How Does Workers’ Compensation Apply When a Nurse Contracts Ebola?

**Q** What is the process for determining if an infectious disease (like Ebola) I contract is a work related illness or injury under Oregon’s workers’ compensation?

**A** Ebola would be no different from other workplace exposure claims. You would bear the burden of proving your exposure to Ebola occurred at work. This would entail questions of exposure history, onset of symptoms, incubation, etcetera and ultimately, medical expert opinions on causation.

Given the current uniqueness of Ebola, the connections to your workplace would presumably be easier to determine. For example, the two nurses in Texas who contracted Ebola can easily connect the dots to their care of the patient with Ebola. In contrast, if you contracted influenza, it’d be harder to prove that you contracted the disease at work, as opposed to contracting it from exposure to someone sick in the community.

What this shows is that if Ebola becomes more widespread, it will become harder to prove that contracting the disease was due to a workplace exposure, as opposed to exposure from someone in the community.

**Q** Would workers’ compensation cover a nurse who is put in “precautionary isolation” (quarantine)? For example, a nurse is put in isolation by the CDC (or other governmental body) after treating a patient who was later diagnosed with Ebola.

**A** Most likely. Where there is a workplace exposure or event that results in the need for medical services (even if those medical services are prophylactic or diagnostic and not curative) then there is a “compensable injury” under workers’ compensation law (an injury requiring medical services).

For example, Oregon Courts have found that a worker exposed to HIV has a compensable injury. The exposure to HIV coupled with the HIV prophylactic regimen and testing the employee underwent was enough to qualify the employee for workers’ compensation benefits.

Likewise, a precautionary quarantine for Ebola exposure likely is covered by workers’ compensation. The exposure would lead to the need for the medical quarantine and on-going testing, all potentially covered by workers’ compensation (assuming the exposure to Ebola can be proven to be work related).

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**Q** What benefits does workers’ compensation provide?

**A** The benefits under workers’ compensation would be the same for Ebola as with any other covered (compensable) condition. These include:

- medical bills for the disease paid without co-pays/costs to the worker
- time loss paid at 66.66 percent of the worker’s “average weekly wage” while the worker is authorized to be off work by the attending physician
- if the injury/disease results in objectively measurable permanent impairment (damage to body function), there is a “formula” for awarding permanent partial or permanent total disability or death and survivor benefits to qualifying family members.

Some employers also allow employees to augment their income with paid time off.

**Q** Does OSHA play a role in requiring an employer to limit a nurse’s exposure to Ebola?

**A** Oregon OSHA requires every employer responsible for any work involving a risk or danger to employees or the public to “…use every device, care and precaution that is practicable to use for the protection and safety of life and limb....” This requirement would include the use of the protocols (every device, care and precaution) applicable in the context of a contagious disease.

Recent news coverage has caused employers to rethink, modify and adopt new protocols, including what “every device, care and precaution” should entail. You can demand that the employer disclose their protocols. And if you have concerns about their adequacy, contact Carl Brown, ONA’s Director of Professional services at c.brown@OregonRN.org.
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Q What recourse, if any, does a nurse have, when he or she is prohibited from coming back to work because the employer suspects that nurse of Contracting Ebola outside of work? For example, an employer prohibits a nurse from returning to work for 21 days (the possible incubation period for Ebola) after the nurse returns from a health care mission in an African nation that has only suspected, not confirmed, cases of Ebola.

A This is almost the flip-side to the OSHA question above. The employer is, under Oregon law, required to take steps to provide a safe work place and to protect other employees and the public. Restricting a worker the employer suspects of being exposed or infected may well be one of the appropriate, necessary protocols.

The analysis of whether the employer’s suspicion is reasonable is fact-specific. You’d need to answer questions like whether the employer is limiting the public’s access to its facilities, is the employer allowing higher-risk individuals to work, is the employer’s suspension based on objective criteria, etcetera.

Your remedy is probably a grievance under the contract. ONA could argue that an employer that denies your return to work for a period of time has suspended you without just cause, in violation of the contract. We made similar claims during the 2009 H1N1 pandemic and successfully got employers to either reverse the suspension or pay the nurse during the time off.

Q Can I object to taking care of a patient I reasonably suspect to have Ebola? Likewise, can I demand that the employer provide me appropriate equipment or training prior to caring for a patient with Ebola?

A you may refuse an assignment if you lack the proper training or equipment, and thus are unable to safely provide care. The standard of care at this point is the training and use of equipment that the CDC is recommending which includes onsite monitoring of donning and doffing of equipment, and a buddy system for donning and doffing personal protective equipment http://www.cdc.gov/media/releases/2014/fs1020-ebola-personal-protective-equipment.html.

Therefore, a nurse may decline a patient assignment if not trained, equipped and staffed properly.

But action must be reasonable and based on current facts. An individual coming into the Emergency Department with flu-like symptoms that recently returned from West Africa would be cause for reasonable suspicion. At the time of this writing, however, a patient with flu like-symptoms with no connection to West Africa may not.
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Q What should I be doing?

A Educate yourself about best practices and procedures. The following is a link to several resources that we recommend all nurses become familiar with regarding ebola preparedness [www.oregonrn.org/?page=2014Ebolalinks](http://www.oregonrn.org/?page=2014Ebolalinks).

– Share these resources with your coworkers.

– Question your employer to determine if they are meeting the necessary standards and recommendations.

– If you still have questions, please contact Carl Brown, ONA’s Director of Professional Services at [c.brown@oregonrn.org](mailto:c.brown@oregonrn.org).

Should you have doubts about your employer’s preparedness, then contact Carl Brown. Carl and ONA can assist you in getting the employer to be responsive and to ensure your place to work is safe for you, your coworkers and your patients.