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Employers Likely to Face Wave of Lawsuits by Employees Stricken with COVID-19

On April 6, the estate of a Walmart employee who died from complications due to COVID-19 sued Walmart in Illinois state court for wrongful death and negligence. The lawsuit alleges that Walmart failed to properly clean its store and that employees were not issued appropriate masks, gloves, antibacterial wipes, and other protective equipment. According to the lawsuit, Walmart did not follow guidelines published by the Centers for Disease Control and Prevention (CDC) and the U.S. Department of Labor (DOL) for maintaining safe workplaces – thereby making it more likely than not that the employee contracted the virus at work. The lawsuit also alleges that Walmart hired new workers in a hasty manner and without properly screening them for symptoms of COVID-19.

This lawsuit is likely the first of many in which plaintiffs' lawyers will try to hold employers legally responsible for the health and well-being of their employees. Although employees and their estates face several legal hurdles – such as proving causation (i.e., that the employee contracted the virus at work rather than somewhere else) and overcoming potential Workers' Compensation preemption – employers whose employees work in "essential" on-site roles should be mindful of and adhere to the CDC's and DOL's guidelines and other "best practices" which will blunt, if not outright defeat, the argument that they breached a legal duty of care to their

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employees. Indeed, on April 8, the CDC issued new workplace guidelines for essential businesses.

Employer best practices should minimally include:

- issuing employees the necessary personal protective equipment (PPE),
- scaling back operations to allow for regular deep cleaning and disinfecting of the premises,
- adhering to accepted social distancing practices among personnel and customers,
- screening employees on a daily basis for symptoms of COVID-19, and
- compelling employees to self-quarantine in accordance with CDC guidelines if they come into contact with someone who has contracted the virus or shown symptoms of the virus.

If practical, employers operating essential businesses should also consider dividing their on-site personnel into "A" and "B" teams and schedule the teams to work alternate weeks. In the event that a member of one team contracts COVID-19 or exhibits the symptoms of the virus, the entire team would then be subject to quarantine consistent with CDC guidelines, and the other team would be deployed on a full-time basis.

If you have any questions about CDC and DOL guidelines, best practices relating to the safeguarding of your workforce, or the appropriate response if an employee tests positive for COVID-19 or shows symptoms of the virus, please contact Chad Moeller or your Neal Gerber Eisenberg attorney.

The content above is based on information current at the time of its publication and may not reflect the most recent developments or guidance. Neal Gerber Eisenberg LLP



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