



# What's New in HR Law

## WSIB Establishes Approach for Adjudicating Entitlement for COVID-19 Claims

March 27, 2020

As the COVID-19 pandemic continues in Canada, all levels of government have been working to reduce its adverse impacts on citizens. While, on March 17 and 23, 2020, the Ontario Government declared a state of emergency and ordered the closure of specific workplaces (such as private schools, daycares, theatres, public libraries, certain food industry businesses, and non-essential businesses), many Ontario businesses remain in operation and some workers continue to attend at the workplace. This situation has led to new issues for employers, namely: what obligations arise if a worker contracts COVID-19 and when does a worker's COVID-19 diagnosis become a compensable illness?

On March 23, 2020, the Ontario Workplace Safety and Insurance Board ("WSIB") released [guidelines](#) addressing how it will adjudicate entitlement to workers' compensation benefits for occupational COVID-19, thus providing guidance on when WSIB benefits may be available to a worker who has contracted COVID-19.

This update is for general discussion purposes and does not constitute legal advice or an opinion.

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## Does the Worker’s COVID-19 Condition Arise Out of and In the Course of Employment?

Like with all claims, the WSIB will first assess whether the worker’s condition arose out of and in the course of employment. In the context of COVID-19, this analysis is met with practical difficulty: a person infected with COVID-19 may be asymptomatic but contagious and, as a result, infect other people without knowing. This epidemiology makes it difficult for employers to determine whether a worker’s COVID-19 diagnosis arises from a workplace exposure or from exposure to infected individuals outside of work.

In dealing with this issue, and consistent with the WSIB’s general approach for determining entitlement for communicable disease, the WSIB will consider whether the worker faced a greater likelihood of exposure due to the nature of their employment.

### The Test for Determining Initial Entitlement for COVID-19

If the worker’s employment duties or requirements were a significant contributing factor in the worker contracting COVID-19, the worker’s condition will be considered work-related. The worker’s employment may be a significant contributing factor where it is established that:

1. The nature of the worker’s employment created a risk of contracting the disease to which the public at large is not normally exposed; and
2. The WSIB is satisfied that the worker’s COVID-19 condition has been confirmed.

In addition to general information about the work environment, work processes, job tasks, and the use of Personal Protective Equipment (PPE), the WSIB may also consider additional factors, as set out in the following chart.

<b>Did the nature of the worker’s employment create an elevated risk of contracting COVID-19?</b>	<b>Has the worker’s COVID-19 condition been confirmed?</b>
<ul style="list-style-type: none"><li>• Has a contact source to COVID-19 in the workplace been identified?</li><li>• Does the nature and location of employment activities place the worker at risk for exposure to infected persons or infectious substances?</li><li>• Was there an opportunity for transmission of COVID-19 in the workplace via a compatible route of</li></ul>	<ul style="list-style-type: none"><li>• Are the incubation period, the time from the date of exposure, and the onset of illness clinically compatible with COVID-19 that has been established to exist in the workplace?</li><li>• Has a medical diagnosis been confirmed?</li><li>• If a medical diagnosis has <u>not</u> been confirmed, are the worker’s symptoms clinically compatible with the symptoms produced by COVID-</li></ul>

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transmission for the infectious substance?	19? Is this supported by an assessment from a registered health professional?
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Based on these factors, workers may have a greater chance at establishing initial entitlement if their co-workers were diagnosed with COVID-19 and present in the workplace. Further, employees who work in essential services that have continued to operate during the pandemic and have regular contact with members of the public and/or clients (e.g. grocery stores, hospitals, pharmacies, care facilities, etc.) may be more likely to establish compensable COVID-19.

### No COVID-19 Benefit Entitlement for Asymptomatic Workers

The WSIB will not grant entitlement for workers who are free of COVID-19 symptoms, even if these workers are quarantined or sent home on a precautionary basis. This may provide relief to employers who are monitoring COVID-19 exposure in the workplace and sending workers home as a heightened precaution.

Eligibility for benefits may arise, however, if an asymptomatic worker later develops COVID-19 symptoms or illness while in quarantine or at home. As with other cases of potential occupational disease and exposures, workplace parties may also voluntarily report workplace COVID-19 exposure through the WSIB’s Program for Exposure Incident Reporting program.

### Future Updates

Our Firm continues to monitor the COVID-19 outbreak and related developments that may affect Ontario workplaces. We will provide further Insights as new information becomes available.

### Need more information?

For more information regarding workplace management amidst the COVID-19 outbreak, contact [Cassandra Ma](#) at 416-408-5508, or your regular lawyer at the Firm.



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