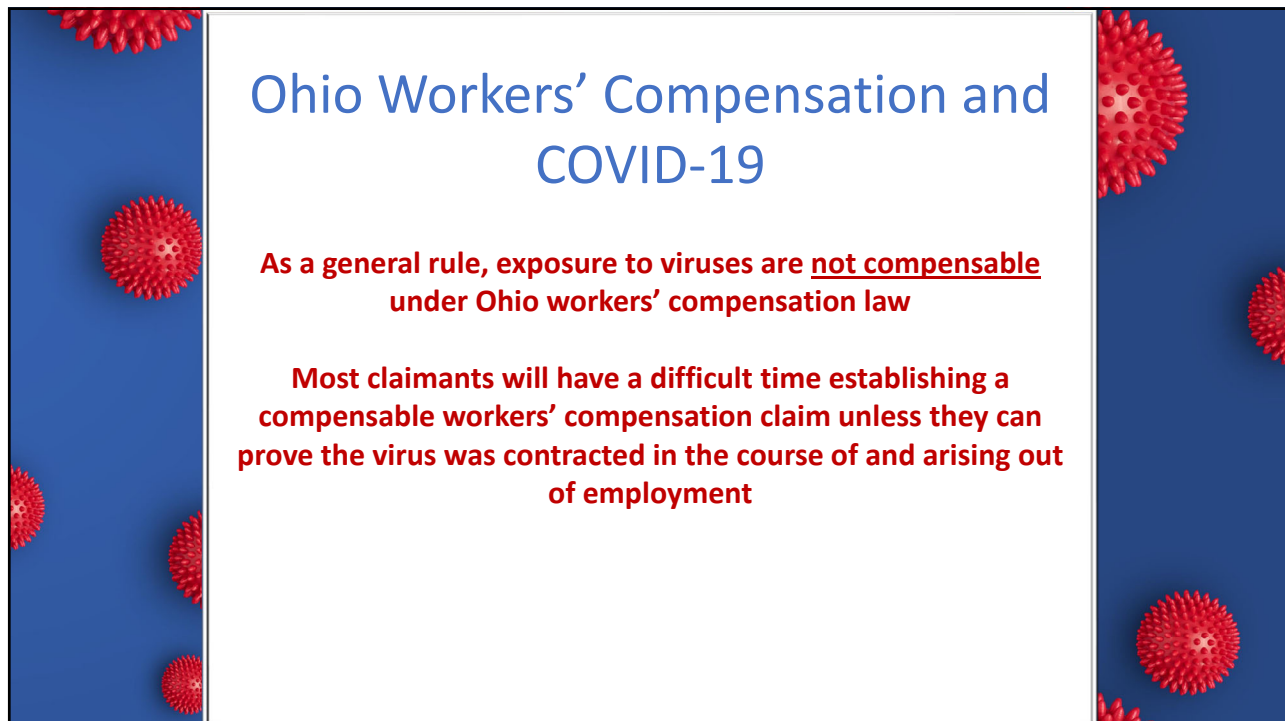


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Elements of a Workers' Compensation Claim

In Ohio, a claimant must prove three elements to have a compensable workers' compensation claim for COVID-19:

- ❑ The disease was contracted in the course of and arising out of employment,
- ❑ The disease is peculiar to the claimant's employment by its causes and the characteristics of its manifestation,
- ❑ The conditions of the employment result in a hazard which distinguishes the employment in character from employment generally, and
- ❑ The employment creates a risk of contracting the disease in a greater degree and a different manner than the public generally.

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Compensable Claim

The claimant must establish COVID-19 was contracted as a result of exposure in the workplace

The claimant must submit a medical opinion from a physician who diagnosed COVID-19 and causally relates that condition to an exposure at work

It should be difficult to obtain this type of medical opinion in a pandemic context with the coronavirus existing throughout the general public

Certain occupations may make it more likely than members of the general public to be infected, such as health care workers and first responders



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Proof of Coronavirus Exposure

Exposure

With the coronavirus, it will be difficult to determine exactly where an employee contracted the virus making it extremely difficult to hold an employer responsible for a compensable workers' compensation claim.

Employers can argue exposure could have happened at any time or anywhere outside of employment.

Latency period of between 2-14 days will make pinpointing exposure virtually impossible

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Coronavirus Claims

It is likely claimant's attorneys will file claims for the coronavirus

These claims should be treated as any other type of flu or virus illness

As a general rule, any claim for coronavirus should be contested by the employer



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Intentional Tort

R.C. 2745.01 Liability of Employer for Intentional Tort

- A. In an action brought against an employer by an employee, or by the dependent survivors of a deceased employee for damages resulting from an intentional tort committed by the employer during the course of employment, the employer shall not be liable unless the Plaintiff proves the employer committed the tortious act with the intent to injure another, or with the belief that injury was substantially certain to occur
- B. As used in this section, “substantially certain” means that an employer acts with deliberate intent to cause an employee to suffer an injury, a disease, a condition or death.
- C. Deliberate removal by an employer of an equipment safety guard or deliberate misrepresentation of a toxic or hazardous substance creates a rebuttable presumption that the removal or misrepresentation was committed with intent to injure another if an injury or occupational disease or condition occurs as a direct result.

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Intentional Tort

Intentional tort in Ohio allows claimants to file personal injury lawsuits against their employer under a theory of intentional tort, essentially means that an employer knew or was substantially certain that an injury would result to a claimant from an employer’s actions.

These lawsuits are heard by a jury to determine whether the employer had actual knowledge or was substantially certain an injury would occur.

There must be evidence of an actual, deliberate intent to injure the claimant.

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Intentional Tort

The statute provides a “rebuttable presumption” of the required intent to injure if the employer deliberately removes a safety guard or deliberately misrepresents a toxic or hazardous substance.

Intentional tort action allows a claimant to file an independent tort action against the employer to seek compensation and punitive damages in addition to the WC claim.

The question will ultimately be whether an employer’s actions or inaction in connection with the coronavirus rises to the level of deliberate intent or substantial certainty.

Will claimants argue a rebuttable presumption under a deliberate misrepresentation of a toxic or hazardous substance?

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Intentional Tort



The question will ultimately be whether an employer’s actions or inaction in connection with the coronavirus rises to the level of deliberate intent or substantial certainty

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Intentional Tort

Will claimants argue a rebuttable presumption under a deliberate misrepresentation of a toxic or hazardous substance?



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Intentional Tort

The safe course is to follow all recommendations from the federal government, state of Ohio and county health departments



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QUESTIONS?

Thank You

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