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PENDING CALIFORNIA CASE COULD UPEND WORKERS' COMPENSATION "EXCLUSIVE REMEDY" FOR COVID-19 CLAIMS

Insights
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One silver lining for employers during the pandemic has been the reality that they shouldn't fear any potential tort liability for COVID-19 cases stemming from the workplace – or should they? Most employers (and attorneys and legal scholars for that matter) have generally been reassured that any such potential lawsuits – such as negligence claims or even wrongful death actions – would be barred by the "exclusive remedy" of the workers' compensation system that exists in most states. For over 100 years in California, for example, this legal doctrine has shielded employers from individual liability claims stemming from workplace injuries or illnesses. However, a pending California case threatens to jeopardize that long-standing rule, which could have widespread ramifications for employers. What do you need to know about the status of this case and how it might impact your organization?

The Facts of the Case

The case stems from an employee who worked at a distribution center for See's Candy in Southern California. According to the lawsuit, the employee alleges that she contracted COVID-19 at the worksite and later passed it on to her 72-year-old husband, who later died. The wrongful death lawsuit filed by the employee and her daughters alleges that the company is liable for her husband's death because it failed to implement sufficient health and safety protocols and safeguards.

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An employer and defense counsel in such a case would immediately invoke the “exclusive remedy” rule to argue that the workers’ compensation system bars any tort claim for liability arising from these facts. Often referred to as the “grand bargain,” the enactment of the workers’ compensation system in California allows employees to quickly recover losses for workplace injuries under a strict liability standard, but protects employers from facing large-scale liability in the civil litigation system with the potential for exorbitant demands and runaway juries. This general bargain exists in most states, creating a shield for most employers that is often invoked when negligence and wrongful death suits arise. And that’s exactly what the employer argued in this case.

However, in a shock to many observers, a trial court judge in Los Angeles County disagreed. The judge established a COVID-19 exception for injuries that “derive from” employees who allegedly contract the virus from the employer’s workplace and then infect their family members.

California’s workers’ compensation exclusive remedy rule had long established that the “grand bargain’s” ban on civil actions based on injuries to employees encompasses injuries “collateral to or derivative of a compensable workplace injury.” This is generally referred to as the “derivative injury” rule.

The trial court disagreed. The judge instead relied on an earlier mesothelioma case in which an employee’s spouse was allowed to proceed with a civil claim where it was alleged that the spouse developed the disease from inhaling asbestos fibers brought home on the employee’s clothing. The trial court held that the COVID-19 transmission was similar in allowing the case to move forward.

However, it is worth noting that the earlier mesothelioma case did not involve an allegation that the spouse’s injury derived from an injury to the employee. In fact, there was no injury to the employee at all in that earlier case. Unlike COVID-19, mesothelioma is not a contagious disease. Instead, that earlier case involved a typical tort claim in which it was alleged that the employer had a duty of care to the spouse by ensuring that the employee’s clothing was free of asbestos fibers when they left work.

Despite the fact that the earlier case was not really a workers’ compensation exclusive remedy case at all, the trial

court relied upon it to create new exception to the “derivative injury” rule here.

An Appeal Worth Watching

As to be expected, the employer immediately appealed the lower court ruling to the Second Appellate District, where the case is now pending. But the employer is not alone. Recognizing the significance of the trial court’s departure from long-standing workers’ compensation law, a coalition of both state and national employer groups has filed an *amici curiae* (“friend of the court”) brief in support of the appeal.

This is one case that all California employers should be watching closely, for the ramifications of the trial court’s decision being upheld would be enormous. Allowing such tort claims to move forward (with the prospect of uncapped liability) would threaten employers who are already struggling from the economic effects of the COVID-19 pandemic. And employers outside of California might also want to take note, as other judges may look to what happens here and apply the same reasoning to cases in their jurisdictions as well.

Taking the trial court’s decision to its logical conclusion, any person (not just a family member) who contracts COVID-19 from an infected employee would be able to bring a tort lawsuit against the employer, even though those third-party injuries would not exist “but for” the employee’s illness that is clearly exclusively covered by workers’ compensation. That prospect could make a difficult situation all the more troubling for employers struggling with pandemic-related compliance issues.

We will continue to monitor developments and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips’ Insight system](#) to get the most up-to-date information. If you have questions about potential liability for COVID-19 related claims, contact your Fisher Phillips attorney, the author of this Insight, or visit our [COVID-19 Taskforce page](#). For further information about COVID-19-related litigation being filed across the country, and to run your own analyses of our litigation data, you can visit Fisher Phillips’ [COVID-19 Employment Litigation Tracker](#).