



## Work-contracted COVID-19? Getting workers' comp benefits isn't impossible

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The availability of workers' compensation benefits for physicians and their employees who contract COVID-19 while at work has been an issue of concern for many FMA members. While it is not guaranteed that your workers' compensation carrier will provide benefits based upon your assertion that you contracted the virus while at work, the situation is not as hopeless as some have made it out to be. See the Sun Sentinel's recent editorial, "[Good luck getting workers' compensation if you catch COVID-19 on the job.](#)"

Unlike several other states, Florida has not amended state policy so that COVID-19 infections in healthcare workers are presumed to be work-related and covered under workers' compensation. However, the state has taken emergency action to ensure workers' compensation coverage in limited circumstances. There is also existing state law that on a case-by-case basis will afford workers' compensation benefits to healthcare providers who contract COVID-19 while on the job.

On March 30, Florida's Chief Financial Officer issued Directive 20-05 which provides that Frontline State Employees who have tested positive for COVID-19 are entitled to workers' compensation benefits unless the State can show, by a

preponderance of the evidence, that the employee contracted COVID-19 outside of his or her scope of employment as a state employee. The Directive defines "Frontline State Employees" in part as those "State Employees working in the healthcare field, whose duties require contact with persons as they are being tested for COVID-19 or otherwise known to be infected with COVID-19."

While this directive only benefits healthcare providers who are state employees, the Office of Insurance Regulation followed the directive with Informational Memorandum OIR-20-05M on April 6, 2020. This memorandum served as a reminder to all insurers and entities authorized to write workers' compensation insurance that first responders, healthcare workers, and others who contract COVID-19 due to work-related exposure are eligible for workers' compensation benefits under Florida law. The memorandum further stated that "Insurers licensed to provide workers' compensation coverage in Florida are reminded of this statutory requirement, which must be applied on a non-discriminatory basis. The OIR expects workers' compensation insurers to comply with all of the provisions of Florida's Workers' Compensation Law and will take appropriate action in the event of non-compliance."

The law the OIR cites for the coverage requirement is s. 440.151, Florida Statutes. This statute equates the disablement

or death of an employee from an occupational disease with the happening of an injury by accident and provides that compensation is due to employees who contract an occupational disease while at work as long as the following apply:

1. The disease resulted from the nature of the employment in which the employee was engaged;
2. The disease was actually contracted while so engaged; and
3. The nature of the employment was the major contributing cause of the disease.

The statute requires that the “major contributing cause” requirement must be shown by medical evidence only, as demonstrated by physical examination findings and diagnostic testing. The “nature of the employment” requirement means “that in the occupation in which the employee was so engaged there is attached a particular hazard of such disease that distinguishes it from the usual run of occupations, or the incidence of such disease is substantially higher in the occupation in which the employee was so engaged than in the usual run of occupations.” For physicians who spend all day treating COVID-19 patients, it will not be hard to meet these requirements. The difficulty comes with the requirement that “both causation and sufficient exposure to a specific harmful substance shown to be present in the workplace to support causation shall be proven by clear and convincing evidence.”

While this may appear to be a daunting requirement, Florida case law has fortunately set forth a list of the elements required for entitlement to compensation under the occupational disease statute.

1. The disease must be actually caused by employment conditions that are characteristic of and peculiar to a particular occupation;
2. The disease must be actually contracted during employment in the particular occupation;
3. The occupation must present a particular hazard of the disease occurring so as to distinguish that occupation from usual occupations, or the incidence of the disease must be substantially higher in the occupation than in the usual occupations; and
4. If the disease is an ordinary disease of life, the incidence of such a disease must be substantially higher in the particular occupation than in the general public<sup>1</sup>

Florida case law also has stated that a specific incident of exposure need not be proven if all the elements of this test have been proven.<sup>2</sup>



Thus, a physician who contracts COVID-19 at work does not have to identify the specific patient from whom he or she contracted the disease as long as he/she can establish a causal connection between the disease and the type of practice the physician was engaged in during the specific time in which the virus was contracted.

The purpose of this dive into Florida’s workers’ compensation law is to show that it is not impossible to receive workers’ compensation benefits for a COVID-19 related disability or death. In fact, a review of the latest available data from the Florida Division of Workers’ Compensation (2020 COVID-19 Report, Data Summary as of May 31, 2020) shows that of the 3,807 COVID-19 indemnity claims filed from January to May of this year, 2,089 were paid in full. For healthcare workers, 1,200 of the 1,740 claims filed were paid. The FMA is working on obtaining data from the DWC that would explain why 540 of the claims filed by healthcare workers were either partially or totally denied. Regardless, this data indicates that filing a workers’ compensation claim for work time missed due to COVID-19 quarantine requirements is not an act of futility.

We encourage any FMA member whose COVID-19-related workers’ compensation claim has been denied to contact the FMA. If we are able to detect an improper pattern of denials based on the information received, we will contact the appropriate state agency for assistance. If you have any questions regarding COVID-19 and workers’ compensation benefits, please contact us at [legal@flmedical.org](mailto:legal@flmedical.org), and we will do everything we can to assist you.

1. *Broward Industrial Plating, Inc. v. Weiby*, 394 So.2d 1117, 1119 (Fla. 1st DCA 1981)
2. *Wuesthoff Memorial Hospital v. Hurlbert*, 548 So.2d 771 (Fla. 1st DCA 1989)