

FREQUENTLY ASKED QUESTIONS & ANSWERS: COVID-19 AND TEXAS WORK INJURY PROGRAMS

(revised 4/22/20)

MANAGERS – REPORTING AN INJURY

Q: What should I first do if an employee reports a suspected COVID-19 exposure?

A: Follow CDC Guidelines and your employer's procedures for COVID-19 exposures. Many employers have established task forces and/or procedures for initial medical screening, testing, treatment and quarantine procedures. These procedures typically call for a consistent initial response – regardless of whether the suspected exposure appears to be work-related. If you are not sure what your employer's COVID-19 procedures, you should contact your Risk Management Department and/or HR Department.

Q: If my employer does not have COVID-19 procedures, where can I find information for responding to the suspected COVID-19 exposure?

A: You could find CDC Guidelines and COVID-19 Response information at www.cdc.gov. There is also a link to Texas Health and Human Services updated regularly for exposure protection, mitigation of spread, medical screening, testing and treatment protocols, and testing center locations in Texas. This information is specific to Texas residents and also includes a 2-1-1-hotline for questions:

<https://www.dshs.state.tx.us/coronavirus>

For questions about COVID-19, dial 2-1-1, then choose Option 6.

Hours: 7:00 a.m. – 8:00 p.m., 7 days per week

If you experience difficulty when dialing 2-1-1, please email coronavirus@dshs.texas.gov. For local assistance, go to [Coronavirus Disease 2019 \(COVID-19\) Local Health Entities](#).

Q: What if my employer's procedures direct me to send employees somewhere other than my usual approved medical facility for work injuries?

A: You should still follow the employer's COVID-19 procedures. Many employers are directing employees with known or potential exposures (with or without symptoms) through their non-occupational programs, regardless of whether an exposure may be work-related. Group health plan resources may have access to telemedicine screening options that are not available through your Plan's work injury medical network. Traditional primary care physicians may also be in a better position to conduct initial medical screenings in order to rule out other potential causes.

Finally, *at this time* many approved medical facilities in your Texas Injury Benefit Plan's medical network are not able to conduct COVID-19 testing.

Q: If I checked with my employer and COVID-19 resources and still am not sure what to do, can I still report the incident to my Plan's Claims Administrator?

A: Yes. But before reporting a known or potential COVID-19 exposure to the Texas Injury Benefit Plan, you should first ask the employee about the exposure and his/her symptoms:

REPORT THE INCIDENT TO HR/EMPLOYEE BENEFITS IF:

- the employee cannot identify the potential exposure (e.g. employee is concerned or worried etc.).
- the employee has symptoms and a known NON-occupational (e.g. employee has a known exposure at home).

REPORT THE INCIDENT TO THE TEXAS INJURY BENEFIT PLAN IF:

- the employee CAN identify a known (or alleged) 'at-work' exposures exposure (e.g., Alleged exposure to co-worker/patient/customer that reasonably may have COVID-19).

Q: If the claim is reportable to the Texas Injury Benefit Plan, should I send the affected employees to my Plan's approved medical clinic?

A: If your employer does not have a known COVID-19 response plan and the claim is reportable to the Texas Injury Benefit Plan, you should first contact the approved provider clinic. Many approved provider clinics are using web-based or telephonic resources to pre-screen employees. Following this prescreen, certain clinics may direct the affected employee to quarantine or may schedule an in-person appointment (or virtual appointment if telemedicine is available).

Q: Can the affected employees get tested for COVID-19 at my Plan's approved medical clinic?

A: Many clinics have indicated that they are unable to test employees for COVID-19. The Claims Administrator may need to direct the affected employee to an alternate location for testing (such as a hospital). For that reason, when possible, the employer and employee should first contact the approved medical clinic.

WORK STATUS AND EMPLOYEE PAY

Q: Will employees that report a COVID-19 exposure get paid while they are under CDC designated quarantine?

A: Check your employer's COVID-19 response procedures and/or contact HR. In most cases, the employers are first looking to non-occupational resources (paid leave policies, short-term disability) for paying wages during this lost work time.

Q: What if an employee was already on modified duty for a work injury at the time of his/her quarantine? Can they get Wage Replacement Benefits under the Plan?

A: If an employee already on modified duty due to a work-related injury must be quarantined, the employee should be eligible to again receive Wage Replacement Benefits under the Plan since the modified duty job can no longer be accommodated. These Wage Replacement Benefits may need to be coordinated with available paid leave (PTO, etc.) that the employee may have, depending on the terms of the employer's specific Texas Injury Benefit Plan document.

Q: Does it make a difference if an employee with a current work injury has been furloughed (temporary layoff without pay)?

A: Check the terms of your Texas Injury Benefit Plan document or discuss with your Claims Administrator. Even if the furlough is considered a "termination of employment," many Texas Injury Benefit Plans have an exception that allows the injured employee to be eligible for Wage Replacement Benefits in this situation.

Q: What if the furloughed employee files for unemployment compensation?

A: Many Texas Injury Benefit Plans allow you to reduce any Wage Replacement Benefits owed to an employee by the amount of unemployment compensation he/she may receive. Plans also generally prohibit an employee from receiving more than 100% of his/her Pre-Injury Pay. You should check with Human Resources to determine if the employee has applied for (or is receiving) unemployment compensation benefits. You should also talk to the Plan's Claims Administrator and review the Coordination of Benefits section of your Texas Injury Benefit Plan to see if this reduction is allowed.

Q: Can I return a potentially exposed employee back to work at some point?

A: Yes. Provided that the employee has completed a quarantine period, is provided any personal protective equipment (PPE) indicated by CDC, and otherwise complies with current CDC and applicable OSHA guidelines.

Q: If an employee on modified duty or returning to work has a reduction in hours, can the employee get Partial Wage Replacement Benefits?

Many Texas Injury Benefit Plans only pay Partial Wage Replacement Benefits if an injured employee's work hours are restricted *based on work restrictions that are assigned to the injured employee by an approved physician*. If the injured employee has a reduction in hours that applies to both injured and non-injured employees, the injured employee will likely **not** be eligible for Partial Wage Replacement Benefits.

CLAIMS ADMINISTRATORS - DETERMINING BENEFIT COVERAGE

Q: Can the Texas Injury Benefit Plan pay for the initial COVID-19 medical screening and/or test?

A: If the Texas Injury Benefit Plan receives an incident report due to a suspected occupational exposure to COVID-19 – and these costs are not payable through the Plan’s non-occupational resources - the Plan could considering paying for the affected employee’s initial COVID-19 screening (physician visit) and COVID-19 test as part of the benefit claim investigation. These costs could then be paid as an expense to the benefit claim file - rather than as Medical Benefits – in order to allow the claim to be classified as an “Incident Only”.

If the COVID-19 test comes back positive and the benefit investigation determines that the claim should be covered under the Plan, the Claims Administrator at that point could consider reclassifying these expenses as Medical Benefits under the Plan.

Q: What information should Claims Administrators obtain in order to determine if an employee testing positive to COVID-19 might be covered under the Texas Injury Benefit Plan?

To be compensable under most Texas Injury Benefit Plans, the incident should be a known exposure at work and directly related to the employee’s work tasks (e.g. a healthcare worker treating a patient). **The Plan typically will not pay benefits for “ordinary diseases of life” or indirect exposures at work that are “factors to which the general public is exposed” (e.g. retail employee exposure to a coworker or customer who later tests positive).** To the extent possible, the coverage decision should be made based on facts that can be confirmed (i.e. positive COVID 19 test) as a known exposure per the Plan’s definitions.

Follow steps below for preserving evidence and answering questions to confirm facts regarding a positive test for COVID-19:

- Determine if the employee’s work tasks place him/her at a material higher risk of exposure to COVID-19 than the general public:
 - 1) Claimant is (or is not) designated as an essential worker under CDC guidelines.
 - 2) Claimant lives/works in an area that is (or is not) under a “Shelter in Place/Stay at Home Order.”
 - 3) Absence of other non-occupational exposures (e.g., family/household member is positive at the time of claimant reporting, claimant traveling abroad, claimant’s family members traveling abroad, concerts or other uncontrolled public events with possible known positive sources).
- Determine the source of the exposure: Is there a positive COVID-19 test for the source?
- Determine the timing of the exposure: Hopefully, this timing can be narrowed down to an hour or specific time (check any receipts, invoices etc.).

- Extent of exposure (length of time? protective equipment used? possible fluid exposure? Is the exposure consistent with Low, Medium or High risk per CDC definitions? <https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-risk-assessment-hcp.html>)
- Determine if the exposure is work-related: Was the exposure solely and directly related to the employee's work tasks?
- Symptoms onset coincide with the COVID-19 incubation period? (less than 14 days from the date of last exposure).
- If possible, obtain a medical records review from an occupational disease specialist in order to determine the medical probability that the employee's exposure resulted from his/her work activities.

Q: What if the employee reported the potential exposure after the Plan's normal reporting timeframe for an "Accident". What if an employee did not treat with an approved medical provider within the Plan's initial medical treatment timeframe?

For many Texas Injury Benefit Plans, the reporting deadlines for Occupational Diseases are extended up to 30 days from the date that an employee should have known of the exposure or symptoms. Many Plans also require employees to receive initial approved medical treatment within 14-days of the employee reporting the potential exposure. Both of these Plan timeframes could be extended further if allowed by the Plan's "good cause" definition.

Q: Once an employee tests positive for COVID-19, should the Plan pay for his/her medical treatment and lost wages while the benefit coverage investigation is still ongoing?

Except in the case of an Urgent Care Claim (a true emergency) or a Pre-Service Medical Claim (a preauthorization request for a specific medical test or procedure), the Department of Labor (EBSA) provides up to 45 days to make a coverage decision (which most Plans incorporate). This timeframe can be extended an additional 45 days if needed to due to reasons outside the Plan's control.

Many Texas Injury Benefit Plans specify that the Plan can pay medical benefits and wage replacement benefits while the benefit coverage decision is still pending. However - like any other occupational injury claim - the Claims Administrator should limit such medical payments to emergency and/or the minimum necessary medical treatment until a Plan coverage decision is made.

CLAIMS ADMINISTRATORS – LIABILITY INVESTIGATIONS

Q: What type of proactive employer information should I investigate and obtain?

What occupational disease exposure safety measures were in place?

- 1) Personal Protective Equipment (PPE) provided and necessary for the work task (check OSHA and/or CDC guidelines);

- 2) Specific trainings/instruction/supervision provided to employees on protection against exposures and exposure reporting procedures (e.g., providing resources/access to CDC guidelines, use and maintenance of PPE, safety meetings, etc.);
- 3) Prior concerns communicated by the claimant or coworkers (and response provided by management) on working conditions, compliance with OSHA/CDC guidelines, adequate PPE, suspected positive coworkers;
- 4) Prior concerns communicated by claimant to management of being a “high risk individual” per CDC guidelines; and
- 5) Employer accommodations offered/provided, such as work-from-home capabilities, alternate temporary jobs or work tasks, paid leave for employees on quarantine or concerned with the work environment, etc.

Q: What type of information should I investigate and obtain regarding the employer’s immediate response to a reported exposure?

What guidance and direction was provided by the employer to affected employees (suspected positive as well as affected coworkers)?

- 1) Communication of CDC hotline/website/employer procedures;
- 2) Direction provided to affected employees on where to go for medical care (get COVID-19 triage and/or testing); and
- 3) Communication to HR and/or communication to affected employees of HR resources re: unpaid/paid leave, benefits, and work status.

Q: What type of information should I investigate and obtain regarding any corrective action taken by the employer to the reported exposure?

Review and document corrective actions taken by employer in accordance with CDC guidelines. For example:

- 1) quarantining employees with known symptoms and quarantining employees with exposure to a known positive;
- 2) cleaning and/or closing the work location and inspecting the location before reopening;
- 3) ensuring that employees who must continue to interact with patients/customers at the affected location have proper PPE that is necessary or appropriate to their work tasks (masks, gloves, etc.); and
- 4) documentation from the employer related to corrective actions.

As the COVID-19 pandemic continues to evolve and spread throughout the country, employers should regularly evaluate CDC and OSHA guidelines as well as the adequacy of safety measures they have implemented to minimize the potential for employee exposures – and when necessary, update these safety measures accordingly.

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