

Kentucky Executive Order 2020-277:

Expanding TTD Benefits During the COVID-19 State of Emergency

On April 9, 2020, Kentucky Governor Andy Beshear issued an Executive Order that provides temporary total disability (TTD) benefits to employees who are quarantined as a result of possible exposure to COVID-19. On April 15, 2020, The Kentucky Department of Workers' Claims (KDWC) issued a Guidance Statement for compliance with the Order.

The Order suspends the statutory “seven day” rule for TTD, so that indemnity benefits are payable from day one of the quarantine. The Order also creates a presumption of occupational exposure for a wide range of “essential” job categories; from healthcare workers and first responders to “grocery workers” and several categories of social services workers. The presumption shifts the burden of proof for occupational exposure from the employee to the employer. Notably absent from the list of specified fields are delivery drivers and package handlers, such as employees with FedEx, UPS and Amazon. Food service workers, such as McDonald’s employees, are not on the list. “Grocery Workers” are included, but it is not clear that this category applies to “big box” retail outlets, such as Walmart, Meijer, etc.

The KDWC Guidance explains that workers who fall under the presumption are immediately eligible for benefits: “The employer or its payment obligor may not deny payment of benefits pursuant to the Order without evidence forming a good faith basis for denial.” The example given of a good faith basis for denial is a grocery worker who is quarantined solely because his spouse tests positive for COVID-19.

Workers who do not fall under the presumption must establish that the removal is the result of an occupational exposure as defined in KRS 342.0011(3):

An occupational disease as defined in this chapter shall be deemed to arise out of the employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause. The occupational disease shall be incidental to the character of the business and not independent of the relationship of employer and employee. An occupational disease need not have been foreseen or expected but, after its contraction, it must appear to be related to a risk connected with the employment and to have flowed from that source as a rational consequence;

Current medical consensus is that COVID-19 can be spread through proximity with asymptomatic or mildly symptomatic carriers of the virus, most of whom are unaware that they have the disease. Under the complex statutory definition, any worker who spends any time in proximity with co-workers, or has any customer contact could demonstrate “a causal connection between the conditions under which the work is performed and the occupational disease.”

Employers have a duty to promptly investigate claims, and benefits can be denied on a good faith basis. An example of a good faith basis is a worker who is removed from work by a physician due to “exposure to COVID-19” without any mention of an occupational exposure in the physician’s quarantine order.

COVID-19 & Claims Management as of 4-20-20

In Kentucky, communicable diseases are generally compensable as occupational diseases when the conditions at work create a greater risk of incurring the disease. The Order extends the scope of benefit entitlement from employees diagnosed with a communicable disease to those employees that a physician has quarantined because they might have the disease. Eligible quarantined employees will receive TTD even if, as is hoped, they are ultimately found not to have contracted COVID-19. The TTD paid will likely never be recovered, as Kentucky provides for the recovery of TTD overpayments only from the payment of back due, lump sum PPD or PTD benefits.

In Kentucky, TTD can be offset by unemployment benefits, as well as benefits from disability, sickness and accident and salary continuation plans that are exclusively employer-funded and contain no internal offsets for workers' compensation benefits. The KDWC Guidance confirms the unemployment benefit offset and provides an offset for FMLA benefits paid under the "Families First Coronavirus Response Act" (FFCRA).

The Order does not address medical benefit entitlement during the quarantine period. However the KDWC Guidance states the Order applies only to the payment of TTD after a worker has been quarantined by a physician due to occupational COVID-19 exposure, and has "...no application to resolution of any issue beyond the scope of the Order," which indicates that medical benefits are not payable solely as a result of a quarantine order for occupational exposure.

Neither the Order nor the Guidance provide any specific procedural requirements for reporting an application for TTD benefits based on a quarantine order. It is recommended that employers treat quarantine orders as reports of lost time injuries, and file first reports of injuries with the KDWC accordingly. Notices of TTD termination must also be filed to ensure the preservation of the statute of limitations on claims.

-
- Please click here to read the full [Guidance Memo](#).
 - Please click here to read the full [Executive Order](#).

We hope that you found this beneficial and that everyone is staying safe during this most challenging time. Should you have any questions, please do not hesitate to contact a member of our Workers' Compensation Team. We are more than happy to assist and answer any questions possible.

KENTUCKY WORKERS' COMPENSATION TEAM

Thomas C. Donkin
tcdonkin@kopkalaw.com
(859) 300-8082
301 E. Main Street, Suite 400
Lexington, KY 40507

Tonya M. Clemons
tmclemons@kopkalaw.com
(859) 300-8086
301 E. Main Street, Suite 400
Lexington, KY 40507