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# The legal state of returning to work during COVID-19

Jill Coonan, TucsonLocalMedia May 20, 2020



Real-estate offices, office spaces and restaurants gradually began reopening in May as Gov. Doug Ducey loosened various emergency regulations and allowed his stay-at-home order to expire by May 15.

But the companies and checks at lines still aren't as full as they once were. This may be because—according to a recent Reuters survey—47 percent of Americans are still hesitant to see how the virus and vaccine develops before they decide to resume their lives as before. 68% as much still opt in. In all, new laws are helping the local workforce make the best plan of action.

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According to [Jessica Post](#), head of labor and employment practice for Henderson Crag law firm, there are two new laws Arizona workers should know about when returning to work. The Emergency Paid Sick Leave Act and the Emergency Family Medical Leave Act. These are aimed at maintaining a safer working environment and clearing hurdles for returning to work.

Employers are facing a difficult time because they don't know demand," Post said. "Some of the most common difficult lies are: (1) they don't know if an employee wants to come back to work, and (2) if there's a customer appetite for retail."

The Emergency Paid Sick Leave Act, which grants employees up to 80 hours of time off, is designed to help employees not have to call in sick or at all employees in the workplace.

"Employers need to work hard to try to keep the workplace safe, and one of those ways, and the best way, is simply to keep sick employees or those whose had prolonged measures out of the workplace," Post said. "And the employees need to be thoughtful if they fall under those circumstances."

The Expanded Family and Medical Leave Act makes employees eligible for up to an additional 10 weeks of family leave, at two thirds of their regular pay, if they need to care for a child whose school or care facility is closed due to COVID-19.

The money from these emergency acts initially comes from the employer, who will then receive a tax credit from the government.

And while certain groups, such as the immune-compromised and elderly, are more susceptible to COVID-19, and therefore more likely in the workplace present an employer from stopping certain groups returning to work. But with these new laws, those at risk groups have more resources to stay at home while keeping in touch, thus protecting themselves and their coworkers.

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"Ultimately, as an employer, doesn't get to make the decision about who wants to come back," Post said. "It needs to be a bit of a mutual change, because everybody's worked through a color for a variety of reasons at different times, but right now is a time we really don't want to work through disease."

Both retailers and offices have employees returning, but Post says retailers will have a more difficult time protecting their environments at an office, due to the greater amount of foot traffic, visitors may need to organize precautions such as doing temperature checks or those entering the workplace, both to prevent virus spread, and to make customers feel safe.

"So many people are watching hours of TV per day about COVID-19 and things along those lines, so they're scared, but they're also watching how to put on facemasks and what businesses should be doing, so there's a higher level of awareness than there ever has before," Post said. "That will set a very high standard for what customers' expectations are presently."

On the customer's side of the law, lawyers are also seeing an increase in the number of inquiries about potential injury litigation with regards to COVID-19.

[Mac Lamber](#), head of the personal injury practice group for Henderson Crag, says he's already received some calls regarding this, and expects the number to increase.

"I think there's going to be a wave of these types of claims as businesses open," Lamber said. "You're going to see customers who go into a store, restaurant or facility like that, and there will be some who are going to allege that they contracted some virus while they were at that retail establishment."

Several questions arise here: Does the customer have a legitimate claim? And if so, does the business have coverage? But most importantly, can the customer provide causation?

Lamber says there are few legal theories involved here: negligence and premises liability. But with both of these, those bringing the claim bear the burden of proof to show evidence that they contracted the virus in that store and nowhere else. Lamber says this will be very challenging to prove, and needs to include evidence that a business didn't follow appropriate measures, such as guidelines from the Centers for Disease Control and Prevention.

"Fuzzing the law aside, I think employers and employees should be creating an environment that is reasonably safe," Lamber said.

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