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COVID-19 and Oregon workers' compensation claims processing

The Oregon Workers' Compensation Division has adopted new rules to address COVID-19 or SARS-CoV-2 exposure. The permanent rules were in effect beginning February 1, 2021 and can be found at OAR 436-060-0141. Of note, the Oregon rules do not establish a "presumptive" case for acceptance like some other states have. In other words, the Oregon administrative rules do not presume that covered workers who contract COVID-19 contracted the virus at work.

The emphasis of the new rules has been a few additional investigative requirements specific to COVID-19 claims that do not materially change the normal investigation for Oregon state workers' compensation claims. Those are noted below. Lastly, although the Oregon Worker's Compensation Division has enacted rules to address COVID-19, these rules do not impact the Longshore and Harbor Workers' Compensation Act. The Oregon Workers' Compensation Division does not have jurisdiction over Longshore claims and their requirements do not establish additional obligations for LHWCA claims.

For your convenience, below is a summary of the new rules:

- Defines "COVID-19," "isolation," "medical service provider," "presumptive case," "quarantine," and "SARS-CoV-2," as these terms are used in the rule;
- Explains that, under OAR 436-060-0140(1), insurers must conduct a "reasonable investigation" before denying any claim, and describes additional requirements for a reasonable investigation when the claim is filed on or after Feb. 1, 2021, for COVID-19 or exposure to SARS-CoV-2;
- Provides an exception to additional requirements for a reasonable investigation if a claim is denied for procedural reasons not related to the worker's exposure to COVID-19 or SARSCoV-2 (for example, the claim was filed with the wrong insurer, the insurer did not provide coverage, or the worker is nonsubject);

- States that the director shall audit denied claims for COVID-19 or exposure to SARS-CoV-2 reported to the director before Oct. 1, 2020, if the insurer had reported five or more claims for COVID-19 or exposure to SARS-CoV-2 before Oct. 1, 2020, regardless of whether those claims were accepted or denied, and if the denial is final by operation of law;
- States that the director shall audit additional denied claims for COVID-19 or exposure to SARSCoV-2, and specific claims to be audited will be selected based on criteria determined by the director;
- Describes the focus of the director’s audit of claims for COVID-19 or exposure to SARS-CoV-2 filed before Oct. 1, 2020, of claims filed on or after Oct. 1, 2020, but before Feb. 1, 2021, and of claims filed on or after Feb. 1, 2021; and
- Explains that failure to comply with requirements in ORS chapter 656, OAR chapter 436, or orders of the director may subject an insurer to civil penalties under ORS 656.745(2).
- In addition to the new rules, the Workers Compensation Division has released industry notices on the below topics:
 - 1) WCD COVID-19 processes update (issued March 17, 2020).
 - The notice reports that employees are working remotely, staggering work schedules, canceling in-person events and avoiding non-essential travel.
 - The notice can be found here: <https://wcd.oregon.gov/IndustryNotices/03-17-20-IN-COVID-19.pdf>
 - 2) WCD COVID-19 claims processing (issued March 25, 2020).
 - The notice provides guidance on topics relating to claims processing such as communication between workers and employers on issues that arise due to the impact of COVID-19 on normal business practices; temporary fee increase for medical services by telehealth; temporary disability authorization; and general information regarding penalties.
 - The notice can be found here: <https://wcd.oregon.gov/IndustryNotices/03-25-20-IN-COVID-ClaimsProc.pdf>
 - 3) Payments to employees of businesses closed due to pandemics (issued April 14, 2020).
 - The notice provides guidance to self-insured employers who are paying employees that are furloughed due to pandemic-related public health issues.
 - The notice can be found here: <https://wcd.oregon.gov/IndustryNotices/04-14-20-IN-payroll-excul.pdf>
 - 4) COVID-19 and workers’ compensation informational flier (issued November 12, 2020).
 - Flier that provides guidance to workers who have been quarantined, exposed to, or contracted COVID-19 in the workplace.

- The notice can be found here: <https://wcd.oregon.gov/IndustryNotices/11-12-20-IN-COVID-19-flier.pdf>

In conclusion, although the new administrative rules and industry notices provide guidance on processing of state system COVID-19 claims, there is currently no case law outlining how the Workers' Compensation Board will apply the new rules to COVID-19 cases and the rules do not implement new requirements on LHWCA claims. However, we are closely watching this issue and will notify clients of any substantive developments. Please feel free to reach out to the attorneys at Babcock Holloway Caldwell & Stires if you have a specific question or concern not addressed here where we may be of assistance.