



The Institutes[®]
CPCU Society

**The Next Litigation Wave: What
Should We Expect When the COVID-
19 "Stay in Place" Orders are Lifted?**

**Presented by the
CPCU Society Risk Management and
International Insurance Interest
Group**

Two Perspectives – Defense Attorney vs Personal Injury Attorney



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CDC Information - Coronavirus (COVID-19)

What is it?

- Coronavirus (COVID-19) is an illness caused by a virus.
- COVID-19 symptoms range from mild (or no symptoms) to severe illness.

How is it transmitted?

- Primarily spread from person to person.
- Close contact (about 6 feet) with a person who has COVID-19.
- Infected from respiratory droplets when an infected person coughs, sneezes or talks.
- Infected from touching a surface or object that has the virus on it, touching your mouth, nose or eyes.



CDC Information - Coronavirus (COVID-19)

Who is at risk?

- Everyone is at risk of getting COVID-19
- Older adults and people of any age who have serious underlying medical conditions may be at higher risk for more severe illness

Is there a cure?

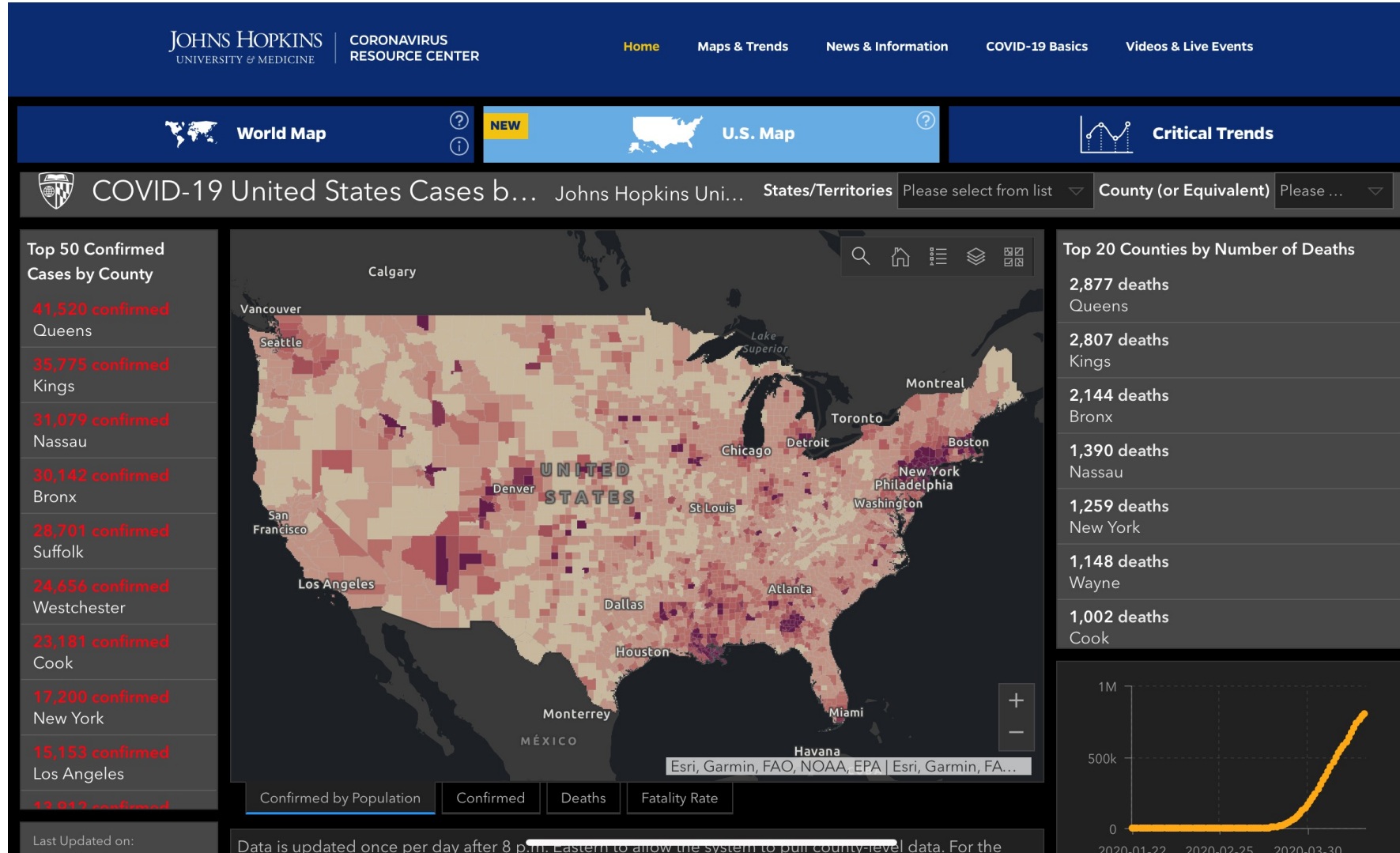
- No vaccine to protect against COVID-19

How to protect yourself and avoid the spread

- Avoid being exposed to the virus that causes COVID-19
- Stay home as much as possible and avoid close contact with others.
- Wear a cloth face covering that covers your nose and mouth in public settings.
- Clean and disinfect frequently touched surfaces.
- Wash your hands often with soap and water for at least 20 seconds, or use an alcohol based hand sanitizer that contains at least 60% alcohol.



Case Map as of April 22, 2020



Areas Affected by COVID-19

- Employment law
- Immigration law
- Insurance law
- Professional liability
- Medical malpractice
- Public entity
- Consumer law
- General liability
- Cyber security
- Banking industry



Causation

- In most cases, causation will be difficult, if not impossible to prove; “general causation” versus “specific causation”.
- Community-acquired cases difficult to trace to just one source
- Viable cases may be found in nursing homes, hospitals, cruise ships, manufacturing facilities, schools and businesses



Standard of Care

- The standard of care will be different for each business
- Will push boundary of foreseeability
- The standards are still evolving:
 - Adequate safeguards
 - Information posted
 - Testing
 - Social distancing enforced
 - Handwashing stations
 - Surfaces constantly cleaned
 - Leave P provided to sick employees



Court Closures and Trial Delays

- Some courts are closed and others are open
- Anticipated significant increase in new filings
- Court dockets already overcrowded
- Judges will expect both sides to continue with litigation



Impact on Litigation and Discovery

- Tolling statutes of limitations
- Vacating and extending trial dates
- Continuing court hearings
- Written discovery regarding the impact of COVID-19
- Remote hearings
- Remote depositions
- Remote mediations
- Remote trials and arbitrations?



Impact on Jurors

1. Will jurors be more or less sympathetic because of their own hardships related to COVID-19?
2. Will jurors look to corporations and insurance carriers for compensation to bridge the gap?
3. Will jurors view corporations and insurance carriers as responsible parties for the pandemic?



The Push for Settlements During COVID-19 Closures

- Some insurance companies and plaintiffs are using this as an opportunity to settle cases
- Uncertainty regarding the ability of the courts to handle cases and set trial dates
- A depressed economy leads to a greater need for financial compensation



Current COVID-19 Litigation

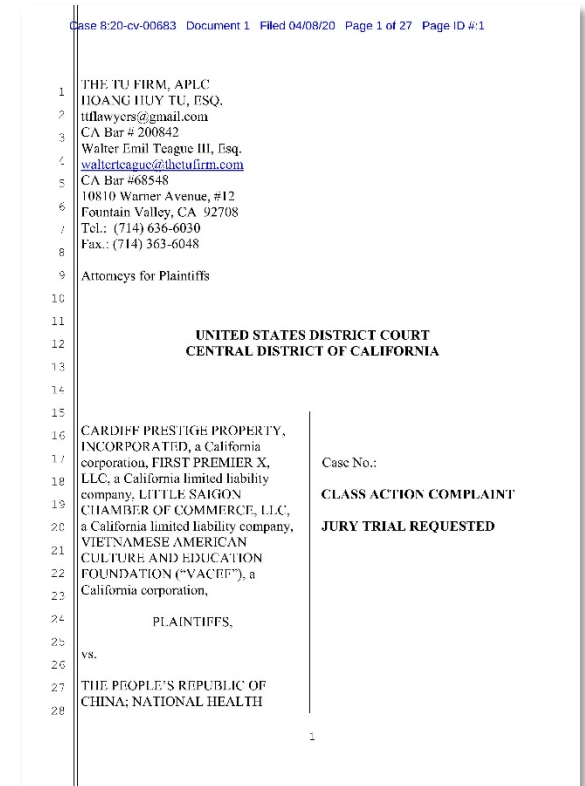
Publicity Stunt Cases

- Nationwide Class Action against China (SD-Florida)
- \$20 Trillion lawsuit against China (ND-Texas)
- New York Class Action against WHO
- State of Missouri filed suit against China



Cardiff Prestige Property Inc. v. Peoples Republic of China

- Tort class action filed in USDC Central District of California on April 08, 2020
- Plaintiffs: “small businesses” in United States and state of California
- Defendants: the Peoples Republic of China (PRC) & its various government entities
- Complaint alleges due to defendants’ misinformation and cover ups of COVID-19, their conduct initiated an unprecedented worldwide pandemic.
- Claims consist of negligence, strict liability for conducting ultrahazardous activity and public nuisance.



Insurance Coverage Litigation

- Plaintiffs have already begun to file suit against various insurance companies regarding coverage under their policies.
 - One example is a complaint involving additional coverage for “Business Income and Extra Expense Coverage” in the event that the business is closed by order of Civil Authority.
 - Plaintiff argues that premiums were paid to the insurance company when they had no intention of providing the coverage for that clause



Current Insurance Litigation

- Thomas Keller Group/French Laundry suit against The Hartford
- Class action filed on behalf of New Mexico restaurants and bars
- A number of companies have joined petition to create national MDL
- Will insurance regulators and/or lawmakers mandate coverage?



Employment Law

- Employment Law
 - Wrongful termination
 - Harassment
 - Discrimination
 - HIPPA
 - Wage and Hour Litigation
 - New laws governing family/medical leave and emergency leave (FFCRA)



Walmart Hit with Wrongful Death Lawsuit

- Relative of Walmart employee who died due to COVID-19 complications filed a wrongful death suit against retail giant alleging:
 - Negligence
 - Failure to promote & enforce social distancing
 - Failure to cleanse & sanitize the store to prevent spread
 - Failure to provide employees with personal protective equipment



Amazon Confirms Death of Warehouse Manager

- A Southern California warehouse manager recently died from COVID-19
- Worker Compensation Exclusivity in CA will likely apply
- Three Amazon employees claim they were fired for complaining the company was not doing enough to protect workers



Employers

- As the landscape for businesses continues to shift amid the COVID-19 pandemic, communication with employees becomes essential.
- Manage risk through implementing and distributing updated policies to employees involving:
 - Remote work
 - Travel
 - Health and safety



Families First Coronavirus Response Act (FFCRA)

Non-Federal Employee Rights

EMPLOYEE RIGHTS

PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The **Families First Coronavirus Response Act (FFCRA or Act)** requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

▶ PAID LEAVE ENTITLEMENTS

Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- ⅔ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at ⅓ for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

▶ ELIGIBLE EMPLOYEES

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). *Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.*

▶ QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

- | | |
|---|---|
| 1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19; | 5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or |
| 2. has been advised by a health care provider to self-quarantine related to COVID-19; | 6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services. |
| 3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis; | |
| 4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2); | |

▶ ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

For additional information
or to file a complaint:
1-866-487-9243
TTY: 1-877-889-5627
dol.gov/agencies/whd



WH1422 REV 03/20



COVID-19 and Employment

- Existing laws do not change due to COVID-19
 - Maternity leave laws, sex discrimination laws, gender discrimination laws etc. *do not change*.
- Employers would be wise to make sure they do not retaliate or treat anyone differently during this crucial time
 - The recent passage of the FFCRA adds another element of anti-retaliation.



Should Employers Provide...

- Should employers provide their employees with proper equipment to sanitize their work areas?
- Answer: Yes. And if the employees need to pay for it themselves, they can get reimbursed.



Applicable OSHA Standards

A number of OSHA standards may apply, but it depends on the circumstances of the case:

- 29 CFR § 1904, Recording and Reporting Occupational Injuries and Illness.
- 29 CFR § 1910.132, General Requirements - Personal Protective Equipment.
- 29 CFR § 1910.133, Eye and Face protection.
- 29 CFR § 1910.134, Respiratory Protection.
- 29 CFR § 1910.141, Sanitation.
- 29 CFR § 1910.145, Specification for Accident Prevention Signs and Tags.
- 29 CFR § 1910.1020, Access to Employee Exposure and Medical Records.
- Section 5(a)(1), General Duty Clause of the OSH Act.



Retaliation and Wrongful Termination

- Employees have been asking employers:
 - Why are we still working from the office?
 - Claiming they are nonessential
 - Being exposed to it (COVID-19)
 - How come customers are still coming?
- Employer says, “If that’s how you feel, go home.” One week later, employer lays off employee.
- But if, that same week, employer lays off 100 other employees, its going to be a more difficult argument to make.



More Current COVID-19 Litigation

- Lawsuit seeks COVID-19 hazard pay for federal employees (USCFC)
 - Plaintiffs seek to represent a section of federal employees who have been exposed to individuals, surfaces, or objects infected with COVID-19 since Jan. 27, 2020
- Class action lawsuits against Uber & Lyft (CA Superior in San Francisco)
 - Plaintiffs seek injunction declaring rideshare drivers “employees” under California’s A.B. 5, thus ordering companies to comply with mandated paid sick leave
- Class action lawsuit against Germ-X (SD—California)
 - Plaintiffs filed suit against hand sanitizer company due to claim that the product can prevent “coronavirus/flu”
- ICE detainees’ class action (WD—Washington)
 - Plaintiffs filed for coronavirus release claiming that they are “literally trapped in jail” during the coronavirus outbreak



Shahriyar Rezai-Hariri v. Magic Mountain LLC

- California Consumers Legal Remedies Act class action filed in USDC Central District of California on April 10, 2020
- Complaint against Magic Mountain brought forth when defendants continued charging customers monthly memberships yet denying access to all parks as COVID-19 continues to course through world populations



L.A. Times Article: COVID-19 and Nursing Homes

Which nursing homes are affected?

[Nursing homes](#) have become a tragic focal point of the coronavirus outbreak. California's Department of Public Health has divulged the names of 255 [skilled nursing](#) and 21 assisted-living facilities across the state with COVID-19 outbreaks.

The state has withheld the precise number where there are 10 or fewer cases.

Filter by county

Los Angeles

Facility	Type	Staff	Residents
[REDACTED]	Skilled nursing	Ten or fewer	Ten or fewer
[REDACTED]	Skilled nursing	26	20
[REDACTED]	Skilled nursing	Ten or fewer	-
[REDACTED]	Skilled nursing	Ten or fewer	17
[REDACTED]	Skilled nursing	Ten or fewer	Ten or fewer
[REDACTED]	Skilled nursing	Ten or fewer	-
[REDACTED]	Skilled nursing	14	Ten or fewer
[REDACTED]	Assisted living	Ten or fewer	Ten or fewer



Cyber Security

- New cybersecurity concerns for remote work
- Competence in using new technologies
- Schools overloading platforms causing delays in teaching
- Platforms being hacked and pornographic images being shown to students trying to attend class



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