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Can Employees Sue Their Employer for Contracting the Coronavirus?

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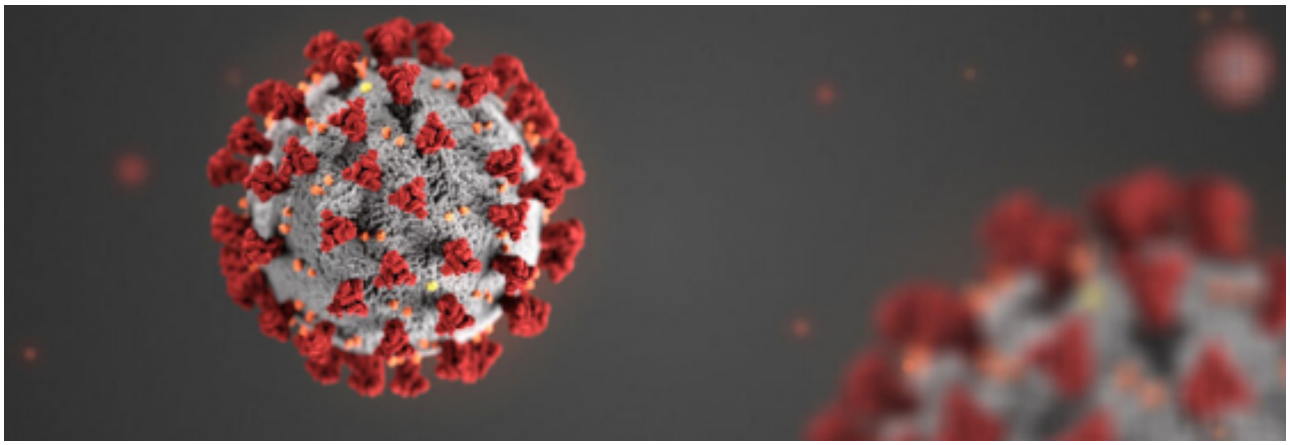

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Chapter 440 of Florida´s statutes sets out Florida´s workers' compensation laws. In very general terms, a workplace injury is covered by workers' compensation. These laws were a political compromise between employer and employee whereby the employer could no longer be sued by an employee for negligence with its unlimited damage potential, in exchange for an employer having a form of strict liability to an employee and being required to cover hospital bills, medical expenses, reduced wages, and the like. But what about coronavirus? If an employee contracts coronavirus while carrying out her/his employment, is it covered?

For illustration purposes, let´s consider a hypothetical restaurant delivery driver named Janet. Janet continues to work delivering food for the restaurant, collecting wages, and physically collecting cash tips from patrons. Janet is stricken with coronavirus and becomes very ill. Also assume that 12 of the 15 workers at the restaurant-including all five of the delivery drivers-become ill with the coronavirus. Finally, for our illustration, assume it is later shown that due to social distancing, only 1 in 100 citizens in Central Florida contracted the disease.

Candidly, there is currently no definitive answer as to whether Janet is covered by the restaurant's workers´ compensation policy under these specific coronavirus circumstances. This particular question is novel, like the coronavirus.

What follows are some educated guesses. Traditionally, for occupational diseases to be covered by Florida´s Workers' Compensation Act:

1. the disease must be actually caused by employment conditions that are characteristic of, and peculiar to, a particular occupation;
2. the disease must be actually contracted during employment in the particular

occupation;
3. the occupation must present a particular hazard of the disease occurring so as to distinguish that occupation from usual occupations, or the incidence of the disease must be substantially higher in the occupation than in usual occupations; and
4. if the disease is an ordinary disease of life, the incidence of such a disease must be substantially higher in the particular occupation than in the general public.

As you can see by reading "the test", an argument can be made that the employment conditions of being a delivery driver, while others are home social distancing, are "characteristic of and peculiar to" being a delivery driver. There may be a challenge proving whether Janet contracted the coronavirus at work, but by comparison to the general public, it is arguably provable.

As to the third prong, Janet certainly has a higher chance of contracting the disease during these times of social distancing as compared to say, a lawyer who is working at home without physical interaction with others.

Finally, coronavirus is arguably a "disease of life" but in this hypothetical scenario, it appears that the incidence is substantially higher. Although there is no case law determining that this conclusion is "right" and that Janet is clearly covered, there is a reasonable argument that she is.

Importantly, even if Janet loses her case and her bout with coronavirus is not ruled to be "an occupational disease", if she has a related pre-existing condition that is aggravated by coronavirus, she still may have a workers' compensation case. For instance, Janet has the common disease of asthma that is aggravated.

Let´s also assume that the restauranteur, being the aggressive type, defends and argues that Janet´s coronavirus is not covered by workers' compensation at all. The law provides a solution for that, too, which is that Janet can now sue in tort. Assuming she can prove causation (which would not necessarily be easy), she will be able to receive damages including out-of-pocket expenses, loss of wages, pain and suffering, and perhaps other theories of damages, none of which would be limited by workers´ compensation.

Finally, let´s assume that the actions of the restaurant were found to be grossly negligent or willful. For example, the restaurant did not provide even basic training as to how to help reduce the risk, did not provide soap, or the time and training about how to use it. Perhaps the "back of the house" was crammed with workers, none of whom were screened for sickness prior to work. Janet may have an argument that even if workers' compensation otherwise would apply to limit her damages, it does not in this case because her employer's actions were grossly negligent or willful which are exceptions to the normal workers compensation restrictions, i.e. punitive damages become available along with their damage multipliers.

Thus, while it is not clear, it is terribly important that just because a restaurant or other entity can operate-it must do so safely, or face potentially significant claims.

If you have questions regarding employment or tort (negligence) issues or other questions regarding your business in the context of the coronavirus, please contact one of the lawyers at Lowndes.

For up-to-date news please follow our Coronavirus (COVID-19) Response Team page.