



Employers Face Increase In COVID-19 Wrongful Death Lawsuits

Insights

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As COVID-19 cases and deaths continue to rise, so too does the number of lawsuits filed against employers. Recently, an increasing number of families of employees who died from COVID-19 have asserted wrongful death actions against employers for failing to keep their family members safe while at work. What can employers learn from these lawsuits to not only keep their workers safe but avoid being on the receiving end of such a claim?

Examples Of COVID-19 Wrongful Death Lawsuits

Throughout the country, employers are starting to be served with wrongful death lawsuits alleging an employee's exposure to COVID-19 at work should lead to employer liability, despite the general rule that the workers' compensation system is the exclusive remedy for such claims. The below matters are some examples of the types of claims that have been asserted against employers by families of deceased workers:

Lanzo v. Generations Behavioral Health

The plaintiff, the wife of a deceased employee working as a nurse at a mental health facility, alleges wrongful death under Ohio law. In support of her claim, the plaintiff alleges that the mental health facility failed or refused to follow COVID-19 directives issued by the state in order to reduce the spread of the virus. This, the complaint states, exposed her husband, Raymond Lanzo, to COVID-19.

The complaint does not claim the facility was wrong to operate during the pandemic, but that it failed to implement the policies and procedures that it should have in place to follow the state's pandemic directives. The plaintiff further alleges that the company was "negligent" in its failure to provide "appropriate safety equipment." Allegations in the complaint also include that the mental health facility's conduct was "wanton and willful," likely both to enhance damages and avoid any argument by Generations Behavioral Health that workers' compensation bars the claims, as simple negligence claims against an employer are typically barred by the workers' compensation laws. Nevertheless, the plaintiff is seeking more than \$25,000 in damages, including medical bills and funeral expenses.

Norwood v. Rodi Marine LLC

This wrongful death lawsuit was filed by the wife of a deceased crew member against a vessel owner/Jones Act employer in the Eastern District of Louisiana. The plaintiff alleges that her husband, Michael Norwood, was a crew member aboard a supply vessel owned and operated by Rodi Marine. In March and April 2020, the vessel reportedly was located at the Austal Marine facility

in Mobile, Alabama. During that time, the vessel's captain reportedly was dispatched to New Orleans to perform services on behalf of Rodi Marine.

Following his return, he reportedly fell ill. Although somewhat unclear, it appears that the vessel captain sequestered himself in his quarters for two to three days until Rodi Marine was told of his illness. The company then removed the captain from the vessel for testing, which revealed that he had COVID-19. Norwood reportedly returned home when the captain was removed from the vessel and was isolated from contact with others except for his wife when he too fell ill. He reportedly succumbed to the virus despite medical treatment.

The lawsuit alleges that Rodi Marine negligently caused Norwood's death for: (1) failing to provide Norwood with a safe workplace; (2) failing to implement policies and procedures to protect the crew from COVID-19; (3) failing to train vessel crew members regarding the actions necessary to prevent contracting and spreading COVID-19; (4) allowing the vessel captain to remain aboard the vessel while infected with COVID-19; and (5) permitting the vessel captain to travel to New Orleans when it was on "lock down" and known to be a COVID-19 hotspot. The plaintiff did not identify a specific sum of alleged damages.

Elijah v. Port Authority Trans-Hudson Corporation

The plaintiff, the wife of a deceased power rail mechanic for a rail carrier, filed this wrongful death lawsuit under New Jersey law. The plaintiff alleges that her husband was exposed to COVID-19 when he embraced a co-worker who later tested positive for COVID-19. The decedent was not wearing a mask because his employer allegedly "instructed its workers at safety meetings not to wear masks at work unless they were performing their specific job functions."

Approximately 10 days after being exposed, the decedent began to experience symptoms of COVID-19, which progressively worsened. The complaint alleges that decedent was hospitalized, and over the next 20 days, experienced a "horrible and protracted death."

The plaintiff alleges that the employer was negligent by: (1) failing to provide employees with a safe place to work; (2) failing to properly train employees about contracting COVID-19 at work; (3) failing to timely provide PPE to employees; (4) failing to conduct contact tracing; (5) failing to test employees for COVID-19; (6) failing to timely quarantine decedent and other employees who had been exposed to COVID-19; (7) failing to apply social distancing measures for employees; (8) failing to properly clean areas; (9) failing to warn employees of the dangers of contracting COVID-19 at work; (10) failing to medically treat the decedent; and (11) failing to follow its own safety rules, practices, and procedures. The plaintiff did not identify a specific sum of alleged damages.

How To Defend Against Such Lawsuits?

The question at the heart of many of these wrongful death lawsuits revolves around whether the employer took reasonable measures, based on then-existing guidance, to do its best to prevent the spread of COVID-19 in the workplace. Accordingly, the timing of any COVID-19-related precautionary safety measures, including policies and procedures implemented in any given case will be critical

safety measures, including policies and procedures, implemented in any given case will be critical evidence. Deciding which actions to take and when is no simple task in this constantly changing environment. However, the more effort an employer makes toward providing for the safety of its workers, the stronger the defenses will be.

Here are some “best practices” to keep in mind, both to help protect employees from illness and to help avoid potential litigation.

1. Follow the [CDC's Interim Guidance for Businesses](#), including best practices for social distancing, [Guidelines for Cleaning and Disinfecting](#) the workplace, and quarantining employees who have an exposure to a confirmed COVID-19 case, found at the [CDC's Public Health Recommendations for Community Exposure](#). Also, send employees who are symptomatic home until released by a medical professional or until they meet the guidelines for discontinuing self-isolation.
2. If you are an essential business employing critical infrastructure workers, the CDC has adopted [different guidelines](#) to follow, including allowing asymptomatic employees who have had a direct COVID-19 exposure to continue to work as long as certain guidelines are met.
3. Utilize OSHA's most recent [guidelines](#) as a resource when creating return to work plans and policies. OSHA's directives on implementing the identified guiding principles and FAQs may assist employers in safely reopening their businesses and workplaces. While the guidance is in the form of non-mandatory recommendations, OSHA has stated that an organization's good faith efforts to comply with its recommended guidance will be taken into “strong consideration” when determining whether to cite violations and has indicated the General Duty Clause may be the basis for violations if employers do not engage in such good faith efforts. Such citations could also be evidence of an employer's failure in a civil lawsuit.
4. Educate your employees and engage with them. Make sure employees know what measures you are taking to protect them. Be sure you stay aware of their health — while respecting their legal rights to privacy and confidentiality. Constantly remind employees of the symptoms of COVID-19 and urge them to seek medical attention if symptoms appear. Check in with isolated sick employees at least once a day to ask about their health. An employee with whom you engage will be less likely to seek litigation against their employer. If a COVID-19 death does occur, consider how you can assist the family, including assistance with funeral costs. Some workers' compensation laws may also provide for funeral expenses if the illness was determined to be work-related.
5. Inform employees of confirmed cases of COVID-19 in the workplace. The CDC recommends that employers notify potentially exposed co-workers of confirmed cases. Err on the side of transparency. Although no case law currently exists, we believe the Occupational Safety and Health Administration may ultimately determine that a failure to notify employees of a confirmed COVID-19 case is a violation of OSHA's General Duty Clause. Employers should still maintain the privacy of the confirmed employee.

6. Stay on top of current and evolving guidelines. Recommendations from the Center for Disease Control (CDC), the Department of Labor (DOL), Occupational Safety and Health Administration (OSHA) and others, as well as state and local executive orders, continue to evolve, sometimes on a daily basis. Employers should assign individuals to keep up with changes and share them with management.

More Wrongful Death Lawsuits Are Likely On The Horizon

As noted above, it is anticipated employers will continue to be the target of these lawsuits, with family members potentially claiming that their loved ones were negligently or willfully exposed to COVID-19 due to inadequate safety policies and practices. You should take appropriate preventive steps not only to curtail litigation, but also provide viable defenses should such cases arise.

For further information about COVID-19-related litigation being filed across the country, you can visit our [COVID-19 Employment Litigation Tracker](#). Our [COVID-19 Employment Litigation and Class & Collective Actions](#) section also has a listing of our litigation-related alerts and team members handling these types of cases.

We will continue to monitor any further developments and provide updates on these and other labor and employment issues affecting employers, so make sure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information. For further information, contact your Fisher Phillips attorney.

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