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Long-COVID: Work Comp & ADA Considerations

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By now, we are all familiar with the Minnesota presumption that front-line workers contracting COVID-19 contracted the virus during employment. This presumption is in effect through January 13, 2023 by [statute](#).

It should be noted however, that any worker whose COVID develops into “long COVID” presents additional considerations for their Employer to address. The Centers for Disease Control and Prevention (CDC) reports that about 43% of people diagnosed with COVID-19 develop symptoms which last at least 29 days after infection. Whenever symptoms last 4 or more weeks, the CDC classifies the condition as “[long COVID](#).” CDC guidance advises that long COVID includes a range of new or ongoing symptoms, lasting weeks or months after infection. The conditions can worsen with physical and mental activity, and include symptoms such as: fatigue; joint/muscle pain; cognitive/concentration issues; shortness of breath; dizziness; heart palpitations; and of course, loss of taste/smell. These symptoms can ultimately develop into organ damage (heart, lungs, kidneys, skin, and brain).

According to recent guidelines from the Civil Rights Division of the Department of Justice (DOJ) and the U.S. Department of Health & Human Services (DHHS), if a workers’ complaints substantially limit one or more major life activity (walking, eating, breathing, seeing, thinking, etc.), then long COVID can be considered a disability under federal laws, including the American Disabilities Act § 1557 (ADA).

This means that careful consideration must be given when dealing with workers who receive restrictions (either as a work-injury or personal condition) related to a long-COVID diagnosis. When those

restrictions prevent a return to pre-COVID infection work duties, then both the prohibition from wrongful termination due to a work injury are raised (for workers with the presumptive work-related COVID), and possible ADA implications (for both work-related and/or non-work infections) arise.

Best practice for workers whose long-COVID complaints (from a work injury or personal condition) result in work restrictions:

- Keep in mind the Workers' Compensation Act prohibition against wrongful termination for those front-line workers with a presumptive work injury from COVID;
- Analyze the condition/restrictions to assess whether this worker's condition is ADA-qualifying.
- For the workers whose long-COVID is ADA-qualifying, keep in mind the protections from discrimination, including the need to making a reasonable effort to consider reasonable accommodations, exist as for any other ADA-qualifying medical condition which arises.

Remember that an Employee need not use the magic "requesting an accommodation" language when reporting long-COVID conditions and restrictions. The knowledge by the employer of a possible condition/issue which interferes with the ability to perform essential job duties due to a long-COVID diagnosis will trigger, *at a minimum*, the duty to at least consider whether an accommodation chat with the worker is needed.

If you have questions about any workers' compensation matter, please feel free to reach out to myself, or any of the attorneys here at Brown & Carlson. Additionally, if this is an urgent matter, please feel free to contact the Brown & Carlson Hotline at (855) 844.7070, as someone will always be available to answer your call.

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