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PRO POINTS

- **Risk of exposure to the coronavirus on the job** has created new safety liabilities for employers and workers, as well as new costs for maintaining a safe workplace.
- **Companies are navigating through pages of recommendations** from several federal agencies on business planning during the pandemic, but the agency in charge of policing workplace safety has issued no mandatory rules on how to prevent exposure to Covid-19.
- **The Trump administration's decision to not issue mandatory pandemic safety rules** has led to lawsuits from worker safety advocates. It has also sparked concern among the business community about liability risks if a company doesn't go far enough to protect workers or customers from exposure to Covid-19.
- **The GOP says liability protections for businesses are a must-have provision** in the next round of coronavirus relief aid, saying it's necessary to avoid "frivolous" lawsuits. But so far, there is little evidence of much litigation over coronavirus exposure at work.

HOW WE GOT HERE

The coronavirus pandemic has created new safety risks for every U.S. workplace. In response, several government agencies have outlined specific suggested precautions on how to protect workers from exposure to the virus in various industries.

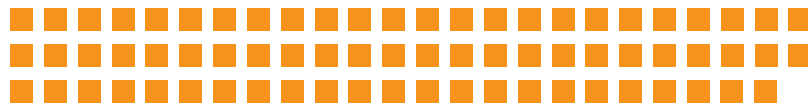
Covid-19 exposure complaints filed against employers

As of July 23, less than 5 percent, or 185, of 3,727 coronavirus-related lawsuits filed against employers since the onset of the pandemic in March have been from plaintiffs claiming fear of exposure, potential exposure or exposure to Covid-19, according to an analysis of Hunton Andrews Kurth's Covid-19 litigation tracker.

71 Labor and employment

Condition of employment

Includes cases regarding lack of personal protective equipment and fear of Covid-19 exposure



67 Health/medical

37 Wrongful death (Nursing homes)

24 Other*

6 Malpractice

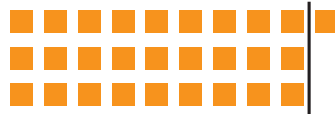


*Includes seven cases involving alleged unsafe conditions at health facilities

28 Miscellaneous tort claims

27 Other

1 Wrongful death (university)



19 Consumer cases

15 Personal injury**

4 Wrongful deaths (Cruise ships)



**Includes 11 claims against cruise ships, one against a charter plane and one against a nursing home

Sources: Hunton Andrews Kurth Database, American Association for Justice

The Occupational Safety and Health Administration and the Centers for Disease Control and Prevention have issued a series of guidelines that generally recommend businesses draft infectious disease response plans and protect their workers through practices like social distancing, frequent hand-washing and regularly disinfecting the workplace. For higher risk industries, like meatpacking and restaurant and retail service, OSHA specifically recommends providing physical barriers for workers, requiring cloth face masks, modifying the setup of supply lines and directing customers to self-checkout options, among other protocols.

Federal guidance for work environments during Covid-19

The Occupational Safety and Health Administration, along with the Centers for Disease Control and Prevention, have issued guidance for employers to develop plans protecting workers from the spread of the coronavirus. Here are general recommendations offered by the federal government, which employers are not required to implement.

Guidelines for office environments



Recommend increasing disinfection of work spaces and high-touch surfaces



Recommend modifying workstations and room seating to promote social distancing; install physical barriers to separate workers when social distancing is not possible



Recommend improving indoor ventilation, increase outdoor airflow



Consider installation of portable high-efficiency particulate air fan/filtration systems to clean air



Recommend staggering work shifts and break times of employees



Consider daily screenings of workers for Covid-19 symptoms



Encourage workers to use stairs instead of taking elevators



Encourage workers to use face masks

Guidelines for some high risk industries

Airline operations



Recommend that airline crews practice routine handwashing



Recommend that cleaning staff wear personal protective equipment when cleaning the interior of a plane after a symptomatic passenger has been onboard



Recommend cleaning and disinfection of all surfaces within 6 feet of an ill passenger, including bathrooms

Meat-processing plants, packaging warehouses, restaurants and retail services



Recommend providing physical barriers for workers



Recommend requiring that cloth face masks be worn by employees



Recommend modifying workplaces for social distancing



Recommend directing customers to self-checkout options

Sources: Occupational Safety and Health Administration, Centers for Disease Control and Prevention

The Equal Employment Opportunity Commission, which polices workplace discrimination, said in April that employers can require workers to take some Covid-19 tests, wear masks and have their temperatures checked as a condition of employment without running afoul of federal discrimination and disability law. However, the EEOC says employers cannot require workers to take antibody tests.

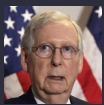
Notably, because OSHA hasn't issued a mandatory workplace safety standard for Covid-19, all these guidelines are largely unenforceable. Agency officials say a new regulation isn't needed because it can enforce worker safety under existing standards such as its rules regarding respiratory protection and bloodborne pathogens. OSHA has also said it will take into account a business' "good faith efforts" to protect workers from Covid-19 when deciding whether to issue a citation.

WHAT'S NEXT

Republican lawmakers have made clear that they won't sign another coronavirus relief package without liability protection for businesses and schools. But of the 3,727 coronavirus-related cases that have been filed since the onset of the pandemic in March, just 185, or less than 5 percent, fall into the personal injury category the GOP describes — plaintiffs claiming fear of exposure, potential exposure or exposure to Covid-19, according to an analysis of Hunton Andrew Kurth's Covid-19 litigation tracker. Instead, the bulk of the litigation deals with insurance claims and with civil rights — people challenging stay-at-home orders, for example.

Democrats, meanwhile, remain staunchly opposed to the liability protections, advocating instead for the inclusion of a provision that would direct OSHA to issue an Emergency Temporary Infectious Disease Standard that would establish protections for those exposed to airborne infectious diseases.

POWER PLAYERS



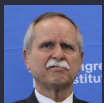
Senate Majority Leader Mitch McConnell

McConnell has warned of "an epidemic of lawsuits" that could arise as workers and customers sue employers over exposure to Covid-19. With Republican control of the Senate, a liability-protection provision will more than likely be a part of the next aid package.



OSHA head Loren Sweatt

Sweatt's agency has declined to issue Covid-19 safety rules, instead offering non-mandatory guidance in collaboration with the CDC for several industries, like farmwork, manufacturing and meat processing. Sweatt's OSHA has also issued only three Covid-19-related citations.



Rep. David McKinley (R-W.Va.)

McKinley is one of the few Republicans expressing support for mandatory Covid-19 workplace safety rules. Many Republicans say they prefer optional guidance over a Covid-19-specific regulation to give businesses more flexibility to reopen during the economic downturn.



The CDC

OSHA often relies on the CDC for technical expertise when issuing safety guidance and standards. The CDC has posted extensive recommendations for reopening businesses safely. But because OSHA hasn't issued a mandatory workplace safety standard for Covid-19, whatever guidelines it and the CDC develop are largely unenforceable.