
COVID-19: it's time for its full recognition as an occupational disease

COVID-19, es el momento de su reconocimiento pleno como enfermedad profesional

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The disease called COVID-19 is likely to stay with us, and probably for a long time. However, the pandemic is in a transitional phase, hopefully getting closer to full control. According to the latest statement by the WHO Committee on Health Emergencies⁽¹⁾, 89% of healthcare workers and 81% of adults over 60 years of age have completed the primary vaccination worldwide, although with important differences between high and low-middle income countries. In addition to vaccines, it is important to note that non-pharmacological preventive measures, now widely available, have also played a significant role in this important achievement⁽²⁾.

In this context, it seems time to discuss and decide about what to do with COVID-19 disease when exposure to the virus occurs at the workplace. It is clear that COVID-19 is directly caused by SARS-CoV-2 virus, which is already recognized as a biological agent, for which employers must provide protections from workplace exposures, as legally required⁽³⁾.

In Spain, therefore, COVID-19 meets the requirements for its recognition as an occupational disease, which in Article 157 of the Consolidated Text in 2015 of the General Social Security Law, in its first part, defines an occupational disease as an illness "caused as a consequence of work...". In addition, when COVID-19 is symptomatic, it requires a sick leave episode in most cases, which should be classified as occupational in its origin. And, in case of sequelae such as "long COVID-19", although we are still learning about this entity, sickness absence may go on for a much longer period, possibly even exceeding 18 months. At that point, in Spain, this can transition into permanent disability, which should also be considered as occupational and could be longer than five years. If COVID-19 is only recognized as an occupational injury (as is currently the case in Spain), its causality prescribes beyond this 5-year period. This does not happen in the case of occupational disease.

There are important advantages to recognition as an occupational disease, including: 1) wage replacement during the sickness absence period, is 75% of the base salary (compared to 60% in the case of nonoccupational disease), paid by the Social Security system starting on day 1, and with no need for a prior contribution period; 2) payment does not count as unemployment time while on leave; 3) healthcare costs are fully covered by the Social Security's own care system, which is operated by the Social Security Insurance Companies, including medicines; 4) in the event that it evolves towards a permanent disability, there may be an increase in economic benefits if a lack of due diligence in the application of preventive measures by the employer is demonstrated (between 30% and 50% more); and 5) very importantly, absence of an infectious worker from the workplace prevents spread to co-workers and the general public (e.g., by not using public transportation).

So, given these advantages, mainly for the sick worker but also for a broader audience, why are we waiting for its recognition as an occupational disease? Or more directly: why isn't COVID-19 already included in the Spanish list of occupational diseases? since this illness occurs "...in the activities that are specified in the list that is approved by the provisions of application and development of this law, and

that is caused by the action of elements or substances that are indicated for each occupational disease.”

It is true, as has been previously discussed⁽⁴⁾, that in the first weeks of the pandemic in March 2020, the law that declared the state of emergency established that COVID-19 in healthcare should be considered as an occupational injury. And later, in February 2021, the same benefits that the Social Security system grants to persons with a recognised occupational disease were applied to those with an occupational injury reported as COVID. However, this was only applicable to healthcare workers in direct patient contact, and was limited to a temporary time frame, (*“until the health authorities would lift all preventive measures adopted to deal with the health crisis”*) and without modifying the chart⁽⁵⁾. No doubt these were fair decisions made during the state of emergency.

But now that the pandemic has ended on May 5th, it is time for COVID-19 to be recognized as an occupational disease, including not just healthcare workers providing direct patient care, but also other occupations where exposure to SARS-CoV-2 is frequent, such as those in education, small businesses, restaurants, hair salons or transportation, among others. This would avoid the judicial stumbling block that the current situation has created, having to prove the exclusive occupational origin when one is not a healthcare worker⁽⁶⁾.

Other European countries are already heading in this direction. According to a recent EUROGIP report⁽⁷⁾, based on the situation in nine European countries, including Spain, most have chosen to recognize COVID-19 as an occupational disease. For example, Denmark already includes it in the list of occupational diseases, within the infectious diseases in humans group, applying to all categories of workers when the exposure duration was more than five days, and Finland recognizes it as a disease caused by biological agents, applicable to all workers. In contrast, Italy, as in Spain, considers COVID-19 an occupational injury, although that country includes other workers who have close contact with the general public, in addition to healthcare workers.

In summary, a few months ago⁽⁸⁾ the European Commission recommended that COVID-19 be included in Annex I of the European List of Occupational Diseases as “COVID-19 caused by work in disease prevention, in health and social care and in domiciliary assistance, or, in a pandemic context, in sectors where there is an outbreak in activities in which a risk of infection has been proven”.

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