

MARCH 2020

COVID-19 A CLAIMS MANUAL

WRITTEN BY PARTNERS OF ALTA CLAIMS SERVICES
LAYOUT BY WORKCOMP CENTRAL



To My Dear Friends and Colleagues,

We are facing unprecedented events resulting in a global health and economic crisis.

As an industry, we often tackle difficult challenges with thoughtful dialogue, consideration and execution.

COVID-19 is proving to be the biggest obstacle our industry may ever face.

Our ability to conquer this invisible enemy while helping those in need will require awareness, cohesiveness, coordination and careful compliance of adopted protocols.

I want to provide our industry with information and education necessary to effectively execute our piece in solving this crisis.

This brief manual provides summaries and overviews in areas critical to our profession.

We hope you find it helpful and look forward to the opportunity to provide further timely information and education regarding COVID-19.

Sincerely,
Roxy Carmona
President & CEO
Alta Claims Services, LLC





COVID-19 Overview and Introduction

COVID-19 is an infectious disease caused by the virus strain “severe acute respiratory syndrome coronavirus 2” (SARS-CoV-2). The disease was first identified in 2019 in Wuhan, China, and has since spread globally resulting in the World Health Organization declaring a pandemic on March 11th, 2020. While a majority of cases result in mild symptoms, some progress to severe pneumonia and multi-organ failure.

A “pandemic” is classified as a global epidemic. We have seen four influenza pandemics in the last century. In 1918 the Spanish Flu emerged infecting 500 million people followed by the much milder “Asian” flu occurring in the 1950’s and 60’s. In 2003, we experienced the SARS outbreak followed quickly by H1N1 in 2009 that rose to the level of a pandemic.

The exponential curve is what concerns most authorities. The first case in the United States was diagnosed on January 22nd in Washington. This increased to 76 cases by March 1st progressing to 2,179 on March 13th. As of March 23rd, the number has grown to 33,404 with 400 deaths. Many are promoting awareness around slowing the spread and flattening the curve. This can only be accomplished by practicing social distancing, self-quarantine and isolation. Please follow this [link](#) that provides updates on the number of COVID-19 cases diagnosed in the United States. This [link](#) provides updates on the spread globally.

How COVID-19 Spreads

The virus that causes COVID-19 seems to be spreading easily and sustainably in the community. A study demonstrated that infected individuals shed high amounts of the virus in the early stages of the infection. People are thought to be the most contagious when they are most symptomatic. However, some spread might be possible before people show any symptoms, but this is not thought to be the main way the virus spreads. Please follow this [link](#) to CDC recommendations that help eliminate or slow the spread of COVID-19. Below are the verified ways the virus spreads.

Person to person who are in close contact with one another (within about 6 feet). Respiratory droplets when an infected person coughs or sneezes that land in the mouth or nose of someone nearby or possibly inhaled into their lungs. The virus is detectable on surfaces. A recent study by the New England Journal of Medicine suggests that individuals can contract the virus by coming into contact with a contaminated object. The virus is detectable for up to four hours on copper, 24 hours on cardboard and two to three days on plastics and stainless steel.

Incubation Period

Like with most infections, there is a latency period between when the person was infected and when they develop actual symptoms. The typical incubation period for COVID-19 is five to six days but may range from two to fourteen days.

Symptoms

Reported illnesses range from mild symptoms to severe illness and death for confirmed COVID-19 cases. Initial symptoms include fever, cough and shortness of breath and may appear 2 to 14 days after exposure. Emergency warning signs of COVID-19 include difficulty breathing or shortness of breath, persistent pain or pressure in the chest, new confusion and bluish lips or face.

Treatment

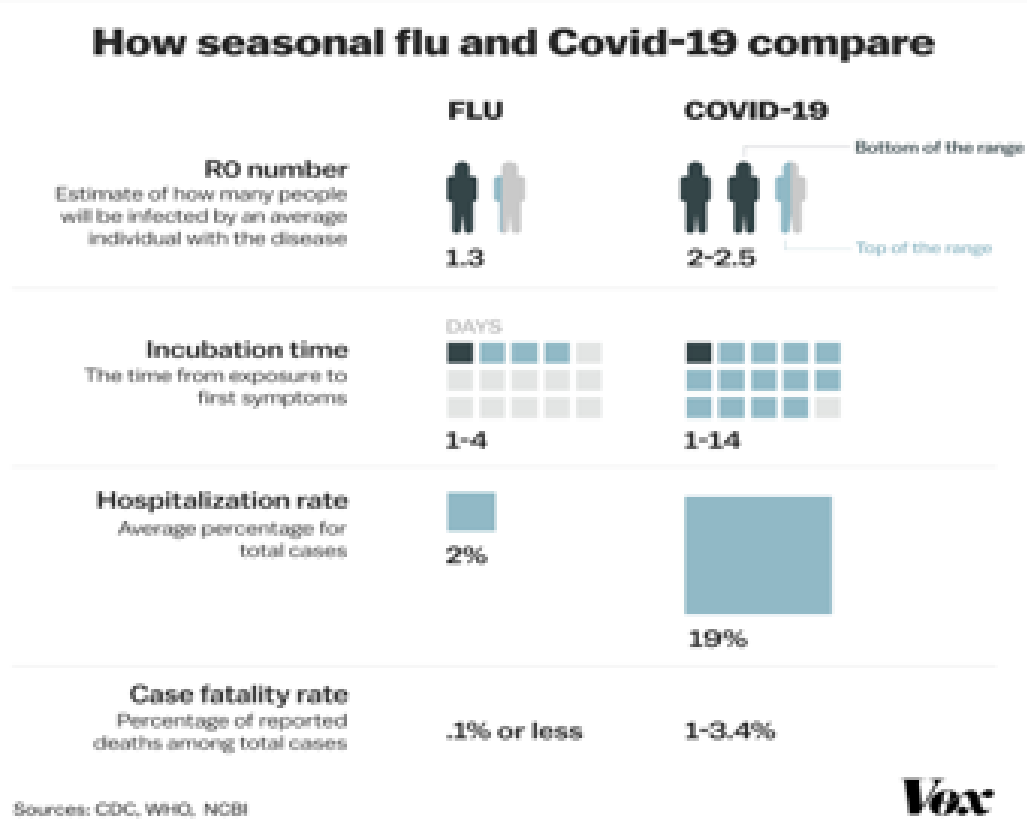
As of March 23, 2020, there is no medication approved to treat the disease. Sixteen companies are working to develop treatments and/or a vaccine. Possible treatments include medications currently used for HIV, Hepatitis-C and Malaria. These drugs include chloroquine, hydroxychloroquine, remdesivir and actemra. In addition, laboratories are working to develop protective antibodies. Follow this [link](#) for the latest news from the U.S. Federal Drug Administration.

Pre-Existing Conditions

Many of those that die from COVID-19 have preexisting conditions, including hypertension, diabetes mellitus and cardiovascular disease. Italy reported, out of 2000 deaths from the disease, 99.8% had at least one preexisting condition with the average patient having 2.7.

Comparison to Influenza

Below table was produced by the Centers for Disease Control and Prevention and the World Health Organization.



Self-Quarantine

People exposed to COVID-19 with underlying health conditions should practice self-quarantine. Self-quarantine involves staying at home, not sharing items like towels or utensils, washing hands frequently, not having visitors and staying at least 6 feet away from people in the household. Once a recommended or ordered period has expired the individual should follow their physician’s directions on how to resume their normal routine.

Isolation

For people who are confirmed to have COVID-19, isolation is appropriate. Isolation is a term used in the medical community that basically means keeping infected people away from those who are not infected. Isolation can take place at the home or care facility. Please follow this [link](#) to a CDC site that provides guidance on successfully completing isolation at home. Special personal equipment will be used to care for these patients in a health care setting.

Order to “Shelter in Place” v. “Secure in Place” (Lockdown)

Both are used by emergency management practitioners to put effective barriers between individuals and a threat. Agencies weigh the threat to the community prior to distinguishing between and selecting the appropriate remedy. A lockdown is used mostly to describe the response to something like an active shooter, while shelter in place is usually in response to a natural or environmental threat, i.e. a tornado or a chemical spill. Please follow this [link](#) to more information concerning shelter in place.

Flattening the Curve

Flattening the curve (avoiding an exponential curve) refers to using protective practices to slow the rate of COVID-19 infection so hospitals have room, supplies and doctors for all of the patients who need care. A large number of people becoming very sick over the course of a few days could overwhelm a hospital or care facility. Too many people becoming severely ill with COVID-19 at roughly the same time could result in a shortage of hospital beds, equipment and/or doctors.



Summary of H.R. 6201

Numerous bills are currently under consideration by Congress. These bills aspire to help individuals with the economic hardships caused by COVID-19. Additionally, bills are being considered to adopt contingency plans to prevent the disruption of Federal elections.

H.R. 6201, "Families First Coronavirus Response Act" was introduced on March 11, 2020 and signed by President Trump, becoming law on March 18th. It becomes effective 15 days after the date of enactment and expires on December 31st of this year. Please follow this [link](#) for a copy of the bill.

Below is a summary of the bill provided on www.congress.gov.

This bill responds to the coronavirus outbreak by providing:

- paid sick leave;
- free coronavirus testing;
- additional food assistance; and
- requiring employers to provide additional protections for health care workers.

It provides supplemental appropriations to the Department of Agriculture (USDA) for nutrition and food assistance programs, including: the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC); the Emergency Food Assistance Program (TEFAP); and nutrition assistance grants for U.S. territories.

The bill also provides appropriations to the Department of Health and Human Services for nutrition programs that assist the elderly.

The bill modifies USDA food assistance and nutrition programs to:

- allow certain waivers to requirements for the school meal programs;
- suspend the work requirements for the Supplemental Nutrition Assistance Program (SNAP, formerly known as the food stamp program); and
- allow states to request waivers to provide certain emergency SNAP benefits.

In addition, the bill requires the Occupational Safety and Health Administration to issue an emergency temporary standard (EST) that requires certain employers to develop and implement a comprehensive infectious disease exposure control plan to protect health care workers.

The bill also includes provisions that:

- establish a federal emergency paid leave benefits program to provide payments to employees taking unpaid leave due to the coronavirus outbreak;
- expand unemployment benefits and provide grants to states for processing and paying claims;
- require employers to provide paid sick leave to employees;
- establish requirements for providing coronavirus diagnostic testing at no cost to consumers;
- treat personal respiratory protective devices as covered countermeasures that are eligible for certain liability protections, and
- temporarily increase the Medicaid federal medical assistance percentage (FMAP).



COVID-19

ADA Pandemic Exceptions

Introduction

As an industry, we are all familiar with the requirements of the Americans with Disabilities Act. For those operating in California, your organization must ensure compliance with the Fair Employment and Housing Act (FEHA). The U.S. Equal Employment Opportunities Commission (EEOC) is a federal agency that administers and enforces civil rights law against workplace discrimination.

The declaration of a pandemic impacts ADA and other similarly situated requirements such as the Rehabilitation Act. Specifically, enforcing ADA cannot interfere with or prevent employers from following the guidelines and suggestions made by the CDC or other state/local public health authorities regarding steps employers should take regarding COVID-19. This is complicated as needed guidelines are fluid as the COVID-19 pandemic progresses.

The EEOC provided guidelines and recommendations to help employers implement effective strategies to mitigate and navigate the impact of COVID-19 in the workplace. This was drafted in response to the H1N1 pandemic and is still relevant today regarding COVID-19.

The declaration of a pandemic by the World Health Organization may change an employer's current interpretation and practices regarding adherence to ADA. The EEOC released a pandemic publication that answers questions about how to handle common situations that result when dealing with a pandemic. Please follow this [link](#) to access the pandemic section of the EEOC guidelines.

Requesting Information from the Employee

The declaration of a pandemic allows ADA covered employers to ask their employees if they are experiencing symptoms of the relevant virus. The symptoms of COVID-19 include fever, chills, cough, shortness of breath, or sore throat. Even though employers are permitted to ask, all documented responses must be contained in the employees ADA compliant confidential medical record.

Taking an Employee's Temperature

Fever is an indicator of COVID-19. Taking someone's temperature is customarily considered a medical exam. However, since the CDC and state/local health authorities have acknowledged community spread including attendant precautions, employers may measure their employee's body temperature. This is also permitted as part of a post offer, pre-employment medical exam. Employers should be aware absence of a fever is not an indicator that the employee does not have COVID-19.

Requiring Ill Employees Stay Home

The CDC states that employees who exhibit symptoms of COVID-19 should leave the workplace. ADA will not interfere with employers following the CDC's advice.

Employees Returning to Work

When an employee is exhibiting symptoms, the employer can require a physician's note or some other form of certification that the employee is fit to return to work and does not have the pandemic virus.

Delaying the Employee's Start Date

An employer may delay the start date of employment for a job applicant that has COVID-19 or experiencing symptoms. The CDC guidelines are emphatic that employers are not required to keep employees or job applicants with COVID-19 or symptoms in the workplace.

Withdrawing a Job Offer

In the instance an employer needs an employee to start immediately but the individual has COVID-19 or symptoms the employer can withdraw the job offer based on the current CDC guidelines.

Infection Control Practices

Employers can require its employees to adopt infection-control practices, i.e. coughing and sneezing etiquette and proper use and disposal of tissue.

Personal Protective Equipment

An employer may require its employees to wear personal protective equipment during a pandemic. However, the employer must continue to accommodate the employee's disability related needs, i.e. non-latex gloves or gowns designed for individuals who use wheelchairs.

Vaccination Requirement

At this time there is no vaccination for COVID-19. Employers can only encourage their employees to take the annual influenza vaccine but cannot require it.

Telework

Employers can and are encouraged to set employees up to work out of their home. Having employees work from home is an effective way to control spread of the virus and resulting infection. Also, employees with disabilities that put them at a higher risk to develop complications from COVID-19 can request to work from home as a reasonable accommodation.

Continuing Existing Employee Accommodations

Barring an undue hardship, the employer is responsible under ADA to continue accommodating an individual's disability.

If an employee with a disability needs the same reasonable accommodation at a telework site that they had at the workplace, the employer should provide that accommodation, absent undue hardship. In the event of undue hardship, the employer and employee should cooperate to identify an alternative reasonable accommodation.

Example: An accountant with low vision has a screen-reader on her office computer as a reasonable accommodation. In preparation for telework during a pandemic or other emergency event, the employer issues notebook computers to all accountants. In accordance with the ADA, the employer provides the accountant with a notebook computer that has a screen-reader installed.

All employees with disabilities whose responsibilities include management during a pandemic must receive reasonable accommodations necessitated by pandemic conditions, unless undue hardship is established.

Example: A manager in a marketing firm has a hearing disability. A sign language interpreter facilitates her communication with other employees at the office during meetings and trainings. Before the pandemic, the employer decided to provide video phone equipment and video relay software for her at home to use for emergency business consultations. (Video relay services allow deaf and hearing impaired individuals to communicate by telephone through a sign language interpreter by placing a video relay call. During an influenza pandemic, this manager also is part of the employer's emergency response team. When she works from home during the pandemic, she uses the video relay services to participate in daily management and staff conference calls necessary to keep the firm operational.



Introduction

What impact will COVID-19 have on employers and carriers from the perspective of Workers' Compensation claims? Customarily, claims for infectious illnesses such as influenza and colds are not considered an industrial injury. The reason being, it is difficult for an employee to meet their evidentiary burden of proof in establishing that the illness arose out of and occurred in the course of their employment. There are a few notable exceptions carved out in some states for public employees who receive a presumption of compensability for specific types of illnesses to which they may have a higher risk of exposure.

COVID-19 is as much an economic crisis as it is a health crisis in our nation. Many businesses are failing and are being forced to terminate their employees. Employees that have lost, or fear immediately losing their job, may file claims. In addition, the increased demand and strain on retailers, telecommunications and healthcare may cause claim frequency to rise in the coming months. Claim durations could be negatively impacted as injured employees will be unable to complete medical-legal evaluations. Workers that fear how COVID-19 may adversely impact them could seek legal representation, increasing litigation rates and claim costs.

Exposure Versus Injury.

Being exposed to an individual with COVID-19 and exhibiting symptoms is not enough to establish AOE/COE. When discussing a possible work-related case of COVID-19, first the employee must establish injury. This burden can be met partially with a positive COVID-19 test. Upon the individual testing positive, the employer or carrier must determine if COVID-19 arose out of and in the course of employment. In addition, an injury needs to be one that requires more than simply first aid. So even workers who tested positive for COVID-19 may not have suffered an injury under the law if their symptoms are minor and do not require medical treatment.

Special or Increased Exposure x

As noted, establishing AOE/COE with COVID-19 must begin with a positive test. However, this is only one step in the process of investigating industrial causation. The second step is to carefully evaluate and establish if the employee's occupation puts him/her at an increased risk of contracting the virus versus activities of daily life.

Most occupations expose individuals to the public. People that work in retail, telecommunications, hospitality and healthcare are just a few examples. Is merely working with the public enough to establish an increased or special exposure?

The relevancy of this issue is mapped out in the case of *McCauley v. Imperial Woolen Co.*, 261 Pa. 312, 104 A. 617 (1918). This case involved a "wool sorter" who sustained a scratch to his neck and died from anthrax poisoning three days later. It was known at the time that wool sorters had a higher rate of contracting anthrax poisoning than that of the general public. This "special or increased exposure" was enough for the judge to determine the employee contracted the anthrax poisoning on the job. In the case of *Bethlehem Steel Co. v. Industrial Accident Commission*, 21 Cal.2d 893 (1943), ten workers in a San Francisco shipyard contracted a very contagious form of conjunctivitis. At the time San Francisco was experiencing an epidemic of conjunctivitis cases.

All ten employees were awarded workers' compensation benefits. The cases were consolidated and heard before the California Supreme Court. The petitioner argued that the job duties in the shipyard made the employees more susceptible to contracting this specific type of conjunctivitis. The California Supreme Court agreed and ruled that the employees' job duties put them at a greater risk of contracting conjunctivitis than that of the general public and awarded benefits.

Establishing AOE/COE

Is a positive test and establishing increased exposure enough to find injury in a COVID-19 case? The coronavirus has no boundaries, meaning it is not contained solely in the walls of a hospital, retail store or grocery market. The CDC and other authorities have stated the virus is more contagious than influenza and is spread by coming into direct contact with the respiratory droplets of an infected individual. Some examples include an infected individual sneezing or coughing directly on the worker, the worker shaking hands with an infected individual and touching his/her face or touching a surface where the virus was recently shed by an infected person. The California Supreme Court clarified the worker's burden regarding AOE/COE in the case of *South Coast Framing Inc. v. WCAB, Jovelyn Clark*. The Court stated that evidence must be "reasonable in nature, credible, and of solid value such that a reasonable mind might accept it as adequate to support its conclusion."

This third prong of establishing AOE/COE must be met prior to linking COVID-19 to the job.

Personal Protective Equipment (PPE)

The possibility of contracting an infectious disease is decreased precipitously by the utilization of appropriate protective equipment. Personal Protective Equipment (PPE) acts as a barrier between the infectious individual and the worker's skin, mouth, nose or eyes (mucous membranes). The barrier works to block the transmission of contaminants from blood, body fluids or respiratory secretions. When PPE is used with other infection control practices like hand washing, using hand sanitizers, covering the mouth and nose while coughing or sneezing, it minimizes the spread of infection from one person to another.

The CDC has provided employers with specific guidance on the use of PPE on the job. This was drafted during the H1N1 outbreak. The employer or carrier should confirm what PPE was used on the job and how this decreased or eliminated the ability to contract COVID-19.

First Responders and Presumptive Injuries

In some states, certain types of injuries to public employees are presumed compensable. In California, pneumonia is presumed compensable for firefighters, police officers, prison guards and California Highway Patrol. This presumption is rebuttable, but it is a high standard to meet.

Orders to Stay at Home or Shelter in Place

Orders to Stay at Home or Shelter in Place present new challenges when considering the industrial link to COVID-19. When evaluating a work-related claim for COVID-19, it is important to understand if the employee is under an order to stay at home. This is an important consideration for both those employees working from home and those allowed to continue working outside the home. For those ordered to work from home, when was the stay at home order put in place and when did the worker first develop symptoms? Who else is in the home with the worker and have they developed symptoms? If so, when? For those that continue to work outside the home, a stay at home order, absent other contrary evidence, potentially serve as a link which connects the infection to the job. This link can be made stronger if the employee's occupation regularly exposes him/her to infected individuals, i.e. healthcare. However, this conclusion should not be immediate, and all factors should be weighed prior to making a determination.

Impact on Claim Frequency and Litigation

Studies show that, generally, economic recessions do not adversely impact claim frequency. Conversely, frequency usually trends slightly downward. Some link this trend to employees feeling uneasy about their jobs and an inability to find another job if needed. With this pandemic, many have lost their jobs.

To them, this is not only a medical crisis but an economic one as well. In some states, like California, employees can file what is called a “post termination continuous trauma claim”. It is predicted this pandemic could result in an increase in these types of claims being filed by attorneys on behalf of workers.

On the flip side, the capacity of retailers, grocers and healthcare are being stretched to the limit. Many retailers such as Walmart and CVS are hiring workers. This increased demand could also lead to work related injuries. Additionally, employees that are still interacting with the public may attempt to claim psychological injury because of the increased anxiety they are experiencing. This potential impact on claim frequency may have a more profound effect on costs to carriers and employers than legitimate COVID-19 claims.

Understanding and Explaining Appropriate Remedies

It is important the worker understands his/her remedies when the employer or carrier decide the claim for COVID-19 is not work related. Congress just passed H.R. 6201, which provides for paid sick leave. It is very important to understand this leave is paid regardless of an actual diagnosis and instead includes absence from work due to the need to self-quarantine. In addition to this federally mandated paid sick leave, the employee may also have access to paid sick time and disability benefits through their employer. Knowing these remedies and clearly articulating them to employees during this difficult time may help ease their concerns as to how they will continue to sustain themselves and their families.

Recovery Rate and Resulting Disability

The vast majority of individuals with COVID-19 recover with no sequelae. If an employer or carrier accepts a claim for COVID-19, the greatest exposure is for the percentage of employees with underlying medical conditions that require hospitalization. It is important to note, COVID-19 itself does not necessarily impact underlying health conditions; rather, the underlying health conditions can have a profound impact on the severity of COVID-19 symptoms and recovery time.

About contributors:

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Chavez and Breault is an experienced boutique California Workers' Compensation Defense Law Firm based in Southern California. For over 20 years, Jorge Chavez and Lance Breault have secured exceptional claim outcomes for several Fortune 100 and Fortune 500 companies. Chavez and Breault is a minority owned firm with an MBE certification recognized by the Supplier Clearinghouse as a diverse supplier within the California Public Utilities Commission. We can be reached at (805) 719-6640 and (310) 214-1001, or visit our website at www.chavezbreault.com to learn more today.

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WorkCompCentral in partnership with several experienced service providers presents the COVID-19 Claims Manual. As we are working through this very fluid situation, upon comparing notes and questions asked by our respective clients, we found there was a common theme. We decided to work together to provide this essential information to the industry at large.

If you have questions, suggestions or comments, please contact us at 866-975-2667.