

Maintenance and Cure in the Time of COVID-19

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As cases of COVID-19 continue to surge across the country, employers are faced with an array of new risks and challenges. This is particularly true for marine companies that employ Jones Act seaman who are entitled to maintenance and cure. While similar in some ways to benefits available to other employees under state worker's compensation schemes, maintenance and cure bring with them unique considerations and challenges. Lawsuits claiming maintenance and cure due to a COVID-19 diagnosis have already been filed. (See for example *Isanto v. Royal Caribbean Cruises, Ltd.*, filed in the Southern District of Florida on Oct. 23, 2020).

What is Maintenance and Cure?

Maintenance and cure is a contractual form of compensation afforded by the general maritime law. Generally, an employer must pay maintenance and cure to any seaman who becomes ill or suffers an injury **while in the service of the vessel**. Maintenance entitles a seaman to a daily living allowance (generally \$45-\$75/day) for food and lodging. Cure entitles a seaman to necessary medical services until reaching **maximum medical improvement**.

Manifests Itself in the Service of the Vessel

Unlike in a worker's compensation claim, a seaman need not show that an illness is in any way work related to recover maintenance and cure. The question is: "Did the illness manifest itself while the seaman was in the service of the vessel?" While courts generally do not refuse a seaman maintenance and cure when he or she has had the same illness at some point earlier in life, a seaman cannot develop an illness then board the vessel and claim maintenance and cure. For example, if a seaman begins to show symptoms of COVID-19 while at home but boards the vessel anyway, he or she should not be entitled to maintenance and cure. The illness would have manifest itself while the seaman was off-duty and not serving the vessel. On the other hand, if the seaman first exhibits symptoms while on the vessel, it does not matter how or where the seaman was exposed to the virus, he or she will likely be entitled to maintenance and cure.

Maximum Medical Improvement

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A seaman is entitled to maintenance and cure until the seaman reaches maximum medical improvement. The seaman reaches maximum medical improvement when the illness can no longer improve. This does not mean that the seaman must fully recover. Once the condition reaches the stage where additional treatment will not improve it, the seaman is no longer entitled to maintenance and cure. For example, a seaman receiving only medication for pain that will not improve with treatment is generally not entitled to maintenance and cure.

The concern with COVID-19 is that the course of the illness and its long term effects are still largely unknown. Reports in the media suggest that some patients suffer long lasting effects and extremely long recoveries, especially for patients placed on a ventilator. This suggests that an employer could be obligated to pay maintenance and cure for a very long time when a seaman develops COVID-19.

Practical Considerations

The following are steps to consider taking to reduce exposure to COVID-19 related maintenance and cure claims.

1. **Implement COVID-19 symptom screening and temperature checks** – While not everyone honestly reports COVID-like symptoms, you may be able to identify those seaman that developed COVID-19 symptoms at home.
2. **Comply with CDC and relevant health department guidelines.**
3. **Develop and use Boarding and Separation Forms** – Like the symptom and temperature screening, these can help identify those who were sick prior to boarding the vessel, but they can also be used to establish that the seaman was healthy when he or she disembarked.
4. **Review your COVID-19 precautions and other health and safety policies to insure best practices are being followed to reduce illnesses and injuries among your crew.**
5. **Review your insurance coverage limits with your broker and/or underwriter to insure you have the proper level of coverage to protect your business.**

For more updates regarding COVID-19 check out our COVID-19 Resource Center.