employment as a direct and proximate cause, or if said exposure is not a known hazardous characteristic of the employment. Under the rule, a claim from an employee for COVID-19 will fail if there is no clear connection between their work and being exposed to the disease, as well as if their place of business does not present a unique environment where potential exposure is common. For example, an employee that works in a machine shop where regular exposure to those with COVID-19 is a rare occurrence would have a more difficult time proving that their exposure was a hazard characteristic of their employment. An employee who works in an area such as a nursing home or health clinic would likely be able to show that COVID-19 is a common hazard characteristic of their employment. The language in the statute is clear that if exposure is not a common characteristic of the employment, an employer can likely deny a claim for benefits due to exposure to COVID-19.

This is a fact-based investigation and will require employers and insurers to examine if the alleged exposure occurred in the workplace and whether the exposure is a hazard peculiar to the job.

The investigation should consider, among other facts, the following:

1. Is exposure likely in the employee’s occupation?
2. Was there a known work-related exposure?
3. Did the employee have known exposure outside of the work environment?
4. What is the time frame between possible exposure and onset of symptoms or a positive test?

With the presumption expiring, the burden of proof will be on the employee to demonstrate employment was the direct cause of their

exposure, and that the exposure was a common characteristic of their employment.

If you have any questions regarding the compensability of a COVID-19 claim, or any other workers' compensation matter, please do not hesitate to contact me or any of my colleagues at Brown and Carlson and we would be happy to discuss the circumstances in detail.

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