

COVID-19: Workplace Risk & Incident Response Team

An interdisciplinary effort navigating all aspects of workplace hazards, safety and compliance through all phases of the global health pandemic.

Since the beginning of the pandemic, Hunton Andrews Kurth LLP has been advising some of the largest companies in the country regarding COVID-19 in the workplace, including assisting companies in developing workplace policies and procedures, advising on compliance with agency guidance and shutdown orders, assessing future claims risk and developing mitigation strategies to reduce risk. As the inevitable first wave of COVID-19 litigation has hit, Hunton has been on the front lines actively defending clients in some of the most high-profile litigation in the country.

Hunton has developed an integrated and interdisciplinary COVID-19: Workplace Risk & Incident Response Team that joins the expertise of our OSHA and employment law lawyers with the experience and talent of our nationally recognized toxic tort and mass tort litigators. The COVID-19 Workplace Risk & Incident Response Team can assist across a wide range of COVID-19 issues, including workplace safety and management, employment law, employee and customer claims risk assessment, government regulation and investigations, and defense of litigation resulting from the COVID-19 outbreak. Our team members are knowledgeable regarding OSHA, workers' compensation coverage for COVID-19 and the interplay with potential tort risk, wrongful death and personal injury defense, nuisance claims and a host of other issues. The legal team has successfully defended COVID-19 workplace litigation, obtaining dismissal of a federal lawsuit against a national meat processing company and defeating a request for injunctive relief, while navigating the constantly changing, and sometimes conflicting, landscape of executive orders and federal, state and local guidance.

Our integrated OSHA and toxic torts team has been leading efforts inside the courtroom, and their recent victory was a runner-up entry for American Lawyer's Litigator of the Week. Our lawyers are also actively engaged in providing guidance on COVID-19-related state and federal legislative efforts, including legislation designed to expand workers' compensation coverage and legislation to provide immunity or other limitations on liability to essential and other businesses.

How Hunton Andrews Kurth LLP Can Help Prepare & Guide Your Company on COVID-19 Workplace Issues.

PRE-INCIDENT RISK ASSESSMENT

- **General Risk Analysis.** We have experience advising clients in all industries on what they should do now to limit their legal exposure as a result of the COVID-19 outbreak. This includes compliance assistance with OSHA rules and mandatory state/local government orders, OSHA/CDC nonmandatory guidance and industry-specific best practices. We can help you identify what could be putting your company at risk, and how to mitigate these risks. We have developed a network of nationwide experts, including in the areas of infectious disease, epidemiology, OSHA and industrial hygiene, to assist with risk analysis and guidance.
 - **Employee Policies & Procedures.** Now is an especially crucial time to ensure your employee policies and procedures are best positioned to address issues arising from COVID-19. Our experience in this arena allows us to efficiently and effectively provide guidance on writing, reviewing or amending employee policies and procedures. As just one example, steps designed to protect vulnerable populations also may violate discrimination laws. We can help you find the legally defensible middle ground.
 - **COVID-19 Outbreak Response Plan.** Preparing an outbreak response plan is important to help avoid costly legal issues for your company down the road. We have experience advising clients how to best design these plans to cover legal issues that are likely to arise, including issues related to employee medical testing, quarantine procedures and how to handle pay for COVID-related absences.
 - **OSHA Considerations.** OSHA currently does not have an infectious disease standard, although efforts are underway on several fronts to force the agency to issue such a rule. Unless and until that happens, OSHA is using the general duty clause for enforcement of COVID-19 issues. We can provide guidance regarding whether your workplace is compliant with OSHA rules and OSHA/CDC guidance and what steps should be taken if your company is not in compliance. We also can assist in determining when to report COVID-19 inpatient hospitalizations or fatalities to OSHA.
 - **Workers' Compensations Issues.** The nationwide landscape of workers' compensation laws is diverse, and states will treat COVID-19 cases differently. We can analyze individual state laws, the risks of disease transmission unique to your workplace and advise on whether the application of workers' compensation law, or lack thereof, may affect liability risks.
 - **Tort Risks.** Tort law varies from state to state, and these variations may impact your liability risk. Issues to consider include the applicable causation standard, availability of punitive damages, whether the jurisdiction recognizes "take-home" toxic tort claims and whether liability waivers are enforceable. We can provide a state-specific assessment of these issues relative to your company's COVID-19 liability risk.
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GOVERNMENT AND OTHER INVESTIGATIONS

- **OSHA Investigations.** During this pandemic, we have routinely assisted employers in responding to written requests from OSHA for complaint response or other requests for information (rapid response or “RRI” investigations). We also are handling formal investigations, including aggressive fatality investigations where OSHA has deployed significant investigation and legal resources. We conduct this work in a manner that protects the company’s interests on all fronts. We put the defense together with an eye toward future tort claims and we know through our experience when to hold OSHA to its statutory limits and when to cooperate fully.
- **Public Health Investigations.** State and local public health agencies have been actively involved in investigating workplaces to protect the public from COVID-19. These agencies have the ability to invite the CDC to participate in an investigation. We have experience assisting in these investigations and interfacing with public health and CDC, and we have infectious disease and other experts who can assist in managing any such investigation.
- **Internal Investigations.** A company may choose to conduct an internal investigation for any number of reasons. Our team can assist whether the investigation concerns a challenged employment law decision, a parallel investigation to a government inquiry or a potential injury claim.

INCIDENT RESPONSE AND LITIGATION

- **Initial Incident Response.** A company’s initial response to an incident can have far-ranging effects on future liability. If your company has a COVID-19 outbreak or fatality, it is important to act quickly to preserve evidence and determine the facts. The initial response should include identifying key players and documents,

issuing a legal hold, conducting an initial investigation, implementing a careful communications protocol and managing press inquiries and statements. We have experience in advising these areas both generally and with respect to COVID-19.

- **Toxic Tort Defense/Wrongful Death.** We are leaders in the defense of toxic tort and exposure claims and bring that expertise to the COVID-19 arena. We can provide a liability assessment and develop a litigation strategy based on your company’s COVID-19 policies and procedures, the number of confirmed cases in the workplace and the extent of community spread, and we have scientific experts available to assist with this analysis.
- **Injunctive Relief.** There have been a growing number of claims against employers and others for injunctive relief seeking to enforce COVID-19 safety measures. These claims present unique legal issues and are often heard by the court on an emergency basis. We successfully defended such claims, and have an experienced team that can respond quickly if required by the court.
- **Media/Press Management.** The firm has worked with high-profile companies to assist them in their media strategy as it relates to COVID-19. We regularly track media coverage for our clients and assist in developing an appropriate response that is consistent with any litigation strategy.
- **Legislation Tracking.** We continue to follow proposed and enacted laws covering COVID-19 to advise clients on what is anticipated to happen, what has happened and what it means for their businesses. When a compliance answer is not clear, we have the contacts to directly reach out to the involved agencies for clarity. We routinely provide no-cost webinars and written resources to assist with knowledge and compliance.

How Hunton Andrews Kurth LLP Can Help with Other COVID-19 Issues.

There are many pieces to the COVID-19 legal puzzle beyond assessing your company's risk, preparing for an incident and responding if an incident occurs.

Below we highlight some of the legal services we can provide in addition to those identified above:

MONITORING THE LITIGATION LANDSCAPE

We track all COVID-19 litigation, and we have developed an interactive [COVID-19 complaint tracker](#) to capture new claims. The tracker, which is updated daily, features an interactive map showing federal and state COVID-19 litigation hot spots and provides searchable case-specific details. The tracker allows us to stay abreast of litigation trends and novel claims that may impact our clients.

INSURANCE & LIABILITY CONSIDERATIONS

The firm's insurance coverage team, comprised of approximately 30 attorneys, evaluates, advises on and litigates COVID-19 insurance recovery claims related to business interruption and other related policies. We can help you pursue a claim, or we can help you evaluate your insurance coverage, and determine what next steps you need to take to position your company to have the best footing going forward.

YOUR 24/7 ADVISOR

Our team is available around the clock to advise you on these rapidly changing and pressing legal decisions which will affect your business. Clients who utilize our COVID-19 response services are offered a 24-hour toll-free number to immediately reach a Hunton Andrews Kurth attorney on call.

FEDERAL & STATE LEGISLATION

We are involved in employer-related COVID-19 legislation at both the state and federal levels. We can specifically speak to issues relating to state workers' compensation expansion legislation and state/federal immunity legislation, and we continue to monitor for other legislative efforts.

RETAIL & CUSTOMER ISSUES

We understand customer safety is also a major concern. We have experience addressing retail and customer-related issues.

RETURN TO WORK ISSUES

Many clients have been asking questions related to returning their workforce to the workplace during this time. We can help your company determine how to best move forward and address ongoing issues.

The Hunton Andrews Kurth COVID-19: Workplace Risk & Incident Response Team

The Hunton Andrews Kurth COVID-19: Workplace Risk & Incident Response Team consists of a knowledgeable team of lawyers, led by:



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