

## Updates

July 19, 2023

### California Employers Will Not Be Liable for COVID-19 Infections Contracted by Workers' Household Members



The California Supreme Court unanimously ruled in [\*Kuciemba v. Victory Woodworks, Inc.\*](#) on July 6, 2023, that California employers cannot be held liable by their workers' household members when workers contract COVID-19 in the workplace and spread the disease to their household members. This decision prevents millions of potential plaintiffs from bringing claims against California employers.

## **Background**

In May 2020, Corby Kuciemba (Plaintiff) contracted COVID-19 from her husband, Robert Kuciemba, after he was infected at his job site. Corby Kuciemba was eventually put on a respirator due to her infection. In October 2020, the Kuciembas sued Robert Kuciemba's employer, Victory Woodworks Inc., in federal district court, claiming Victory Woodworks Inc. was negligent by failing to prevent the spread of COVID-19. The federal district court granted a motion to dismiss the Plaintiff's claim.

The Plaintiffs appealed the decision to the U.S. Court of Appeals for the Ninth Circuit, and the California Supreme Court agreed to answer the following questions posed to it by the Ninth Circuit: (1) Does the California Workers' Compensation Act bar a spouse's negligence claim against an 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 Decision**

First, the court ruled that the California Workers' Compensation Act does not bar a spouse's negligence claim against an employer. However, an employer does not owe a duty of care to an employee's spouse to prevent the spread of COVID-19. Thus, a worker's household member cannot successfully bring negligence claims.

## **Reasoning**

The court held that the California Workers' Compensation Act does not bar a spouse's negligence claim for COVID-19 because the California Workers' Compensation Act only bars claims that are "legally dependent" on a workplace injury, such as a wrongful death or loss of consortium claim. Instead, a spouse's COVID-19 claim is considered a family member's own independent injury.

However, the court further held that any negligence claim brought by an employee's family member would fail. While the court pointed out that an employer's negligence could foreseeably result in a situation where an employee who is exposed to the virus will pass the virus to a household member, the proper policy was not to impose this duty on employers.

Kuciemba's argument relied on the California Supreme Court's decision in *Kesner v. Superior Court*. In *Kesner*, the court allowed household members of workers who brought asbestos on their clothes into their homes to bring asbestos lawsuits. The court distinguished *Kesner* because mesothelioma can only develop after a long period of exposure to asbestos and thereby limits the pool of potential plaintiffs. On the other hand, COVID-19 can be transmitted in as little as 15 minutes and would result in a large pool of potential claimants.

The court noted that imposing such a duty on employers could lead to millions of potential plaintiffs in California. The court explained that creating this duty would create a "litigation explosion," which would create significant burdens on the judicial system and the community. Nearly every employer, many of which are "essential businesses," in California could have been exposed to litigation because every business had COVID-19 in the workplace. The court explained that the potential litigation would cause a significant financial burden to these businesses, and the judicial system could not manage the number of potential suits. Thus, the court believed the proper policy was to prevent such a burden on California employers, the court system, and the community at large.

## **Takeaways for California Employers**

The California Supreme Court's decision provides much relief to thousands of employers. A different result would have left almost every employer in California as a potential defendant.

Nevertheless, employers should note the limitations of this decision. The court's decision bars negligence claims only from their employee's household members. Employers may be subject to workers' compensation claims and negligence claims from their employees. For any claims or issues related to COVID-19, employers are strongly encouraged to seek advice from outside counsel for ongoing guidance.

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