

## Coronavirus/Covid-19 Litigation

### Death or Severe Injury from Covid-19

If you or a loved one was forced by an employer to enter or re-enter a workplace that failed to offer safe work conditions and suffered death or **severe** injuries from contracting the Covid-19 virus, contact Attorney Rusty Tucker for a free consultation as to what your rights and remedies might be at 214-505-0097 or contact us online. Please know that our firm believes that the overwhelming majority of infections from the coronavirus were unavoidable and were not due to the negligence or gross negligence of any person or entity. We will only consider those cases where there was egregious conduct or gross negligence that led a person to become infected AND suffer death or serious injury.

### Can you Sue Your Employer?

If your employer has worker's compensation, it is very difficult to do but it can be done in limited circumstances in the State of Texas. A recent Texas court of appeals decision in *Berkel v. Lee* confirms that the exclusive remedy rule from worker's compensation prohibits an injured worker from receiving any additional damage payments for employer negligence, unless:

1. **Gross negligence death claims.** The family of the injured worker must demonstrate that the workers' death on the job was caused by the employer's gross negligence; or
2. **Injury was "substantially certain" to occur.** The employee can demonstrate that the employer should be held liable because injury was substantially certain to occur.

To prove gross negligence in a death claim, the worker's family must show that the employer was knowingly reckless. For example, if a restaurant knew that its delivery person had the Coronavirus, and that restaurant allowed that delivery person to drop off food at a customer's house, and that customer of the restaurant contracted the Coronavirus, the customer may be able to claim gross negligence against the restaurant. Some states other than Texas only require that simple negligence is the standard for liability.

To pass the "substantial-certainty" test, workers must prove that their employer's conduct was almost definitely going to cause harm to a particular victim, or to someone within a small class of potential victims within a localized area. An example in this area would be if an employee was ordered to return to work at a meat-packing plant and work in close quarters where the employer knew that many of its employees had or have had the coronavirus, a good argument could be made that the person was "substantially certain" to get the coronavirus.

The other element that must be met to recover is causation, meaning that the injured party must show they suffered harm as a result of the gross negligence (in Texas). For a case involving Coronavirus, Defendants will likely argue that there many other potential sources of the Coronavirus, so proving causation will be a definite challenge in some of these cases.

## **Contingent Fee Representation**

We represent clients on a contingent fee basis meaning that we do not get a recovery if we don't obtain a recovery on your behalf. You will not be liable for any attorneys' fees, costs, or expenses whether or not we obtain a recovery on your behalf. Please call Attorney Rusty Tucker at 214-505-0097 or contact us online for a free consultation as to what your rights and remedies may be.