

COVID-19 claims post-ARPA



Regional Workers' Compensation Assistant Coby Jones

On Jan. 27, the special provisions for the handling of Office of Workers' Compensation Programs (OWCP) COVID-19 cases established by the American Rescue Plan Act of 2021 (ARPA) expired. The ARPA streamlined the OWCP claims process for federal workers who were diagnosed with COVID-19 between Jan. 27, 2020, and Jan. 27, 2023. Under the ARPA, to establish a COVID-19 claim federal workers simply needed to prove that:

- They were diagnosed with COVID-19 via a positive test result (excluding home tests) or medical professional; and
- Within 21 days prior to the diagnosis of COVID-19, they carried out duties that required contact with members of the public or co-workers.

Anticipating the expiration of the ARPA COVID-19 provisions, OWCP published *FECA Bulletin* 23-02 on Dec. 15, outlining how it would process COVID-19 cases that are diagnosed after Jan. 27. In a nutshell, OWCP will return to processing COVID-19 cases according to the same rules and procedures that it applies to every other OWCP claim.

Claimants must establish the five basic elements for adjudication as set forth under the Federal Employees' Compensation Act (FECA) as follows: 1) The claim was timely filed; 2) The claimant is a civil employee of the federal government; 3) The claimant provided evidence of a diagnosis of COVID-19, and evidence that establishes that they actually experienced disease exposure; 4) The exposure occurred while the claimant was in the performance of duty; and 5) The diagnosed COVID-19 was found by a physician to be causally related to the work exposure.

While COVID-19 claims under the ARPA were filed via a CA-1 to ensure that claimants received continuation of pay (COP) during the pandemic, claims for COVID-19 diagnosed after Jan. 27 should generally be filed on Form CA-2, Notice of Occupational Disease. This is because in most cases there will be no clear, identifiable incident or incidents over a single day or work shift to which the injured worker can specifically attribute the cause of his or her diagnosed COVID-19. This is consistent with how OWCP has historically handled infectious disease cases.

Under rare circumstances, claimants may still file a CA-1 when they can identify a specific incident or incidents that led to their infection. However, if a CA-1 is filed but the event is not clearly identifiable as to time and place of occurrence, OWCP will administratively

convert the CA-1 to a CA-2 and a formal decision will be issued denying entitlement to COP.

The date of injury for a CA-2 claim is the last date the claimant was exposed to claimed factors of employment prior to testing positive for COVID-19. For a CA-1 claim, the date of injury is the date of the claimed incident that caused COVID-19. Note that the determination as to whether or not the claim will be adjudicated under the ARPA is not the date of injury, but rather the date of the diagnosis.

To establish a diagnosis of COVID-19, the employee should submit:

- a. A positive polymerase chain reaction (PCR) or antigen COVID-19 test result; or
- b. A positive antibody COVID-19 test result, together with contemporaneous medical evidence that the claimant had documented symptoms of and/or was treated for COVID-19 by a physician (a notice to quarantine is not sufficient if there was no evidence of illness); or
- c. If a positive PCR, antigen, or antibody test is not available, a COVID-19 diagnosis from a physician together with rationalized medical opinion supporting the diagnosis and an explanation as to why a positive test result is not available.

Self-administered COVID-19 tests, also called "home tests," "at-home tests" or "over-the-counter" (OTC) tests, are insufficient to establish a diagnosis of COVID-19 under the FECA. The only exception to this policy is where the administration of the self test is monitored by a medical professional and the results are verified through documentation submitted by such professional.

In post-ARPA cases, claimants filing a CA-2 will have to write narratives to establish the third basic element of their case: fact of injury. They should clearly describe all the times during a typical workday when they are in contact with, or in close proximity to, other people. They will need to include an estimate of the number of people they are exposed to and the locations of this exposure.

Claimants also will need a rationalized medical report from their physician in order to establish the fifth basic element of their case: causal relationship. The report should explain how the amount of public exposure described by their patient in their narrative, with reasonable "medical certainty," led to the COVID-19 infection.

A more detailed explanation of OWCP's post-ARPA COVID-19 policies and procedures, along with guidance on both writing a work exposure narrative and obtaining a rationalized medical report, can be found on the NALC website under Workplace Issues>Injured on the Job. The website also contains links to *FECA Bulletin* 23-02 and OWCP instructional material on filing post-ARPA COVID-19 claims.