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Crisis Averted: California Employers Are Not Liable for "Take-Home" COVID Cases.

California Employment Law Update on **July 11, 2023**

Last week, the California Supreme Court unanimously ruled that employers are not liable to nonemployees who contract COVID-19 from employee household members that bring the virus home from their workplace, because "[a]n employer does not owe a duty of care under California law to prevent the spread of COVID-19 to employees' household members." *Kuciemba v. Victory Woodworks, Inc.*, No. S274191 (Cal. July 6, 2023), slip op. at 49.

We previously covered the *Kuciemba* action here, but as a reminder, the Ninth Circuit certified two questions to the California Supreme Court: (1) If an employee contracts COVID-19 at the workplace and brings the virus home to a spouse, does the California Workers' Compensation Act (Lab. Code, § 3200 et seq.) (the "WCA") bar the spouse's negligence claim against the employer, and (2) Does an employer owe a duty of care under California law to prevent the spread of COVID-19 to employees' household members?

The court answered the first question in the plaintiff's favor, concluding "take home" COVID-19 claims do not fall under the Workers' Compensation regime and therefore are not barred by the exclusivity provisions of the WCA. However, as a practical matter, the court's ruling on the second question—that employers owe no such duty of care—bars negligence claims for COVID-19 infection by members of an employee's household.

Public policy concerns drove the court's analysis. As it explained:

Imposing on employers a tort duty to each employee's household members to prevent the spread of this highly transmissible virus would throw open the courthouse doors to a deluge of lawsuits that would be both hard to prove and difficult to cull early in the proceedings. Although it is foreseeable that employees infected at work will carry the virus home and infect their loved ones, the dramatic expansion of liability plaintiffs' suit envisions has the potential to destroy businesses and curtail, if not outright end, the provision of essential public services. These are the type of 'policy considerations [that] dictate a cause of action should not be sanctioned no matter how foreseeable the risk.' Slip op. at 46 (quoting *Elden v. Sheldon*, 46 Cal. 3d 267, 274 (1988)).

Although the California Supreme Court is a notoriously difficult venue for employers (as we have frequently observed), in *Kuciemba*, the court took a pragmatic approach to avoiding a catastrophe for employers and the judicial system alike. Employers of all kinds can breathe a sigh of relief.

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Related Professionals

- **Jonathan P. Slowik**
  Partner