

Handling COVID-19 Workers' Compensation Claims in North Carolina

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Proving a Compensable Occupational Disease in North Carolina

Under the North Carolina Workers' Compensation Act, generally speaking, there are two types of occupational diseases, each with their own standard of proof:

1. Those specifically enumerated in N.C.G.S. §97-53; and
2. Those covered by the statute's "catchall" provision in N.C.G.S. §97-53(13):

"Any disease, other than hearing loss covered in another subdivision of this section, which is proven to be due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation or employment, but excluding all ordinary diseases of life to which the general public is equally exposed outside of the employment."

The catchall provision in 97-53(13) casts a broad net and may be familiar as the standard for occupational disease repetitive trauma claims, like carpal tunnel syndrome and lateral epicondylitis.

Employees will need to look to the latter "catchall" definition of a potential compensable occupational disease in bringing claims for alleged occupational COVID-19 exposure, as COVID-19 is not an enumerated disease or condition under the N.C.G.S. §97-53.

As such, an employee seeking to utilize the catchall provision will need to prove that their development of COVID-19 was due to causes/conditions peculiar to their particular job, that it was characteristic of and peculiar to their specific trade, occupation or employment, and that it is not an ordinary disease of life to which the public is equally exposed.

Filing a Formal Response to a Workers' Compensation Claim for COVID-19

When an employee formally files a workers' compensation claim, (presumably via the submission of a Form 18, *Notice of Accident (or Occupational Disease) to Employer of Employee*), for COVID-19, N.C.G.S. §97-18(j) and NC Industrial Commission Rule 601 allow 30 days "following notice from the Commission of the filing of the claim" to either accept or deny compensability (or give notice of payment of benefits without prejudice).

If the decision is made to deny the claim, a Form 61, *Denial of Workers' Compensation Claim*, should be filed, stating (under the "reasons" for denial section of the Form 61):

“Employee has not suffered a compensable injury by accident or developed a compensable occupational disease or condition as defined by the North Carolina Workers’ Compensation Act.”

This publication is not intended to be all-encompassing and does not cover all situations and exceptions to general rules. To discuss the applicability or interpretation of any provision of the law to a specific situation, please contact an attorney at Hedrick Gardner Kincheloe & Garofalo, LLP.