

COVID-19 and Heart and Lung Act Benefits

by Paul Della Franco, Esquire

Pennsylvania's Heart and Lung Act, covers all police officers, sheriffs and firefighters who sustain temporary disabling injuries "in the performance of" their duties. Like other communicable diseases, COVID-19 presents a special challenge for public employers when police officers, sheriffs and firefighters allege that they contracted the virus in the performance of their duties.

Although there is no question that COVID-19 would meet the definition of a disabling injury for Heart and Lung Act purposes, the difficulty arises in determining if "the injury" (in this case the "actual infection") occurred "in the performance of duties." The same difficulty exists under the Pennsylvania Workers' Compensation Act's more general "course and scope of employment" causation standard. Unfortunately, as the number of those infected will inevitably increase, it will become very difficult to precisely pinpoint where the infection was acquired by first responders since it could have occurred on or off duty. This analysis becomes even more difficult since causal exposures can occur when first responders interact with an individual infected with COVID-19 who is not showing any outward symptoms.

Practically, in this time of a health crisis, it is hard to imagine that a fact-finder would not give the benefit of the doubt to a first responder who has tested positive for the virus and lean toward granting such claims. Therefore, we recommend an approach which strongly considers the work-relatedness of the infection and takes some proactive measures to investigate the claim even if the first responder's medical evidence supporting a definitive or specific work-related exposure is somewhat lacking.

We recommend that the following steps be taken: 1) require proof of positive tests results for COVID-19; 2) take a statement from the first responder asking him/her to detail all on- and off-duty activities for the prior 2-3 weeks; 3) ask if any individuals in the first responder's home or others he/she has recently interacted with while off-duty have tested positive; 4) request the name of any medical providers he/she has seen or talked to since the symptoms first presented; and possibly 5) have the statement and any medical records reviewed by an independent physician to offer an opinion.

Another related issue involves first responders who have not yet tested positive for COVID-19, but who have had contacts while on-duty with an individual who has tested positive since the first responder should be quarantined for the next two weeks, at the very least. Although we recommend that these employees be placed on "paid leave" while under quarantine, we do not recommend acknowledging a Heart and Lung Act injury *unless* they also test positive for COVID-19 after the documented contact.

Importantly, these decisions for Heart and Lung Act benefits must be made in consultation with your workers' compensation carrier. Municipalities should hesitate in acknowledging any claimed temporary disability as work-related for Heart and Lung Act purposes until, if and when, your workers' compensation carrier also accepts the claim.

You should work together with your workers' compensation carrier in accepting or denying such claims jointly and should avoid any confusion brought about by a workers' compensation issuance of a Temporary Notice of Compensation Payable (TNCP) which can later be withdrawn, unlike a decision to pick up a Heart and Lung claim.

These are difficult issues which require a knowledge of the interaction between the Heart and Lung Act, the Workers' Compensation Act and other employment laws related to disability. We encourage you to call us at Campbell Durrant with any questions or concerns regarding these issues.