COVID-19: How To Pivot Your Business And Prepare For The Next 6 Months-A 5-Part Series

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Porzio Client Alert

Part 1: PREPARE FOR LITIGATION

It is difficult to imagine the future of your business when the regulations of quarantine will start to be relaxed and business operations will begin to return to a new normal. As companies begin to develop plans to return, now is the time to anticipate and prepare for the potential impacts COVID-19 related litigation could have on your company. Despite actions taken from CDC guidelines, employers are at risk of being sued for alleged exposure to COVID-19 at the company's worksites or from the company's commercial vehicles or products. Last week, a relative of a Wal-Mart employee (who died of complications of the virus) sued the retail company claiming the company failed to implement COVID-19 safety precautions, sanitize the store, and provide personal protective equipment such as masks, latex gloves and even antibacterial soaps or wipes to employees. The complaint alleged another employee at the same store passed away on March 29th due to complications related to COVID-19. To avoid the workers' compensation bar, the complaint alleges Wal-Mart acted intentionally and purposefully. There is a strong possibility that similar suits will follow across the country against employers small and large.

The COVID-19 exposure lawsuits will allege personal injuries or wrongful death because of exposure and seek compensation for pain and suffering, hospital bills, missed time from work, fear of death, and lost wages. Fortunately, by following best practices for safety, and documenting your company's actions with regard to the safety of your employees, customers, and those who interact with your business will help you prepare for possible claims. Employers should take proactive measures to prevent and prepare for these suits including:

- Follow CDC guidelines relating to exposure, symptoms, and return to work;
- Draft and distribute to employees COVID-19 safe worksite practice policies (“best practices”) based on CDC and OSHA Guidelines and state and local government orders and have your employees consent to receiving these guidelines These guidelines and orders are the baseline; employers can implement reasonable practices that exceed these guidelines based on the company's respective work circumstances and existing procedures;
- Educate employees on COVID-19 best practices and document attendance at education meetings;
- Retain all attendance records and receipts of documents regarding best practices in each employee's file;
- For those employees who do not follow best practices, make a determination of risk in retaining that employee and document their employee file accordingly;
- Conduct random spot checks of worksites to ensure compliance with “safe-distancing” practices and Personal Protective Equipment (PPE) requirements;

- Communicate daily to employees the need to follow and comply with the best practices by email or other written format;
- Understand all employment laws relating to unemployment, leave, and pay as they will mold your response to claims for leave and lost wages;
- Maintain individual files on employees who self-quarantine without a prescription, those who take leave to care for a sick relative or for children studying remotely; Plaintiffs' lawyers might file class actions on behalf of a group of employees, and you will want to prove—with documents—how each employee is different, and
- Prevent customers from entering your premises without a mask. Post these signs at all entrances and do not deviate from it.

Remember:

- Document all COVID-19 practices implemented, education meetings, spot checks, and other compliance efforts;
- Locate insurance policies and broker information. If you receive a Complaint, insurance carriers must be placed on notice immediately, and
- Retain all COVID-19 related documents to demonstrate compliance to local authorities and as proof in potential COVID-related personal injury and wrongful death suits.

Like any personal injury or wrongful death lawsuit, COVID-19 exposure lawsuits will be fact sensitive. Fact issues such as underlying medical conditions, family members exposure to the virus, and the plaintiff's potential exposure to the virus at other locations and from other products will be part of an employer's defense. These facts, however, might be difficult to develop. Your best defense will be to be prepared, follow best practices and maintain up-to-date records. Armed with these facts, your company will be in a better position to defend and defeat these claims.