

Coronavirus Litigation Has Begun— Steps to Take to Prepare



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During a public health crisis, businesses must make the safety and welfare of employees and customers a top priority,

while at the same time preparing for the expected litigation post-coronavirus. Knowledge and preparation are critical to understanding the legal implications of actions taken in dealing with a worldwide pandemic. While the litigation is in its infancy, some of the lawsuits filed so far include the following.

Failure-to-Warn Claims

Several lawsuits were filed in federal court in Los Angeles, California, in March, alleging negligence against the Princess Cruise Lines Ltd., for its response to the coronavirus, alleging that the cruise line knew that passengers who had sailed on the ship the week before had symptoms of coronavirus, one died as a result, and one crew member aboard the cruise disembarked in Hawaii as a result of coronavirus. The complaints include counts of regular and gross negligence and failure-to-warn claims. *Weissberger v. Princess Cruise Lines Ltd.*, No. 2:20-cv-02267, 2020 WL 1151023 (C.D. Cal. Mar. 9, 2020); *Abitbol v. Princess Cruise Lines Ltd.*, No. 2:20-cv-02414, 2020 WL 1231198 (C.D. Cal. Mar. 13, 2020); *Sheedy v. Princess Cruise Lines Ltd.*, No. 2:20-cv-2430, 2020 WL 1231185 (C.D. Cal. Mar.13, 2020).

Injunctive Relief

In February, the City of Costa Mesa got an emergency temporary restraining order (TRO) enjoining the transportation of persons infected with or exposed to the coronavirus (also known as “COVID-19”) to any place within Costa Mesa, California, until a subsequent hearing. The TRO prevented the transfer of some of the patients who had been scheduled to be transported to a closing mental health hospital in Costa Mesa from the cruise ship Diamond Princess. *City of Costa Mesa v. United States*, No. 820CV00368JLSJDE, 2020 WL 882000 (C.D. Cal. Feb. 21, 2020).

The Allied Pilots Association filed suit in Texas against American Airlines at the end

of January out of concern for the health of its members, seeking a temporary restraining order stopping flights from the United States to China while the Centers for Disease Control maintained its Level 3 or higher warning related to travel to China. *Allied Pilots Assn. v. American Airlines, Inc.*, No. DC-20-01598, 2020 WL 507870 (D. Tex. Jan. 30, 2020).

Class Actions

A class action lawsuit was filed in mid-March against the People’s Republic of China and several governmental agencies in China, alleging negligence, strict liability, and public nuisance for numerous actions, including failures to admit knowledge of dangers, contain the virus, and to warn others including the named plaintiffs. *Alters v. People’s Republic of China*, No. 1:20-cv-21108-UU, 2020 WL 1223865 (S.D. Fla. Mar. 12, 2020).

Other class actions filed to date include:

- a complaint alleging false and misleading advertising by products that claim to prevent flu and coronavirus, *David v. VI-JON, d/b/a Germ-X*, No. 20CV0424 CAB AGS, 2020 WL 1082551 (S.D. Cal. Mar. 5, 2020);
- an action seeking to stop foreclosures in West Virginia, *Shuffs v. Bank of America*, No. 5:20-cv-00184, 2020 WL 1274505 (S.D. W.Va. Mar. 16, 2020,); and
- a suit alleging failure to provide paid sick days, *Verhines v. Uber Tech.*, No. CGC-20-583684, 2020 WL 1187253 (Cal. Super. Mar. 12, 2020).

Preparation and Knowledge Are Critical

Reviewing contracts, insurance policies, and employment practices is important for workplace health, safety, and productivity and avoiding bad decisions that lead to legal liability, particularly in responding to a communicable disease outbreak. As more information becomes available about COVID-19 and how it spreads, the protocols developed by the Centers for Disease Control and Prevention (CDC) will be updated—and potentially weaponized—by affected persons, entities, and their lawyers. The CDC is continually updating its website with best practices for employers and the general populace, so all should be encouraged to familiarize themselves with its site.

(Coronavirus (COVID-19), <https://www.cdc.gov/coronavirus/2019-ncov/index.html>).

Contracts and Policies

Whether the coronavirus pandemic qualifies as an “act of God” under *force majeure* clauses in contracts is certain to be an issue to be litigated as companies struggle to meet contract terms and deadlines. Such terms are often within the definition section of an agreement, but rarely examined closely. “Force majeure” is often defined as “an unforeseeable event or cause that is beyond the reasonable control of a Party, including by way of example, but not limited to: (a) acts of God, war, riots, insurrection, terrorism, rebellion, floods, hurricanes, tornadoes, earthquakes, lightning, pandemic, epidemics, and other natural calamities.”

Businesses should be reviewing their insurance policies, which may have exclusions that include language pertaining to pandemics. Potentially applicable coverages to review in policies include business interruption; event cancellation or travel insurance; contingent business interruption coverage; and liability, such commercial general liability (CGL), directors and officers (D&O) (claims from shareholders that company leaders failed to respond appropriately to the coronavirus pandemic), and errors and omissions (E&O) (including negligence claims).

Employment Issues

Employers may face employment practices lawsuits, and considerations that can help to minimize exposure to communicable disease, as well as liability, include the following:

- Stay informed and communicate. Identifying reliable sources for public health guidance and being able to demonstrate compliance with such recommendations can help support decisions made, particularly when such decisions are challenged sometime later. Educate employees and implement procedures to minimize risks, including personal hygiene to help prevent the spread of infection.
- Be vigilant to the duty of care. Ensure compliance with the Occupational Safety and Health Act, which requires employers to provide employees with a

workplace “free from recognized hazards.” 29 U.S.C.A. §654.

- Consider restrictions on returning to work. Be mindful of any prohibited discrimination basis; restrictions should be based on direct threats to others’ health or safety.
- Minimize the psychological burdens of stress and anxiety. Communication is key as is flexibility in addressing workers’ mental burdens during a time of heightened stress.
- Consider obligations on leave and compensation. Staff with symptoms should be sent home or advised to stay home. Expanding leave benefits and protections should be considered to avoid employees returning to work prematurely and risking spreading the illness to others, further affecting workers’ health, safety, and production.
- Continue to protect privacy. Always protect personal health data within the requirements of disclosing such information as mandated by public health authorities.
- Statutes implicated, include these five:
 - Family and Medical Leave Act (FMLA)
 - Health Insurance Portability and Accountability Act (HIPAA)
 - Americans with Disabilities Act (ADA)
 - Occupational Safety and Health Act (OSHA)
 - State workers’ compensation laws

Sources of Information

- World Health Organization, www.who.int
- Centers for Disease Control and Prevention, www.cdc.gov
- National Institutes of Health, www.nih.gov
- The European Center for Disease Prevention and Control, www.ecdc.europa.eu/en 