



How could coronavirus impact employers' liability claims?

Businesses should document that they are following government guidance to mitigate potential claims from employees.

Employers should be future-proofing against the potential for claims from employees stating that they caught **Covid-19** at work, advises Forum of Insurance Lawyers (FOIL) president and Plexus Law.

Plexus Law expect to see an increase in employers' liability (EL) claims resulting from the coronavirus pandemic.

At this difficult time for UK businesses and society generally, it is very important for employers to be aware **that claims could potentially be brought in the future by employees**, or members of the public, as a result of the Covid-19 pandemic.

The actions, systems and processes that organisations undertake now to safeguard their staff will determine whether claims are brought and, as importantly, whether they are successful. Businesses should be taking measures to protect their workforce but are also be mindful about whether they could see future claims as a result of employees allegedly catching Covid-19 in the workplace.

Managing the risks

In order to best defend these types of claims, employers should follow government guidance closely, communicate constantly with staff and draft risk assessments and mitigation strategies relative to Covid-19 and the business's specific circumstances as a result of the pandemic.

Keeping documentation of these measures will be key. For a Covid-19 claim to succeed, an individual claimant must establish that a breach of duty has occurred which will be difficult to do if government guidance is followed.

"It is therefore crucial for employers to take measures such as identifying high risk individuals, allowing those in non-essential roles to work from home, ensuring a two-metre distance between workers, etc. Furthermore, employers should ensure that leaders within the business adhere to and enforce any corporate measures that are implemented. If this doesn't happen and an employee brings a claim, then the employer could be held vicariously liable for the negligence of a manager who fails to adhere to internal policies and procedures.

Causation

Another consideration for claimants in this instance will be the need to establish causation, or a causative link between the breach of duty in the workplace and the contracting of the Covid-19 virus – this is needed in order for a claim of this ilk to be successful.

In many cases it will not be clear when and where the virus was contracted, and this will be a key issue within any subsequent legal dispute.



Potential for higher damages

Although the overall frequency and volume of Employers' liability and public liability claims will fall due to the increase in home working and shrinking of the economy, it is expected that higher value claims could be sought for damages.

In most cases, damages will be relatively minimal if the symptoms are mild or moderate and most people do fully recover. However, tragically, we know that the virus does lead to many deaths and the long-term respiratory complications are not yet fully known, so there is also the risk of higher value claims being brought.

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