COVID-19 Webinar Series: Workplace Safety

National Sea Grant Law Center
Informational Webinar
July 8, 2020
Webinar Overview

- Introduction & Background
- General Updates
- Workplace Safety
- Public Nuisance
- Q&A
Who We Are

- One of 34 Sea Grant Programs
- Based at the University of Mississippi School of Law
- Established to provide non-advocacy legal research, outreach, and education services to Sea Grant network.

http://nsglc.olemiss.edu/covid19
NSGLC Updates

• COVID-19 Research Assistants started on June 8.
  • 10 new blog posts on variety of topics: PPP, workplace safety, insurance, evictions.

• Don’t forgot to follow us on Twitter and Facebook!

• New information on COVID-19 Resources webpage:
  • Updated PPP Forgiveness Tip Sheet (Spanish and Vietnamese translations available from Texas Sea Grant).

• COVID-19 Advisory Requests:
  • Summary of SBA Interim Rule re: fishing boat owners and crew.
General Updates

- Deadline for applications for PPP loans has been extended to August 8th.
  - Fishing boat owners can now include some independent contractors in payroll calculations.

- PPP Forgiveness Changes/Updates
  - 24-week loan period.
  - New EZ application.

- Lawsuits to watch:
  - Jane Doe v. North Pacific Seafoods (related to quarantine req.)
  - Norwood v. Rodi Marine, LLC (death of boat captain from COVID-19)
Workplace Safety Overview

- Employers have general responsibility to provide a safe workplace free from serious hazards.

- Occupational Health and Safety Act covers most private sector employers and employees.
  - Term “employer” does not include the U.S., or any State or political subdivision of a State.

- 28 states with OSHA–approved plans that cover public sector workers.
Select a state/territory from the map to show that state/territory's State Plan contact information.

- This state's OSHA-approved State Plan covers private and state/local government workplaces.
- This state's OSHA-approved State Plan covers state/local government workers only.
- This state (with no asterisk *) is a federal OSHA state.
Employer Responsibilities

- Provide a workplace free from serious hazards.
- Identify health and safety hazards, and work to eliminate or minimize.
- Provide PPE for employees for hazards that can’t be eliminated or mitigated.
- Notify employees of identified hazards and provide training on how to address them.
- Maintain records and post notice of injuries and citations.
Employer Reporting Requirements

• Must report “any work-related” incident that results in, among other things, death or hospitalization.

• Injury or illness is considered work-related “if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness.” (29 C.F.R. 1904.5).

• Covers all payroll and non-payroll (i.e., independent contractors) supervised by employer on daily basis.
This webpage provides information for workers and employers about the evolving coronavirus pandemic. The information includes links to interim guidance and other resources for preventing exposures to, and infection with, the novel coronavirus—officially named SARS-CoV-2, which causes the Coronavirus Disease 2019 (COVID-19).

Find the latest OSHA resources related to COVID-19, including:
- Public Service Announcements
  - PSA #1 (English - Recording | Transcript) (Spanish - Recording | Transcript) (July 6, 2020)
  - PSA #2 (English - Recording | Transcript) (Spanish - Recording | Transcript) (July 6, 2020)
- Frequently Asked Questions (July 2, 2020)
OSHA Guidance re: COVID-19

- OSHA has not issued standards or regulations addressing COVID-19 exposure in the workplace.
  - Relying on general duty clause and existing regulations.
  - Personal Protective Equipment (PPE) standard requires use of gloves, eye and face protection, and respiratory protection if job hazards warrant it.

- Employer discretion re: whether COVID-19 infection is work-related.

- On June 24, Virginia Department of Labor and Industry voted to adopt a emergency temporary standard (ETS) for COVID-19. Effective July 15.
Return to Work

- Employers may require employees to come to work during the pandemic.
  - Employees returning to work may have expanded rights to leave of absences for COVID-related reasons under federal Families First Coronavirus Response Act or state laws.

- Refusal to return to work without a valid health-related reason (or CARES Act justification re: child care) may be considered as voluntary resignation.
Workers’ Rights

- Receive information and training about hazards.

- Be provided with **necessary PPE at employer’s expense**.

- File a complaint if they feel they are being exposed to hazard.

- File a whistleblower complaint if they suffer retaliation.

- Receive copies of their workplace medical records.
Testing and Screening

- Employers may include testing and screening requirements as part of their return to work strategies with some limitations.

- *Must comply with EEOC and ADA requirements*, including reasonable accommodation for disabilities.

- May require employees to be tested for active infections, but can’t require antibody tests.

- Can require temperature checks and ask screening questions.
Workers Compensation

• Most states require employees who are injured or become ill due to a condition at the workplace to bring a worker’s compensation claim.

• Unclear whether COVID-19 will be covered under state workers compensation.
  • Some states have enacted legislation or executive orders that expand coverage for certain workers.
Liability Waivers

• Courts generally refuse to uphold employer-employee liability waivers due to disparity in bargaining power.

• Employers already have liability protections through workers compensation system.

• See slides and recording from 5/27 webinar for more information about liability waivers.
A Seattle fishing company has had more than 100 COVID-19 cases on its ships. They're heading to Alaska this summer.

Guest Workers Describe Coronavirus Nightmare On Louisiana Crawfish Farm
Two women on H-2B visas say they fell ill with COVID-19 but were told not to leave company housing for the hospital — allegations the company denies.

Workers headed to a Naknek cannery forced to quarantine in L.A. hotel without pay, lawsuit says

Widow of sea captain who died of coronavirus sues Lafayette-based vessel owner
Unique Situation: Vessels

- OSHA authority is preempted by U.S. Coast Guard for inspected vessels. OSHA retains authority over uninspected vessels.
- CDC has issued guidance and recommendations of best practices for ships, but no specific guidance from USCG or OSHA.
- Some states have issued reopening standards for vessels – both inspected and uninspected, including party and charter boats.
- **Reminder**: Jones Act seaman can sue employer for personal injury damages.
Unique Situation: Seafood Processing

- CDC and OSHA issued interim guidance for seafood processing workers on June 24, 2020.
  - Seafood processing plant workers considered a component of the “critical infrastructure” of the food and agricultural sectors.
- CDC guidance advises that critical infrastructure workers may be permitted to work following potential exposure provided:
  1. They remain asymptomatic;
  2. They have not had a positive test result for COVID-19; and
  3. Additional precautions are implemented to protect them and the community.
Allene Goodenough (right) and Helyn James of the Young Women’s Christian Association mop up a spot on the sidewalk where someone expectorated by an anti-spitting sign during a public health campaign in Syracuse, New York, in 1900. (George Rinhart / Corbis via Getty Images)
Public Nuisance

What is a Public Nuisance?
- “An unreasonable interference with a right common to the general public.”

Who can file this type of claim?
- Public officials or agencies.
- Individuals who have suffered a “particularized harm”.
- Those who have standing to sue as a representative of the general public (member of a class action).
Barriers to Employees’ Public Nuisance Claims

- Courts may find regulatory agencies like OSHA have jurisdiction over workers’ safety claims.
- Workers compensation is typical remedy for employees seeking damages.
- Proving causation.
Recent Workplace Public Nuisance Claims

- **Taynarvis Massey et al. v. McDonald's Corp. et al.,** No. 2020-CH-04247 (Ill. Cir. Ct. 2020). (McDonald’s)
- **Hernandez v. VES McDonald’s,** Cal. Super. Ct., No. RG20064825 (June 22, 2020). (McDonald’s)
Employer Response to Public Nuisance Claims

To manage the risks, businesses should follow procedures outlined by the CDC, OSHA, and individual states and local governments. Adhering to these measures will be an important defense to employees’ public nuisance lawsuits based on employer COVID-19 liability.
Questions?

Please type your question into the Chat window.

Answer Poll Before Signing Off!

Contact Us

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