

Subject: Processing Claims for COVID-19 Diagnosed After January 27, 2023

Background: The Federal Employees' Compensation Act (FECA) covers injury in the performance of duty; injury includes a disease proximately caused by federal employment. The U.S. Department of Labor's (DOL) Office of Workers' Compensation Programs (OWCP) Division of Federal Employees', Longshore and Harbor Workers' Compensation (DFELHWC) administers the FECA. The FECA provides to an employee injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician that OWCP considers "likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation." See 5 U.S.C. 8103. The FECA also pays compensation for the disability or death of an employee resulting from injury in the performance of duty.

On March 11, 2021, the American Rescue Plan Act of 2021 (ARPA) was signed into law. This legislation streamlined the process for federal workers diagnosed with COVID-19 to establish coverage under the FECA. FECA Bulletin 21-09, issued on April 28, 2021, incorporated the ARPA's provisions for processing COVID-19 claims.

Section 4016(b)(1) of the ARPA requires an injured Federal worker to be diagnosed with COVID-19 on or prior to January 27, 2023, for these statutory provisions to apply. Therefore, any claim for which COVID-19 is diagnosed between January 27, 2020, and January 27, 2023, will continue to be processed in accordance with the guidelines established under the ARPA.

In accordance with the clear Congressional intent to end the specialized treatment of COVID-19 claims for Federal workers' compensation on January 27, 2023, OWCP is updating its procedures to provide that claims for COVID-19 diagnosed after that date must establish the five basic elements for adjudication set forth in the FECA regulations. See 20 C.F.R. §10.115.

Purpose: To provide guidance regarding the processing of claims involving COVID-19 diagnosed after January 27, 2023.

Actions:**I. Filing of Cases Involving COVID-19 Diagnosed After January 27, 2023**

1. **Policy Applicability.** A determination as to whether a claim based on a COVID-19 diagnosis is treated under the ARPA COVID-19 provisions will be based exclusively on the date of the positive COVID-19 test result¹. See section IV below. Claims with test results dated on or before January 27, 2023, will be handled under the ARPA provisions. Claims with test results dated after January 27, 2023 will be handled in accordance with the policies in this Bulletin.

2. **Form.** Claims for COVID-19 diagnosed after January 27, 2023, should generally be filed on Form CA-2. This is because in most cases there is no clear, identifiable incident or incidents over a single day or work shift to which the injured worker can specifically attribute the event alleged to have caused the diagnosed COVID-19. While OWCP had previously required these claims to be filed on Form CA-1, that was due to the exigent circumstances and uncertainty regarding COVID-19. Those circumstances have now passed, so this change is being made so that COVID-19 is treated similarly to other airborne infectious disease where the specific etiology is unclear.

Exception: Form CA-1 may be used only if the event alleged to have caused the diagnosed COVID-19 is identifiable as to time and place of occurrence. This must be a specific event or incident or series of events or incidents during a single day or work shift. See 20 CFR §10.5(ee).

If there is no clear, identifiable incident or incidents over a single day or work shift to which the injured worker is attributing the diagnosis of COVID-19, Form CA-2 should be used. If a claim is submitted on a CA-1 but there is no clear, identifiable incident or incidents over a single day or work shift, the claim type will be administratively updated and continuation of pay (COP) adjudicated.

3. **Electronic Filing.** The Employees' Compensation Operations and Management Portal (ECOMP) should be used to file new claims. To assist the claimant in filing the correct form, the FECA Program is updating the COVID-19 claims filing process in ECOMP to ask specific questions to direct the claimant to the CA-1 or CA-2 as appropriate.

4. **Continuation of Pay (COP).** Agencies are directed to process COP following the filing of Form CA-1 in accordance with established procedures. See 20 CFR §10.211; 20 CFR §10.220--§10.222.

II. Creation of Cases Involving COVID-19 Diagnosed After January 27, 2023

1. **Case Indicator.** Cases involving COVID-19 diagnosed after January 27, 2023, will have a case indicator of CVD.

COVID-19 claims filed or adjudicated after March 11, 2021, and where COVID-19 is diagnosed on or before January 27, 2023, will continue to have special tracking indicator C19 assigned.

2. **Case Prefix.** Cases involving COVID-19 diagnosed after January 27, 2023, will have a prefix "55" as is used in other new FECA claims.

COVID-19 claims filed or adjudicated after March 11, 2021, and where COVID-19 is diagnosed on or before January 27, 2023, will have a prefix "19".

3. **Case Number Conversion Notification.** In all instances where a case number is changed to a "55" or "19" prefix based on the date COVID-19 is diagnosed, a letter will be sent to the claimant and agency notifying them of the change.

III. Case Adjudication Procedures for Claims Involving COVID-19 Diagnosed After January 27, 2023

Claims for COVID-19 diagnosed after January 27, 2023, will be fully developed to establish the five basic elements for claims adjudication under the FECA:

- a. The claim was filed within the time limits set by the FECA;
- b. The injured worker was an employee within the meaning of the FECA;
- c. The claimant provided evidence
 1. Of a diagnosis of COVID-19, and
 2. That establishes they actually experienced the event(s) or employment factor(s) alleged to have occurred.
- d. The alleged event(s) or employment factor(s) occurred while the employee was in the performance of duty; and
- e. The COVID-19 is found by a physician to be causally related to the established event(s) or employment factor(s) within the employee's Federal employment. Neither the fact that the condition manifests itself during a period of Federal employment, nor the belief of the claimant that factors of employment caused or aggravated the condition, is sufficient in itself to establish causal relationship.

With respect to (c)(2) above, in accordance with established FECA procedure, the CE must make a factual determination by reviewing the evidence of file to decide whether the claimant actually experienced the specific event(s), or employment factor(s) claimed on Form CA-1 or CA-2. See FECA Procedure Manual 2-0803(2)(a). In doing so, the CE may credit statements made by the claimant regarding facts of which the claimant has direct knowledge. For example, if the claimant alleges that they were in close contact to 10 individuals at work, which the claimant believes resulted in the claimant getting COVID-19, OWCP may accept as fact that the claimant was in close contact to 10 individuals at work. To provide another example, if the claimant alleges their COVID-19 is the result of "sitting next to an individual that had tested positive for COVID-19," OWCP may accept as fact that the claimant sat next to the individual, but would require the

claimant to provide evidence in support of the allegation that the individual sitting next to them was COVID-19 positive.

A rationalized medical report establishing a causal link between a diagnosis of COVID-19 and factors of Federal employment is required in all claims for COVID-19 diagnosed after January 27, 2023. See FECA Procedure Manual 2-0805.3(d)(2).

IV. Specialized Requirements to Establish a Diagnosis of COVID-19. There are no changes to the specialized requirements for medical evidence needed to establish a diagnosis of COVID-19 as noted in item III(c)(1) above. See *also*: FECA Bulletin 21-10 and FECA Bulletin 22-06.

Specifically, in order to establish a diagnosis of COVID-19, an employee (or survivor) 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.

In certain rare instances, a claimant may establish a diagnosis of COVID-19 if a physician provides a rationalized opinion with supporting factual and medical background as to why the employee has a diagnosis of COVID-19 notwithstanding a negative or series of negative COVID-19 test results.

Medical reports from nurses or physician assistants are acceptable if a licensed physician cosigns the report.

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. This is because there is no way for FECA claims staff to affirmatively establish (1) the date and time the sample was collected and (2) that the sample collected is that of the injured federal employee making the claim. 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.

V. Chargeback

Claims accepted for COVID-19 diagnosed after January 27, 2023, will be included in the annual chargeback billing.

COVID-19 claims filed or adjudicated under the ARPA standards after March 11, 2021, *and* where COVID-19 is diagnosed on or before January 27, 2023, will be accepted under the ARPA. They will be flagged with the "19" prefix and non-chargeable in the FECA database, meaning it will not be included in annual chargeback billing.

Disposition: This Bulletin is to be retained until incorporated into the FECA Procedure Manual.

¹ In rare cases where a test was unavailable (see IV.c, below), treatment under ARPA will be dependent on the date of initial COVID-19 diagnosis made by a physician.

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