

CALIFORNIA SUPREME COURT SHUTS DOWN COVID-19 LIABILITY CLAIM FROM WORKER'S WIFE: 4 KEY TAKEAWAYS FOR EMPLOYERS

Insights
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The California Supreme Court handed employers a win last week by making it clear that they do not have a duty to prevent the spread of COVID-19 to employees' household members. The court didn't go so far as to say such claims are barred under the state's workers' compensation act, but the July 6 opinion in *Kuciemba v. Victory Woodwork, Inc.*, does settle a common question posed during the pandemic about whether employers can face liability for COVID-19 infections originating in the workplace and spread to family members. Though this is a rare win for employers in California, the case is a good reminder that you should take steps to ensure a safe workplace and reduce your legal risk. Here are the answers to your top four questions about the case and how it may impact your workplace.

1. Does an employer owe a duty of care under California law to prevent the spread of COVID-19 to employees' household members?

No. The employee [in this case](#), Robert Kuciemba, was a construction worker who claimed he contracted COVID-19 at work and subsequently transmitted it to his wife, who as a result was hospitalized and placed on a ventilator.

Kuciemba alleged that his employer violated local health orders and placed workers in close contact to him when there was reason to believe they had been exposed to COVID-19. As a result, he was infected and passed the virus to his wife. Kuciemba's wife sued for negligence, among other claims, and the questions posed in the case ultimately made their way to the California Supreme Court.

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Hannah Sweiss

Partner

818.230.4255

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The state's highest court said the wife could not proceed with her claims. "Although it is foreseeable that an employer's negligence in permitting workplace spread of COVID-19 will cause members of employees' households to contract the disease, recognizing a duty of care to nonemployees in this context would impose an intolerable burden on employers and society in contravention of public policy," the California Supreme Court said in response to certified questions from the 9th U.S. Circuit Court of Appeals.

The court focused its decision on the public policy considerations, noting the potential negative consequences of imposing such a duty on employers would outweigh the benefits because by creating an enormous burden on businesses, the court system, and the community.

While the transmission of COVID-19 to household members is foreseeable, the court ultimately concluded that policy considerations require an exception to the general duty of care.

2. Wait ... doesn't the California Workers' Compensation Act bar the spouse's negligence claim against the employer?

No. As you may know, in California and many other states, the workers' compensation system serves as the **exclusive remedy** for workplace injuries and illnesses – which means employees who receive such compensation can't also bring a tort claim in court. 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.

In this case, the court's opinion has a significant discussion about the limitations on remedies for covered injuries and the **"derivative injury doctrine,"** which bars third-party tort claims if they are **collateral to or derivative of the employee's workplace injury** — such as an heirs' claims for an employee's wrongful death.

The wife's claim, however, was not derivative and therefore wasn't barred by the California Workers' Compensation Act, according to the court, because the claim was not legally dependent on her husband's injury. The court made clear that a mere causal link between a third party's personal

injury and an employee's injury is not sufficient to bring the third party's claim within the scope of the derivative injury doctrine.

Even though the claims were not barred by the state's workers' compensation act, the California Supreme Court still concluded (as discussed above) that an employer does not owe a duty of care under California law to prevent the spread of COVID-19 to employees' household members.

3. Are there any open questions remaining?

Yes. The opinion does leave open some issues. Specifically, the court suggests that the outcome may be different depending on the circumstances. For example, the court noted that "a local measure enacted on an emergency basis could appropriately impose a tort duty extending to employees' household members." The court added that "social conditions surrounding COVID-19, much like the virus itself, have evolved a great deal since the start of the pandemic," "these changes are likely to continue," and the "the calculus might well be different in the future."

4. What should employers do now?

Employers should continue to track the evolving requirements surrounding COVID-19 in the workplace and maintain appropriate safety protocols in line with these requirements.

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.

Conclusion

If you have questions about potential liability for COVID-19 related claims, contact your Fisher Phillips attorney, the author of this Insight, or any attorney in any one of [our six California offices](#).