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Locke Lord QuickStudy: Employers Not Responsible for Spread ?of COVID-19 by Employees Off the Clock, ?California Supreme ?Court Says

Locke Lord LLP

WRITTEN BY

Yeva Mikaelyan | Jonevin Sabado

On July 6, 2023, the California Supreme Court issued a unanimous decision in *Kuciemba v. Victory Woodworks, Inc*., No. S274191, 2023 WL 4360826 (Cal. July 6, 2023), limiting the scope of employer liability to third parties in lawsuits involving COVID-19 infections. The court held that although the California Workers' Compensation Act ("WCA") did not bar a third party from raising an independent tort claim against his or her spouse's employer, employers did not have a duty to prevent the spread of COVID-19 to their employees' household members. The opinion comes as a relief to employers that have little to no power to prevent individual employees from contracting or spreading COVID-19 infections while off the clock.

Background

Robert Kuciemba, an employee of Victory Woodworks ("Victory"), contracted COVID-19 at work after a group of new workers were transferred to his job site. The plaintiffs alleged that Victory transferred the new workers without taking the precautions required by San Francisco County's health order. Robert's[1] wife, Corby Kuciemba, contracted the virus from him and was ultimately hospitalized for several weeks as a result.

The Kuciembas sued Victory in California state court, alleging numerous tort claims, including negligence and loss of consortium. Victory removed the case to federal court and moved to dismiss the complaint, which the district court granted. The Kuciembas appealed, and the Ninth Circuit, noting a lack of precedent on the matter, certified the following questions to the California Supreme Court:

1. If an employee contracts COVID-19 and thereafter infects a spouse, does the derivative injury rule of the WCA bar the spouse's negligence claim against an employee-spouse's employer?
2. Does an employer owe a duty of care to prevent the spread of COVID-19 to the household members of an employee?

The California Supreme Court answered "no" to both questions.

The Court's Analysis

If an employee contracts COVID-19 and thereafter infects a spouse, does the derivative injury rule of the WCA bar the spouse's negligence claim against an employee-spouse's employer?

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Under the derivative injury rule of the WCA, workers' compensation benefits typically provide the exclusive remedy to third parties where their claims are "collateral to or derivative of" the employee's workplace injury. The court explained that a third party's claim against a family member's employer is barred only if the third party's claim requires proof of the employee's injury.

Upon clarifying the rule, the court held that the WCA did not prevent Corby from bringing her tort claims against Victory because it was not necessary for her to prove that *Robert* was injured (*i.e.*, infected with COVID-19) in order to assert her claim against Victory. In other words, Corby's claim was not derivative because it was not the injury to Robert that caused her harm, but her own COVID-19 infection. Thus, the court held that the derivative injury rule did not preclude Corby's claim.

Does an employer owe a duty of care to prevent the spread of COVID-19 to the household members of an employee?

Though Corby's claim was not barred by WCA, the court nonetheless held that Victory had no duty to prevent its employees from transmitting COVID-19 to third parties. This holding essentially mooted Corby's claim.

The opinion acknowledged that "[e]mployers have little to no control over the safety precautions taken by employees or their household members outside the workplace." The court reasoned that although considerations related to "moral blame" and foreseeability tilted in favor of a duty of care, those factors were outweighed by the "significant and unpredictable burden" that such a duty would place on employers, courts, and the community.

Indeed, if such a duty were imposed on employers, the consequences would likely be dire. The court noted that this burden could result in employers enacting stringent restrictions that would negatively impact the flow of work. Moreover, courts would become flooded with a "deluge" of these lawsuits, which are difficult to prove because the high transmissibility of COVID-19 means individuals could become infected from any person they encounter throughout the day, whether or not at work.

Implications

The court's decision provides necessary clarity regarding an employer's duty to prevent COVID-19 infections in non-employee third parties, such as employees' family members. Nonetheless, employers should beware of making policy changes based on this ruling in a non-COVID-19 context. The *Kuciemba* decision did not alter employer obligations to third parties in other contexts, such as exposure to toxic materials. In addition, employers should continue to take precautions against the transmission of COVID-19 in the workplace because government investigations or claims by their own employees could still give rise to liability.

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[1] This article, like the court's opinion, uses the first names of Robert and Corby Kuciemba for the sake of clarity, as the spouses share a last name.

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