

Employer Waivers of COVID- Related Liability

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As employees continue to return to their offices and places of business, companies are grappling with risk management related to COVID-19, including potential liability to employees who contract COVID-19 on the job. Hundreds of employees have already filed lawsuits against their employers, asserting claims ranging from negligence to wrongful death to public nuisance in connection with the illness of the employees or their family members. At the same time, organizations that have required their customers and patrons to waive liability (such as Disney and the New York Stock Exchange) have garnered significant press coverage. Many employers are asking if they should consider requiring their employees to sign similar waivers.

As described below, while there may be little legal downside in requiring such waivers, there also may be limited upside, both legally and practically. Although there is considerable variation in the laws of the various states and laws in this area are still evolving, in many states, such waivers will not have any effect either because they are preempted by workers' compensation laws, because they are otherwise invalid and unenforceable, or because employers may have existing protections from liability arising from negligent conduct.

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