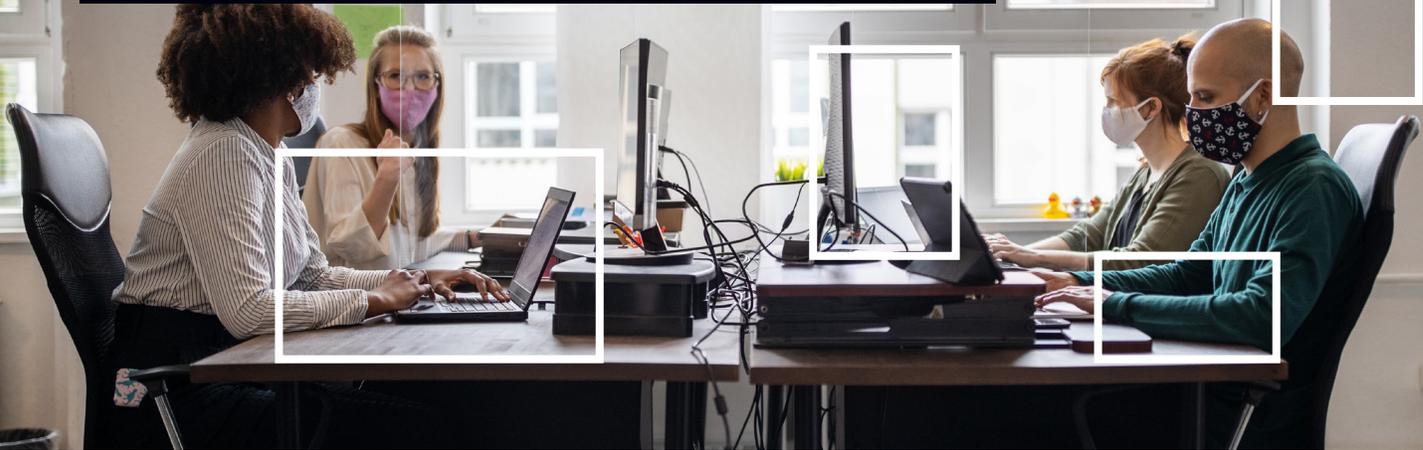


You Should Know

COVID-19 worker compensation claims



The question some are asking - Why have so many COVID-19 workers compensation claims been rejected?

The term “so many” implies the ‘rejection rate’ is higher than the norm. So, what is the difference between the normal denial rate (non-COVID-19 claims) compared to the COVID-19 claim denial rate?

According to a national third-party claim administrator, their denial rate in 2019 nationally was 11% (pre COVID-19) and 37% nationally for COVID-19 only claims - a difference of 26%.



So, why the difference?

The answer resides in the structure of the U.S. Workers Compensation system and the laws within this structure. Each state establishes its workers compensation laws – 50 states with 50 different ways to determine if a claim should be

rejected. A claim with the same fact-pattern could be accepted in one state and rejected in another.

The decision-making process regarding the acceptance or rejection of an employee’s claim for benefits is state specific and situation. Therefore, the rejection rate is a function of the applicable state law and thus will vary by state.



So, why are COVID-19 rejection rates higher and vary?

Contained within many states’ workers compensation statute exists an important rejection-rate determinant – a section of the statute devoted to Occupation Illness and Communicable Disease. Some state lawmakers established wording in this section with a bent toward rejecting ‘communicable’ disease claims (consult your state’s applicable WC statute) - even when the employee contracted their illness

on the job and because of their job activities. Because COVID-19 is common in the general population, a strict reading of some state statutes can produce a high rejection rate. Some state legislators have added provisions to their statute in an attempt to soften the impact.

One example of a legislative change that several states have or are attempting to institute is generally referred to as Rebuttable Presumption. The wording differs by state, but broadly it says that if an employee’s occupation falls into a defined category and they test positive for COVID-19, it will be presumed they contracted the virus on the job. **The burden is then placed on the employer/carrier to prove differently.** Claims by employees that fall into this classification can still be rejected if the facts prove the employee did not contract COVID-19 on the job. Thus the reason for the word ‘rebuttable’.

The states making change to their statute to adjust for COVID-19 claims are in different stages of the process. This makes for a fluid environment. A claim in the same state may be rejected today and because of these changes – accepted tomorrow. The point: as states modify their laws the rejection rate will adjust accordingly.

Decisions related to accepting or rejecting a COVID-19 claim are based on facts and laws. But, not all facts are discoverable when it comes to a COVID-19 workers compensation claim?

Every claim is fact specific and no two fact-patterns are the same. Often it is difficult if not impossible to determine how the employee contracted COVID-19. What then? How will the applicable state statute respond? – Reject or deny - it depends and sometimes it is not clear.

What is clear though – some decisions as to whether to reject or accept a claim is made on ‘available facts’ because ‘all facts’ are not always attainable.



A recap:

- State statutes determine acceptance or rejection
- State statutes vary so the rejection rate vary by state
- Each claim is fact specific, but all facts are not always attainable
- **Who has the burden of proof is important and varies by states**
- Communicable diseases statutory wording can be difficult to overcome
- Employers and insurance carriers are not the ultimate decision maker – the legal system is
- There are methods built in the workers compensation statute to challenge decisions



So, why have so many COVID-19 claims been rejected?

Many state statutes were not written with the COVID-19 pandemic in mind. Their perspective of a ‘communicable disease’ was a normal disease of life - common to the general population – a colds, the yearly flu, etc. As a result, state statutes incorporated wording in their law that made it difficult to accept COVID-19 claims and thus many have been rejected.

For additional information contact your Willis Towers Watson client team or:

Jeff Seibert

Senior Principal, Claim Consulting
Integrated Casualty Consulting
jeff.seibert@willistowerswatson.com

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