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California Supreme Court Holds Employers Have No Duty Of Care To Prevent The Spread Of COVID-19 To Employees' Households

Client Alert | July 6, 2023

Decided July 6, 2023 ***Kuciemba v. Victory Woodworks, Inc., S274191***

The California Supreme Court held today that employers owe no duty of care, under state tort law, to nonemployees (including employees' family members) to prevent the spread of COVID-19.

Background: Robert Kuciemba worked for Victory Woodworks in San Francisco. He contracted COVID-19 while at work, allegedly because Victory transferred workers from a job site where there were many infections to his site. He brought the virus home and transmitted it to his wife, whose age and ill health made her especially vulnerable to COVID. She was hospitalized for over a month as a result.

The Kuciembas sued Victory in California court, raising a variety of state-law tort claims. After Victory removed the case to federal court, the district court dismissed the complaint. It first ruled that Mrs. Kuciemba's claims against Victory were barred by the derivative-injury doctrine—namely, that California's Workers Compensation Act provides the exclusive remedy for work-related injuries and third-party claims that are "collateral to or derivative of" work-related injuries. The court also ruled in the alternative that Victory had no duty of care to prevent the spread of COVID to Mrs. Kuciemba.

The Kuciembas appealed to the Ninth Circuit, which—noting the lack of clear precedent addressing the scope of the derivative-injury doctrine or the duty of care in a case like the Kuciembas'—certified both issues to the California Supreme Court. The Supreme Court accepted certification and heard argument in May 2023.

Issues: 1. If an employee gets COVID-19 at work and transmits the virus to his spouse, does the derivative-injury doctrine bar the spouse's claim against the employer?

2. Does an employer owe a duty to the households of employees to exercise ordinary care to prevent the spread of COVID-19?

Court's Holding: 1. No. Third-party claims are barred by the derivative-injury doctrine only when they are "legally dependent on the employee's injury," such as with an heir's wrongful-death or spouse's loss-of-consortium claim. The derivative-injury doctrine does not bar "a family member's claim for her *own* independent injury," even if the injury was "caused by the same negligent conduct of the employer" that injured the employee.

2. No. Although it is generally "foreseeable that an employer's negligence in permitting workplace spread of COVID-19 will cause members of employees' households to contract the disease," "the significant and unpredictable burden that recognizing a duty of care would impose on California businesses, the court system, and the community at large

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counsels in favor of" declining to impose such a duty on employers.

What It Means:

- The opinion acknowledges that "there is only so much an employer can do" to prevent the spread of viruses such as COVID-19: "Employers have little to no control over the safety precautions taken by employees or their household members outside the workplace," and they cannot control whether individual employees comply with precautions such as "mask wearing and social distancing."
- The Court's opinion clarifies the scope of California's "analytically challenging" derivative-injury doctrine, explaining that it bars a plaintiff's claim only if she must "prove injury to the employee as at least part of a *legal* element" of her claim. It is not enough that the third party's injury would not have occurred but for the employee's injury.
- Even where foreseeability factors weigh in favor of recognizing a duty, courts will decline to impose a duty of care that would "alter employers' behavior in ways that are harmful to society."
- The Court declined to address "[w]hether a local measure enacted on an emergency basis could appropriately impose a tort duty extending to employees' household members," which was beyond the scope of the questions certified from the Ninth Circuit.

The Court's opinion is available here.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the California Supreme Court. Please feel free to contact the following practice leaders:

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