

COLD COMFORT FOR COMPO IN COVID-19 CRISIS

In these unprecedented times, workers in NSW may have difficulty proving their rights to workers compensation payments following exposure to, and contracting of, the COVID-19 virus. RMB Compensation Lawyer FRAN SMITH explains:

The NSW Workers Compensation legislation defines a “disease injury” as:

- (i) a disease that is contracted by a worker in the course of employment but only if the employment was the main contributing factor to contracting the disease;
- (ii) the aggravation, acceleration, exacerbation or deterioration in the course of employment of any disease, but only if the employment was the main contributing factor to the aggravation, acceleration, exacerbation or deterioration of the disease.

Unfortunately, this definition does not include the prevention of disease. Therefore, it would seem that workers practising social responsibility and staying at home because of cold-like symptoms will not be covered by workers compensation.

Likewise, the worker who is required to self-isolate due to exposure to the virus whether in the workplace or elsewhere, will have to rely on other leave entitlements rather than workers compensation. Some workplaces will require workers to use annual leave entitlements rather than sick leave entitlements in those circumstances.

However, workers who contract COVID-19 due to exposure in the workplace are likely to satisfy the definition of “disease injury” and may well be entitled to workers compensation for their absences from work. They will also need to show that the “injury” was contracted in the course of employment or arose out of or in the course of employment.

It may be difficult to establish that a virus was contracted “in the course of employment”.

To trigger entitlement to workers compensation in NSW the duties performed at work must be the “main contributing factor” to the contraction of the disease. Examples include health workers who must interact with those who are known to have contracted the virus, or a worker who is required to travel to a high-risk area.

The unknown challenge is the entitlement to workers compensation when a worker simply asserts they acquired the virus from a co-worker. Will the employer’s risk management policy be relevant to whether the sick workers employment was the main contributing factor to contraction of the virus? Who knows?

Entitlement to workers compensation is just one more uncertainty in these uncertain times.