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Managing Employment Injuries in the Age of COVID-19

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The management of employment injury claims has not halted due to the current pandemic. Not only are new employment injuries taking place and claims being filed, ongoing claims are still being processed.

Managers must be vigilant in order to limit the financial impact of the pandemic with respect to employment injury claims. They can act in one of two (2) ways:

- Investigating the circumstances in which the worker contracted COVID-19 in order to determine whether it can be considered an employment injury;
- Monitoring employment injury cases to identify the impact of the pandemic on the way cases are treated to then try to obtain a reduction in financial consequences for the employer by an assignment of costs.

Can COVID-19 be considered an employment injury?

Although a worker infected with COVID-19 is at liberty to file an employment injury claim, they are responsible for proving that they contracted the disease or came into contact with the virus due to or in the course of their work. According to the current laws and jurisprudence, a COVID-19 diagnosis does not trigger the application of any legal presumption facilitating the acceptance of a worker's claim under either the category of occupational disease or that of industrial accident.

Helpful tip: If one of your employees has contracted COVID-19, investigate the origin of the infection. Ask the following questions and document the answers you receive:

- Has the worker travelled recently? Where and when? When did they return from abroad?
- Has one of their loved ones recently been diagnosed with COVID-19?
- Have one or more colleagues, clients or business partners contracted the disease?
- What symptoms did they experience, and when did they begin experiencing them?
- What was their schedule and who did they work with in the days before they began experiencing symptoms?
- Why do they believe they contracted the disease at work?
- What hygiene, preventive and protective measures and distancing did they use in the workplace?

Can employers apply for an assignment of costs due to COVID-19?

In terms of employment injuries, the pandemic can have many consequences, such as treatments and temporary assignments of work being temporarily interrupted and medical assessments and examinations by the Bureau d'évaluation médicale (BEM) being cancelled or postponed for an indefinite period. This situation will inevitably prolong the period during which employment injury benefits are paid, potentially significantly in some cases.

Employers could apply for an assignment of costs for these claims in order to reduce the financial impact of the pandemic by demonstrating, for example, that the treatments necessary to consolidate

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the worker's injury were suspended due to the pandemic, delaying consolidation or increasing the consequences o permanent impairment.

A pandemic the size of COVID-19 is probably very much outside the scope of risks most employers generally have to face. When applying for an assignment of costs due to "undue burden"[1], the employer will need to demonstrate that the consequences stemming from the pandemic such as delayed consolidation or more substantial permanent consequences represent a significant proportion of the costs attributable to the employment injury.

Helpful tips: If you have workers who are currently receiving income replacement benefits, find out whether their treatments or medical care have been interrupted due to the pandemic, if they have had medical or surgical appointments cancelled, etc. Document this information.

The impact of these events on the cost of the claim can be documented retrospectively.

Keep in mind, however, that applications for an assignment of costs due to "undue burden" must be submitted within the time limit established by law, as interpreted by jurisprudence[2].

The members of our Labour and Employment team are available to answer any questions you may have about occupational health and safety measures you are considering or the solutions you are seeking given the realities of your organization and its activities.

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1. Section 326 of the *Act respecting Industrial Accidents and Occupational Diseases* ("AIAOD").
2. Section 326 of the AIAOD states that the application must be made in writing within the year following "the date of the accident", and must include an explanation of the reasons for the application. However, the Court of Appeal has interpreted this time limit as being able to start from the day the right to the exception begins in *Commission de la santé et de la sécurité du travail v. 9069-4654 Québec inc.*, 2018 QCCA 95 (known as the "Supervac 2000" case), as has the majority of the Tribunal administratif du travail jurisprudence that followed.

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