



# Is it possible to claim workers compensation if COVID-19 is contracted at work?

## **Workers Compensation Payment for Death Caused by COVID-19**

A finding has been made in the New South Wales Personal Injury Commission that the family of a worker who died as a result of contracting COVID-19 in the course of a work trip to America is entitled to compensation under the NSW workers' compensation scheme.

While a number of claims in regard to COVID-19 related injuries have been made under the New South Wales workers' compensation scheme, this is the first known tribunal judgement delivered in relation to such a claim.

### **Background**

The deceased worker, Mr Georges Sara, worked alongside his wife as the co-director of a New South Wales dental supply company, G & S Sara Pty Ltd, which provided dental products and services to

various healthcare providers in New South Wales. Prior to his death, Mr Sara's business expanded into the United States, and he regularly travelled to the US as part of his role as a company director. In July of 2020, Mr Sara boarded a plane for what would turn out to be his last journey from Sydney to New York.

Mr Sara arrived in New York on 15 July, and by 19 July was complaining of COVID-19 symptoms including a cough and fatigue. On 23 July 2020, Mr Sara was admitted to a New York hospital where he was diagnosed with COVID-19. After months of prolonged treatment, Mr Sara died on 21 November 2020 due to acute respiratory distress caused by complications arising from COVID-19.

A dependency claim was subsequently brought by Mrs Sara, the deceased worker's wife, on the basis that Mr Sara had contracted COVID-19 while on a work trip, and therefore was entitled to payments under the workers' compensation scheme.

Mrs Sara claimed weekly income support payments for the period 23 July to 21 November 2020, a lump sum death benefit, and the payment of the deceased's medical and hospital expenses incurred in the American healthcare system.

### **Was COVID-19 contracted "in the course of employment"?**

A key point of dispute between the parties was whether Mr Sara contracted COVID-19 in the course of his employment.

Similar to the South Australian Legislation, the New South Wales workers compensation scheme requires an injury to have occurred "in the course of employment" for it to be compensable as a work-related injury.

Based on the dates on which Mr Sara's first symptoms appeared, and the progression of the disease, the Commission was satisfied that, on the balance of probabilities, it was likely Mr Sara had contracted the virus during the period of travel from boarding his flight at Sydney Airport, to when he arrived at his hotel in New York.

Importantly, the Commission held that while not everything Mr Sara did while in New York could be considered "in the course of his employment", the period of travel from Australia to the United States was found to be clearly within the course of Mr Sara's employment, as the travel was encouraged and induced by his employer.

Consequently, a judgement was delivered by the Personal Injury Commission of New South Wales on 10 August 2021 in which the Commission found in favour of Mrs Sara on the basis that Mr Sara contracted the COVID-19 virus as part of his employment, awarding her \$834,200 as a lump sum death benefit, in addition to weekly compensation and funeral expenses.

The Commission did not make a final finding in regards to the medical expenses incurred in America, instead listing that point to be determined at a later hearing, and noting that statutory limits will likely apply to the amount Mrs Sara is able to claim in medical expenses.

### **Conclusion**

The judgement of the New South Wales Personal Injury Commission confirms a potential for Tribunals to find workers who contract the COVID-19 virus to claim compensation provided that they can prove they were exposed to the virus in the course of their employment.

This judgement comes at an interesting time in which there is mounting uncertainty as to whether States like New South Wales can contain the rising numbers of COVID-19 cases emerging in the community.

In spite of the above, it is worth noting that given the implications the decision has for employer's liability under the workers' compensation scheme, it is possible this decision may be appealed by the Respondent before a higher Court. It is unknown if that will occur at this time. As such, it is important to remember that the findings of the Commission in this matter have the potential to be overturned.

It should also be noted that each state has its own workers compensation scheme. Therefore, whilst the judgement set a precedent in New South Wales, it may not be upheld in judgements for cases heard in other jurisdictions such as South Australia.

If you or someone you know has been exposed to the COVID-19 virus through their employment, or you would like to speak to someone regarding any of the issues raised above, we encourage you to contact one of our [specialist workers' compensation lawyers](#).

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