



## Editorial article

# Declaration of COVID-19 as an occupational disease in healthcare workers: Challenges and reality<sup>☆</sup>



## La declaración de la COVID-19 como enfermedad profesional en profesionales sanitarios: desafíos y realidades

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In a short space of time, we have witnessed how the infection caused by the new coronavirus (SARS-CoV-2) abruptly burst into our lives, spread at an unprecedented rate throughout the world and had devastating effects on people's health, the economy, and our daily life as we knew it.

For the Spanish health system, facing a crisis characterised at first by shortages and scarcity of resources, and for a long time by a high pressure on care, has been a tremendous challenge<sup>1–3</sup>.

This has also been the case for healthcare workers (HWs), who suddenly became one of the groups most exposed to an unknown infection<sup>3,4</sup>; as well as to other additional risks, especially those related to the psychosocial realm (high level of accumulated stress as a result of the pandemic-related demands, increased hostility, and aggressiveness towards HWs).

For a time (spring 2020), Spain became one of the countries with the highest number of infected HWs<sup>1,3</sup>. So much so, that their commitment to patients, despite the risk to their health derived from the shortage of personal protective equipment (PPE) made the front page of the New York Times (<https://www.redaccionmedica.com/virico/noticias/coronavirus-new-york-times-mira-a-los-kamikazes-de-la-sanidad-espanola-6286>).

According to data from the Ministry of Health, from March to May 2020 (first wave of the pandemic), 22% of the COVID-19 cases reported to the National Epidemiological Surveillance Network (RENAVE) corresponded to HWs<sup>5</sup>. However, new, and more recent data (from 10 May to 29 December: second wave) show a different scenario, with a significant reduction in the percentage of cases in HWs; this could be due to the general improvement in preventive resources and, in particular, to the availability of PPE<sup>5,6</sup>.

It is not surprising that the occupational exposure of HWs to SARS-CoV-2 soon became an object of concern in our country<sup>7</sup> and

there were early calls for the recognition of infection by this coronavirus as an occupational contingency and, more specifically, as an occupational disease (OD). In this regard, it is worth highlighting the valuable work of Martí Amengual et al. which rightly recalled that such recognition constitutes a right for all affected HWs<sup>8</sup>.

However, this recognition was delayed, and throughout the pandemic it underwent numerous variations as a result of a specific regulatory developments, materialised in different and successive royal decrees:

- Royal Decree-Law 6/2020, 10th March 2020, by which it was considered equivalent to an occupational accident (exclusively for temporary incapacity benefit, periods of isolation or infection)<sup>9</sup>.
- Royal Decree-Law 13/2020, 7th April 2020, by which it is recognised as an occupational accident, when it is demonstrated that the exclusive cause of infection has been the occupational activity, with all workers, but especially healthcare and social-health workers, being beneficiaries of the same<sup>10</sup>.
- Subsequently, with Royal Decree-Law 19/2020, 26th May 2020, recognition as an occupational accident was extended to all infections in healthcare or social-health personnel occurring up to one month after the end of the State of Alarm (21 July 2020)<sup>11</sup>.

Finally, Royal Decree-Law 3/2021, of 2nd February approved the long-awaited recognition as an OD for HWs and social-health workers, although with certain limitations<sup>12</sup>.

When we talk about an occupational accident and/or OD, we refer to legal concepts that in Spain are defined in the R.D.L. 8/2015 Texto Refundido de la Ley General de la Seguridad Social (LGSS) (in its articles 156 and 157, respectively)<sup>13</sup>.

Although both are considered professional contingencies, the declaration of a condition as an occupational accident or as OD has significantly different implications for the affected worker<sup>13,14</sup>.

Both share the amount of the economic benefit derived from temporary incapacity (75% of the regulatory base), as well as the right to request a supplementary benefit derived from the lack of health and safety measures. This supplement allows for an increase

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of 30–50% of the economic benefits that may derive from such a contingency, depending on the seriousness of the infringement.

Similarly, in both professional contingencies there is an obligation to carry out evaluations and surveillance programs, in order to prevent the risks associated with the disease in the workplace.

However, the declaration of OD carries particular advantages for the professionals concerned. Thus, when the worker is unable to carry out his/her usual work activity as a result of the effects of the said condition, he/she is entitled to a change of job with the same salary conditions, before moving to a situation of permanent disability. Not so in the occupational accident, whose declaration does not include that option of change of position in the company among its advantages.

In addition, in the case of OD, there is the imprescriptibility of the recognition, which allows such a declaration at any time after the events that give rise to the declaration of such contingency. In this, too, it differs from an occupational accident, for which a prescription period of five years is recognised, so that, after this period, the resulting conditions will not be recognised for that purpose.

In short, the recognition of OD is associated with greater compensatory benefits for the worker<sup>14</sup>.

According to current Spanish legislation<sup>13</sup>, the three requirements that must be present to recognize a pathology as OD in our country are:

- 1 A disease included in the official list of occupational diseases (ODs).
- 2 A proven risk of exposure to the specific causative agent for that disease.
- 3 And a profession in which one is exposed to said risk causing the disease.

In the case of fulfilling all three, the recognition would be direct under the presumption *iuris et de iure*, that is, it does not admit evidence to the contrary.

The official list of ODs in Spain is established by Royal Decree 1299/2006, of 10th November<sup>15</sup>, and the COVID-19 caused by the SARS-CoV-2 virus would meet, according to this standard, the criteria to be recognised as OD for various groups of workers, including HWs.

In addition to the above, it should be noted that for ODs caused by exposure to biological agents, Royal Decree 664/1997, of 12th May, also applies<sup>16</sup>. This specifies which infectious diseases are considered occupational for the purposes of the protective action of the Social Security System, expressly including those caused by viruses of the *Coronaviridae* family, such as SARS-CoV-2 (Annex II, Royal Decree 664/1997).

And finally, Spain has transposed Commission Directive (EU) 2020/739 of 3 June 2020<sup>17</sup>, which expressly includes SARS-CoV-2 as a biological agent among the known human pathogens listed in Directive 2000/54/EC of the European Parliament and of the Council, of 18 September 2000 on the protection of workers from risks related to occupational exposure to biological agents (the EU equivalent of our Royal Decree 664/1997)<sup>7</sup>.

In short, it can be concluded that our legal system prior to the pandemic already allowed the recognition of COVID-19 as OD in certain groups of workers (among which the HWs are included)<sup>2,7</sup>.

However, as mentioned above, since the beginning of the pandemic we have witnessed a constant evolution of this recognition, from a common contingency<sup>9</sup> to an occupational accident<sup>10</sup>, with different particularities until it was recognised on 2nd February as an OD with certain restrictions, under the terms of application of Royal Decree-Law 3/2021<sup>12</sup>.

This Royal Decree<sup>12</sup> does not modify the current OD classification and does not include COVID-19 in the official list of reference ODs. This is a unique and different recognition from that granted to

occupational pathologies officially considered as ODs in Spain<sup>15</sup>. This is related to the exceptional and temporary nature of the decree, as this recognition can only be applied to those infected during the period between the international declaration of the pandemic (11 March 2020) and the cessation of the measures developed to combat it (until the government's preventive measures against the health crisis are completed)<sup>12</sup>.

The above limitations have been criticised from different directions, in particular the time limitation of recognition as an OD. In this regard, it is underlined that SARS-CoV-2 infection may remain a prevalent disease in the future, also once the pandemic phase is over<sup>8</sup>.

On the other hand, at this time, healthcare workers, and especially those directly involved in treating patients with COVID-19, would have a higher risk of infection than the general population<sup>18</sup>. In addition to this, it does not seem appropriate to establish time limits, such as those contemplated in the Royal Decree in question, due to the great ignorance that still exists about many aspects of the disease, such as those relating to the effects and sequelae that could emerge in the future<sup>18–20</sup>.

In short, we demand the incorporation of COVID-19 into the official list of ODs for healthcare personnel and, therefore, a recognition that is fully comparable to that granted to any other officially recognised OD in our country. If this were the case, it would be enough to be a HW and to have contracted the disease in order to acquire such recognition (under the presumption *iuris et de iure*<sup>14</sup> or presumption of fact and law, as the disease is included in the list of ODs approved by law). This means that evidence to the contrary would not be admitted and that the affected worker would not need to prove the occupational origin of the infection.

Undoubtedly, the recognition that took place in February 2021 constitutes a substantial advance, by abandoning the consideration of an occupational accident established initially for the infection by SARS-CoV-2 in HWs, however, it does not eliminate the need to prove the exclusive occupational origin of COVID-19 in order to obtain this qualification which, for authors such as Martí et al.<sup>2</sup> is complex when there is a high incidence of SARS-CoV-2 infection globally.

At the present time, we are witnessing an increase in the scientific evidence available on the risks of infection by SARS-CoV-2 both in the general population and in different professional sectors. However, it is noted that, although there is an association between certain occupations and an increased risk of infection and disease, including death, the scientific evidence is still limited and of variable quality; as is the evidence regarding the so-called “Long COVID”, as well as possible future disability resulting from SARS-CoV-2 infection<sup>18</sup>.

There are still many unknowns to unravel in relation to the disease caused by the SARS-CoV-2 virus, also from an occupational perspective. In this sense, it is necessary to promote quality scientific research to clarify all these aspects and, finally, to lay the foundations for the development of appropriate measures not only for the prevention of damage/protection of the health of those working in professions at risk, but also for the necessary compensation for the damage caused to the professionals affected<sup>19,20</sup>.

To conclude, it can be said that the recognition of SARS-CoV-2 infection in HWs and social-healthcare workers as an OD, according to Royal Decree-Law 3/2021, of 2 February, although it represents a substantial advance over the consideration previously granted since the beginning of the pandemic, does not seem to correspond to what was expected. It constitutes an essentially compensatory recognition which, due to its exceptional and temporary nature and the fact that COVID-19 is not included in the official list of ODs, means that the professionals concerned lose some of the fundamental advantages linked to such classification.

## Conflict of interests

The authors declare that they have no conflict of interest.

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