California Court Ruling Opens Door to COVID-19 Claims by Non-Employees Catching Virus from Workers

Insights
1.07.22

A common question posed during the pandemic has been whether employers can face liability for COVID-19 infections originating in the workplace. As to employees who contract COVID-19, the answer has been that an employee's ability to recover from the employer for such illness is limited to benefits available through workers' compensation. But what about when a sick employee passes the illness to family members or others? A California appeals court just permitted a wrongful death suit based on just such a claim to go forward. What can you learn from the December 21 ruling and what can your business do to minimize your risks?

The Claims

By way of background, an employee of See's Candies sued her employer alleging that she contracted COVID-19 at work and passed it to her husband, who later died. The employee then filed a wrongful death suit against her employer, claiming the company failed to implement proper safety measures in the workplace. Her claims were for general negligence and premises liability.

Workers Compensation as the "Exclusive Remedy" for Workplace Injuries

As discussed in our previous coverage of this case, See's asked the trial court to dismiss the lawsuit based on the exclusive remedy provisions of the California Workers Compensation Act (WCA). These provisions are often termed "the grand bargain." Injured workers are assured prompt compensation for workplace injuries regardless of whether the employer is negligent. In return, the employer is shielded from unlimited liability that could result from civil litigation outside of the workers' compensation scheme. This same "exclusive remedy" doctrine can be found in many other states as well.

Court Holds That COVID-19 Negligence Claims are not Subject to Exclusivity Provisions

The trial court refused to dismiss the suit and See's appealed. In a ruling issued on December 21, 2021, the Court of Appeal affirmed the trial court's decision. In its lengthy analysis the court reasoned that the "grand bargain" is between the employee and the employer – it cannot be extended to injuries sustained by non-employees.

The court held that the derivative injury doctrine did not apply to injury suffered by the plaintiff employee's husband. See's argued that "injury" is defined by the WCA to include "any injury or disease arising out of the employment." The court sidestepped this argument by focusing on the fact that an individual infected with the virus but who does not become ill can still pass it to others thereby causing injury to another without suffering harm themselves.

Nonetheless, the court's decision was not based on the fact of injury or non-injury to the employee. Instead, the court assumed that mere infection even without symptoms could constitute an injury. It held that only claims that are legally or logically dependent upon the employee's injury are subject to the exclusivity provisions, while claims that are biologically caused by the employee's injury are not.

In essence, the court said that the WCA exclusivity provisions (and the derivative injury doctrine) only extend to non-employee claims when such claims are for their own losses related to the employee's injury. In other words, when an employee is injured or killed in a workplace accident, any losses suffered by a worker's family members as a result (such as for loss of support, comfort, etc.,) are subject to the workers' compensation exclusivity provisions. But, the court said, when a third party is injured, the exclusivity provisions do not apply even if the employee's workplace injury is the "biological cause" of the third party's harm. As a result, negligence (and related) claims related to those injuries are not preempted by the WCA.

The Takeaway for Employers in California and Elsewhere

The open question is whether the appellate court's decision opens the door to potentially wide-ranging liability for employers in California and elsewhere resulting from an endless chain of COVID-19 infections. Taken to its logical extreme, the court's decision would permit someone far removed from the workplace to sue an employer. For example, the employee could pass on the virus to a family member, who then passes it to a friend, who then passes it to another friend, and so on – and anyone in that chain could possibly pursue civil litigation against the employer if they followed this decision to the extreme.

However, even absent the protections of the WCA exclusivity provisions or similar provisions in other state's laws, it would be premature to conclude that such endless liability automatically follows. The court in this case expressly pointed out that it was not addressing two additional issues upon which any ultimate recovery by the plaintiffs would depend:

- First, the plaintiffs would need to show the employer owed a duty of care to third parties who come in contact with their employees.
- Second, the plaintiffs would have to prove that the employer's workplace was indeed the source of the infection.

As a result, employers should continue to track the evolving requirements surrounding COVID-19 in the workplace and maintain appropriate safety protocols in line with these requirements. This decision means it is absolutely essential for you not to let any COVID-19 fatigue creep into your workplace, as you need to maintain your business safety measures even two years into the pandemic and beyond.

If you have questions about how to implement safety protocols or 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.

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