

COVID-19 Impact on Business Insurance

Presented By:

Chris Condon, CIC

President & CEO



General Liability Insurance

- Update policy rating factors such as sales or payrolls.
- Changes in operations
 - Manufacturing of new products (PPE, sanitizer).
 - New services such as cleaning/sterilization, consulting, etc.
- Employees working from home – clients/guests in homes.

Commercial Auto Insurance

- Adding “Hired & Non-Owned Autos” coverage to protect the business while employees use their personal autos to deliver goods.
- Requesting proof of insurance from your employees.

Commercial Property Insurance

- Changes to inventories – businesses most likely have *less* inventory on hand, but some have *more* depending on their industry.
- For building owners – occupancy changes, especially vacancies, could trigger coverage limitations.
- Business income coverage – what it is designed to cover.

Workers Compensation

- Updating payrolls mid-term instead of waiting for audit, including adding new class codes for role changes.
- Switching to “Comp-As-You-Go”, if its available to you.

Other Notes

- Employment Practices
 - Claims related to layoffs/downsizing and state/federal labor laws (FSLA).
 - Changes in coverage terms for new and renewal policies.
- Cyber
 - Security of personal devices used by employees for business.
- Premium payment.
- Contact your agent with any questions on coverage, exposures or claims.

a disease that is due to causes and conditions **characteristic of a particular trade, occupation,** process or employment

- Is COVID 19 exposure characteristic of healthcare providers?
- Can the source of the exposure be traced to a patient directly or indirectly?
- Who is subject to the higher risk of exposure?
 - Just care providers, or other support staff such as housekeeping, etc.?

Other industries or occupations

- 1st responders
- Grocery stores
- Public transportation
- Some states have created “rebuttable presumptions” for some occupations

- Same law and regulations as insured employers
- Risks and exposure no different than insured employers
- Perhaps more flexibility in deciding when and how to pay for claims



MAINE WORKERS' COMPENSATION
COVID-19 COMPENSABILITY ISSUES

Current Statistics

- As of the week of April 10, 2020 the Maine Workers' Compensation Board reported that there have been **264** Covid-19-related cases reported by First Report of Injury in Maine, 208 lost time, 21 medical-only and the balance incident-only claims.

Compensability of Covid-19 Claims under the Maine Workers' Compensation Act

- If an employee develops Covid-19, this may prompt a formal claim under the Act.
- Is Covid-19 compensable under the Maine Workers' Compensation Act (the "Act")?

Compensability of Covid-19 Claims under the Maine Workers' Compensation Act

- Coverage under the Act is limited to injuries or occupational diseases that “arise out of and in the course of employment.” 39-A M.R.S.A. § 201(1).
- What does this mean?

Compensability of Covid-19 Claims under the Maine Workers' Compensation Act

- When analyzing whether an injury arose out of and in the course of employment, those injuries that are “a consequence of life in general” must be separated from those injuries that are a “consequence of industrial activity” with only the latter being covered by the Workers' Compensation Act. *Feiereisen v. Newpage Corp.*, 2010 ME 98, ¶ 6. The purpose of this requirement is “to compensate employees for injuries suffered *while* and *because* they were at work.” *Comeau v. Me. Coastal Services.*, 449 A.2d 362, 365 (Me. 1982);
- The employee bears the burden of proof.

Compensability of Covid-19 Claims under the Maine Workers' Compensation Act

- Contracting a virus from a co-workers is *not* compensable. See *Russell v. Camden Community Hospital*, 359 A.2d 607, 611-612 (Me. 1976) (“... it is clear that the Law was not intended to extent to an employee in a shoe factory who contracts pneumonia simply by standing next to an infected co-worker. In that example, the employee's exposure to the disease would have occurred regardless of the nature of the occupation in which he was employed” and “... the disease must be so distinctively associated with the employee’s occupation that there is a direct causal connection between the duties of the employment and the disease contracted.”).

Compensability of Covid-19 Claims under the Maine Workers' Compensation Act

- This formula depends heavily on the facts of each claim.
- To prove that an injury or disease such as Covid-19 is compensable, it must be shown:
 - (1) That Covid-19 was contracted in the course for employment;
 - (2) That Covid-19 was a risk peculiar to employment; and
 - (3) That the employment created a risk of contracting Covid-19 that was greater than the risk of contracting it in public generally.

Compensability of Covid-19 Claims under the Maine Workers' Compensation Act

- Causation is likely the most difficult piece for an employee
- Note that if Covid-19 becomes more widespread, there is a higher likelihood that exposure occurred outside of the workplace, in which case proving a specific workplace exposure will likely be more difficult.

No current Presumption of compensability for Covid-19 under the Act

- Emergency legislation (SP 789) was passed March 17 in response to the Covid-19 pandemic.
- There was consideration of a presumption of compensability for all first responders and medical workers; this was not included in the final legislation.

Compensability of Covid-19 Claims under the Maine Workers' Compensation Act; who is at risk?

Some professions are more at risk:

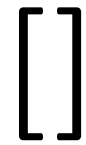
- Health care providers
- First responders
- Traveling employees
- Many others

Compensability Analysis

- Job duties and description
- Employee interview
- Medical notes and records
- Discussion with employer

Conclusion and Closing Thoughts

- Employees have been pursuing and will continue to pursue COVID-19 workers' compensation claims.
- Like other workers' compensation claims, these are particularly fact-driven requiring investigation on the fundamental elements of the claim and burdens of proof.
- It may come down to decisions of the Workers' Compensation Board for further guidance.



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Workers' comp and COVID-19

Michael Bourque, President and CEO

MEMIC

Working from home and WC



- Compensability standard: “Arising out of” and in “the course of” employment
- Ergonomic challenges at the forefront
 - Encourage a proper set-up
 - May wish to engage insurer or ergonomist; MEMIC’s e-Ergo service
 - Encourage breaks and movement
- If an injury or discomfort is recorded, pay attention
 - A new issue or recurrence of at-work?
 - A remote evaluation may be possible, including telemedicine
- A “traumatic” incident – slip, trip, fall, or lifting
 - Investigate by getting full statement from the employee
 - Ask for photos and about intervening issues that might impact

Working from home and WC

MEMIC

1982 Maine Supreme Judicial Court: Comeau vs. Coastal Maine Services

- Makes clear the need to establish the “work-connection” between the IW’s activities and the resulting injury.
- Benefits were denied when an employee was injured breaking up a fight outside of the hotel room being paid for by the employer.

2015 Maine Supreme Judicial Court: Sullwold vs. The Salvation Army

- Upheld a lower level decision where an IW’s heart attack and death while using a treadmill at home was found to be compensable, was using his work provided BlackBerry device at the time of his heart attack and death.
- Use of employer-provided devices are may be key to compensability question

Other issues related to COVID and WC



NCCI proposes...

- Furloughed, non-working employees to be moved to a classification with a rate of zero
- Wages for “Time not worked” (such as allowed by the Federal relief program) would be moved to the zero rate class code
- COVID-19 related claims will not be counted for experience rating
- Temporary re-classification for different work
- Track your payroll and changes in jobs related to the pandemic