



Litigation Spawnd by the COVID-19 Pandemic: What's New Is Old (Q4 2022)

The COVID-19 pandemic spawned what *appear* to be new causes of action. For example, before the pandemic, no U.S. president had issued a mandate that all employees of federal government contractors or workers at health care institutions receiving federal government funding be vaccinated against a virus. Currently, litigation over government-mandated COVID-19 vaccines has largely concluded, with the U.S. Supreme Court drawing definitive lines as to how far the federal government can go: yes, for health care workers; no, for non-health care workers generally.

On the other hand, lawsuits stemming from COVID-19-related mandates by *private employers*—whether vaccine or safety protocols—are now (Q4 2022) in their preliminary stages. Although these claims appear “new,” coming from a novel and constantly mutating coronavirus, in reality, such “new” claims are dressed in old clothes. For example:

Reasonable accommodation claims: Even before the pandemic, Epstein Becker Green (EBG) attorneys had a wealth of experience advising health care clients on accommodation or exemption requests from employees seeking to avoid vaccine mandates (such as the flu vaccine) and had handled claims that employees’ disability or religious beliefs were not adequately accommodated. Since the advent of the pandemic, EBG attorneys have handled many claims of discrimination alleging that, in implementing a vaccine mandate, the employer failed to accommodate a religious belief or disability. Religious accommodation claims have far outpaced disability accommodation claims.

Unsafe working conditions: Although case counts, hospitalizations, and deaths from COVID-19 have slowed, particularly after vaccines became available, the virus continues to mutate, is still present in workplaces, and continues to sicken and kill people (mostly the unvaccinated). Lawsuits filed against employers have alleged that employers were negligent in adopting and implementing COVID-19 safety protocols, which led to either an employee contracting COVID-19 at work or taking the virus home to infect family members. While state workers’ compensation laws generally preempt employee claims that they contracted COVID-19 at work, “take home” COVID-19 lawsuits for wrongful death have been brought, alleging that the employer was negligent in enacting and enforcing COVID-19 safety protocols that resulted in the death from COVID-19 of an employee’s family member. The results have been mixed as to whether these “take home” claims are preempted by state workers’ compensation laws. EBG continues to monitor these pending cases and is well equipped to advise and defend employers against such claims.

Wage and hour class actions: EBG attorneys have been handling putative class actions alleging that pre-shift time spent waiting in line and completing mandatory health screening procedures implemented due to the pandemic is compensable. Plaintiffs claim that time spent in such screening procedures is “integral and indispensable” to their principal duties and therefore compensable, while employers counter that such time is non-compensable “preliminary” time. It remains to be seen how courts will decide this issue.

The number of claims arising out of the COVID-19 pandemic continues to ramp up. EBG attorneys can help reduce the risk of such claims ever being filed. [If you receive such a claim, we are here to help.](#)