

Worker Rights Consortium Guidelines for Workers' Compensation for Workers at Garment Factories Who Contract Covid-19

In the face of countless outbreaks of the Covid-19 illness in factories and other workplaces around the world, exposure to SARS-CoV-2 is increasingly recognized by governments and health professionals as an occupational hazard facing workers and employers in all industrial sectors, including garment manufacturing. This document provides guidance for apparel brands and their supplier factories with respect to compensation for workers who contract Covid-19.

As has been previously communicated, apparel brands and their supplier factories are responsible for protecting their workers from exposure to SARS-CoV-2 through steps that include enhanced ventilation, strict hygiene measures, social distancing (including through, where necessary, reducing occupancy levels), sufficient personal protective equipment of the correct types (and training and implementation programs that include workers as active participants), and testing, tracing, and tracking protocols for exposed workers and those with whom they may have come in contact.¹

Covid-19 illness that is contracted as a result of exposure to infected people at work, as evidenced by the circumstances described below, is a work-related injury or occupational disease. Consequently, under international labor standards, workers who are infected by SARS-CoV-2 as a result of their work should be provided healthcare and, to the extent they are temporarily or permanently incapacitated for work, to cash benefits or compensation.² The same international standards also require that dependent family members (e.g. spouses and children) of employees who die from Covid-19 contracted in the course of the employee's work-related activities should be entitled to cash benefits or compensation, as well as to a funeral grant or benefit.³

The following are guidelines for apparel brands and their suppliers in cases where garment factory workers—including full-time, part-time, and temporary employees, as well as workers employed at the workplace through labor contractors—contract Covid-19 through proven or presumed workplace transmission.

¹ Worker Rights Consortium and Maquiladora Health and Safety Support Network, "Effective Infection Control Practices and Policies for Operating Apparel and Textile Factories," April 15, 2020,

<https://www.workersrights.org/wp-content/uploads/2020/04/WRC-MHSSN-Infection-Control-04102020.pdf>.

² International Labour Organization Conventions 121 ([Employment Injury Benefits Convention](#), 1964) and 102 ([Social Security \(Minimum Standards\) Convention](#), 1952).

³ International Labour Organization, *ILO Standards and COVID-19*, May 29, 2020,

https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/genericdocument/wcms_739937.pdf.

A. When Are Workers Required to Receive Compensation for Covid-19 Illness?

1. Any worker who is diagnosed with Covid-19, by a healthcare provider, or a positive Covid-19 test (“contracts Covid-19”), who works in a workplace where:
 - there is a cluster of three or more cases, or
 - the worker had significant exposure to another worker who has a confirmed case of Covid-19, or
 - the worker’s job duties include having significant exposure to a substantial number of other persons (including, for example, coworkers, contractors, vendors, or other visitors) in or from a locality with ongoing community transmission of Covid-19, is conclusively presumed to have contracted an occupational disease arising out of and in the course of employment, and is therefore entitled to compensation and other benefits.⁴
2. Any worker who contracts Covid-19 during the course of their employment outside the home, including their commute to and from work, but does not fall into one or more of the three categories set forth above, should be presumed to have contracted the illness at work and is therefore entitled to compensation and other benefits, unless the available evidence demonstrates it is more likely than not that the illness was *not* contracted during the course of their employment.⁵
3. Any worker who is exposed to Covid-19 at work and is advised by their employer or by a medical provider to quarantine should receive compensation under Section B.1 below, to cover the period of quarantine during which they are away from work, regardless of whether they have actually contracted the disease.⁶ This includes payment of regular wages to workers in circumstances where a factory suspends operations as a result of the outbreak of Covid-19 in the workplace.

B. What Care and Compensation Should Workers Receive for Covid-19 Illness?

Any worker who contracts Covid-19 (1) should receive compensation for the reasons set forth above, (2) should also receive, as an obligation of the employer, adequate healthcare for Covid-19, including testing for the virus and for antibodies, and any treatment required for the disease and its effects, and (3) should be paid according to the following, as a minimum standard.

1. **For any period while they are ill with the disease, and during any post-disease period during which they are temporarily unable to work because of the effects of the disease or the risk of exposing other employees:** Workers should be paid those

⁴ National Council on Occupational Safety and Health, *A Safe and Just Return to Work*, Appendix C, https://nationalcosh.org/sites/default/files/SafeAndJustReturnToWork_EN.pdf; US Occupational Safety and Health Administration, *Revised Enforcement Guidance for Recording Cases of Coronavirus Disease 2019 (COVID-19)*, May 19, 2020, <https://aboutblaw.com/QVV>, (“evidence that a COVID-19 illness was contracted at work.”).

⁵ State of California, Executive Order N-62-20, May 6, 2020.

⁶ National Council on Occupational Safety and Health, *A Safe and Just Return to Work*, Appendix C.

wages and benefits required by local law to be paid to employees who are temporarily unable to work due to occupational injury or illness, or at least 60 percent of their average monthly wage for the previous year, or average monthly required minimum wage, if higher (“the disability rate”), *whichever is greater*. Employees should have the option (but should not be required) to use during these periods, in lieu of such payment, any paid or unpaid sick days or other medical leave to which they are otherwise legally entitled.

2. **In the case of workers who experience long-term total impairment due to Covid-19, as identified by a physician:** Workers should be paid, in addition to any legally due severance and retirement benefits, those wages and benefits required by local law to be paid to employees who are permanently, totally unable to work due to occupational injury or illness, or the above-defined “disability rate”, *whichever is higher*.
3. **In the case of workers who experience long-term partial impairment due to Covid-19, as identified by a physician:** Workers should be paid, in addition to any legally due severance and retirement benefits, those wages and benefits required by local law to be paid to employees who are permanently, partially unable to work due to occupational injury or illness, or a percentage of the above-defined “disability rate” equal to the extent of the disability as medically determined.⁷

In countries where existing social safety net programs administered by the state or industry provide some portion of the amount of compensation that workers should receive under B.1–3, factories and brands should ensure that workers receive the amount remaining through direct payments to workers.

C. What Compensation Should Be Provided to Families of Workers Who Die of Covid-19?

Surviving eligible dependents or beneficiaries (as defined by national law) of any worker who dies as a result of contracting Covid-19 and who would have been entitled, for reasons set forth above, to compensation should receive, in addition to any compensation due by reason of the termination of the worker’s employment (i.e., severance and retirement benefits), *the greater of* the compensation due to them under national law in such circumstances, *or* the present value of:

1. For workers with three or more eligible dependents, at least one of whom is over the age of eighteen (18) or is the worker’s spouse or domestic partner: 60 percent of the worker’s average monthly wage during the previous year, multiplied by the average number of months worked per year during the previous three years, multiplied by the life expectancy of the youngest dependent who is over the age of 18 or is the worker’s spouse or domestic partner;
2. For workers with two or more eligible dependents, at least one of whom is over the age of eighteen (18) or is the worker’s spouse or domestic partner: 55 percent of the worker’s average monthly wage during the previous year, multiplied by the average number of months worked per year during the previous three years, multiplied by the life expectancy

⁷ International Labour Organization Convention 121.

of the youngest dependent who is over the age of 18 or is the worker's spouse or domestic partner;

3. For workers with one eligible dependent, who is over the age of eighteen (18) or is the worker's spouse or domestic partner, 50 percent of the worker's average monthly wage during the previous year, multiplied by the average number of months worked per year during the previous three years, multiplied by the life expectancy of that dependent or spouse or domestic partner; and
4. For workers with one or more dependents, all of whom are under the age of eighteen (18) and do not include a spouse or domestic partner, paragraph C.1, 2, or 3 shall be applied to calculate the workers' average annual wage, and the applicable percentage of that wage. That figure shall be multiplied by the number of years until the youngest dependent reaches 18 years of age.⁸

In addition, an amount sufficient to cover the expenses of a culturally appropriate funeral and burial shall be paid.

The United Nations mortality table, which predicts the observed life expectancy at birth for males and females by country, should be used to determine the life expectancy of eligible dependents.⁹

The present value of future benefits to be received by eligible dependents of the deceased employee shall be determined using an appropriate discount rate. Any payments made over a period in excess of one year should be adjusted annually to account for inflation.

In countries where existing social safety net programs administered by the state or industry provide some portion of the amount of compensation that the eligible dependents of deceased workers should receive under B.1–3, factories and brands should ensure that workers receive the amount remaining through direct payments to workers.

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⁸ This formula is derived from the compensation program developed for survivors and family members of decedent workers of the Rana Plaza disaster, which was formulated with the assistance of the International Labour Organization (ILO) in accordance with ILO Convention 121. Rana Plaza Arrangement, "Rana Plaza Arrangement: How were claims for deceased and injured workers calculated?," <https://ranaplaza-arrangement.org/RanaPlaza-Arrangement-Calculation-Formula-ca9c4b1a2180b5bcd4b649016fc29ca4.pdf>.

⁹ United Nations Department of Economic and Social Affairs, *World Mortality 2019: Data Booklet*, 2019, <https://www.un.org/en/development/desa/population/publications/pdf/mortality/WMR2019/WorldMortality2019DataBooklet.pdf>.