

# UPDATE ON CORONAVIRUS, COVID-19

Now that there are documented cases of Coronavirus, COVID-19 (CV-19), in Connecticut it is appropriate to review Connecticut's Workers' Compensation Laws to determine if cases involving CV-19 would be considered compensable.

In general, communicable diseases are not considered compensable. On the other hand, if a particular occupation places a worker at greater risk to contract a communicable disease and a causal relationship can be medically established between the work and the disease then there is potential for a claim to be considered compensable for communicable disease.

In Connecticut there are three types of compensable injuries: accidental injuries, repetitive trauma injuries and occupational disease injuries. Occupational diseases are defined in Connecticut General Statutes Section 31-275 (15) to be "any disease peculiar to the occupation in which the employee was engaged and due to causes in excess of the ordinary hazards of employment as such, and includes any disease due to or attributable to exposure to or contact with any radioactive material by an employee in the course of his employment."

*Hansen v. Gordon*, 221 Conn. 29 (1992), is the leading case in Connecticut defining what an occupational disease is. In *Hansen*, a case litigated by **Attorney Jason Dodge of SDAZ**, a dental hygienist claimed that she had contracted hepatitis in the course of her work and she was entitled to benefits. Evidence was presented that dental hygienists were at higher risk to contract hepatitis as compared to other occupations in that they are exposed to bodily fluids in their job. Medical testimony was also provided that indicated the hygienist had contracted the disease from her job as opposed to other causes. The claim was found compensable. The *Hansen* decision described what is needed to prove that an occupational disease is peculiar to employment: "Therefore, the requirement that the disease be "peculiar to the occupation" and "in excess of the ordinary hazards of employment," refers to those diseases in which there is a causal connection between the duties of the employment and the disease contracted by the employee. In other words, it need not be unique to the occupation of the employee or to the work place; it need merely 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." *Hansen v. Gordon at 35*.

Notwithstanding the ruling in *Hansen*, it remains the employee's burden to prove that the disease is substantially related to the employment versus other exposures. Therefore, if a healthcare worker were to contract CV-19 they potentially could pursue a claim, however, it would be their burden to prove causation. The mere fact that the worker encounters ill people in the course of their work is not sufficient to establish a causal relationship. The worker may have to show that there was a direct exposure to a patient with CV-19. Obviously, there could be a significant causation question as to whether the claimant contracted the CV-19 as a result of exposure to a patient or

through other causes, especially if the disease was widespread or the workers' family members had the disease.

There could be some claims where a finding of compensability of CV-19 makes sense. For example, if a nurse were to be stationed in a CV-19 quarantine unit and she/he were to contract the virus then she/he likely would have a strong claim for a compensable injury. Also, if a worker could show they were pricked by a needle which had the fluid of a CV-19 patient then this likely could lead to a compensable claim as well.

Illness contracted by employees in jobs not normally associated with increased likelihood to contract a disease probably would not be considered compensable. Therefore, employees with such jobs as office, warehouse, or manufacturing positions would likely not be able to pursue compensable CV-19 claims in our opinion.

Hopefully the number of CV-19 cases in Connecticut can be kept to a minimum with increased attention to hygiene such as washing hands and cleaning common areas and workspaces. If you have any questions regarding this CV-19 and potential claims please feel free to call us.