

Legal Pitfalls and Potential Liability for Employers in COVID-19

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While various “non-essential” businesses continue to require their employees to safely practice social distancing, remain quarantined, and work remotely, numerous business deemed “essential” have stayed open and have continued to operate. These businesses still require physical interaction, even if at a safe distance and with the use of protective gear. In turn, as the COVID-19 crisis persists, these “essential” businesses and companies face continuing exposure to liability from employees who may contract the virus. For example, in Illinois, the family of a deceased Walmart employee has filed a negligence and wrongful death lawsuit against the store, claiming store management ignored a store employee’s symptoms and failed to notify other workers that someone at the store may have contracted the virus. Moreover, with the Federal and many State governments hoping to begin gradually lifting the “Stay-At-Home” government mandates and lessen restrictions, “non-essential” businesses may now also be subject to claims from any employees who may contract the virus in their return to the workplace.

Recently, in an effort to limit this exposure, the U.S. Chamber of Commerce and lobbying groups are asking Congress for legislation that would give companies legal immunity from potential litigation. These include issues that may arise from employees who fell ill while on the job, or from families of individuals who have passed away after contracting the virus while at work, among others. More specifically, the U.S. Chamber of Commerce proposes that companies should not face lawsuits as long as they continue to follow the guidance of the Center for Disease Control and Prevention (“CDC”) and state and local health departments. This proposal arises from the climbing number of deaths among workers across the country – to include grocery store clerks, plant employees, and delivery personnel. These lobbying groups further argue that the number of lawsuits that may arise at the cessation of this crisis will not only overwhelm businesses, but may result in economic despair for a large number of companies.

It is important to note that despite the growing number of civil actions as a result of COVID-19, workers’ compensation laws also shield employers and businesses from employee lawsuits. As a general rule, workers’ compensation laws serve to provide employees injured on the job with remedies for lost wages or medical care. However, there are exceptions to workers’ compensation and it does not serve as a blanket protection. An example of an exception could include gross negligence, which may occur when a business may fail to take steps to mitigate employee exposure to COVID-19 in the workplace. Moreover, businesses have a legal duty to maintain a hazard free workplace under the Occupational Safety and Health Act (“OSHA”) and if businesses fall short of this obligation, then litigation is also likely to follow.

The requests for legislation to curb or limit liabilities for businesses who follow official health and safety guidelines is merely a proposal at this time, with its enactment, its potential scope, or any other relevant details, largely unknown. Since lawsuits arising out of COVID-19 liability will only increase as places begin to re-open and restrictions loosen, businesses must remain mindful of adhering to the following, and important, steps:

1. Continue to follow the CDC’s recommendations and guidance;
2. Continue to follow OSHA’s recommended safety procedures
3. Provide necessary protection for workers, to include masks, gloves, and regularly checking on the welfare of employees;
4. Sanitizing work stations;

5. Restricting the number of customers allowed inside; and
6. Enforcing social distancing to reduce any potential transmission.

Ultimately, businesses must take proactive steps and measures to protect the health of employees in order to mitigate any future civil litigation claims and to ensure, as a whole, the future health of its business.

Carr Maloney P.C. will continue to monitor the proposed legislation and provide updates on this issue.