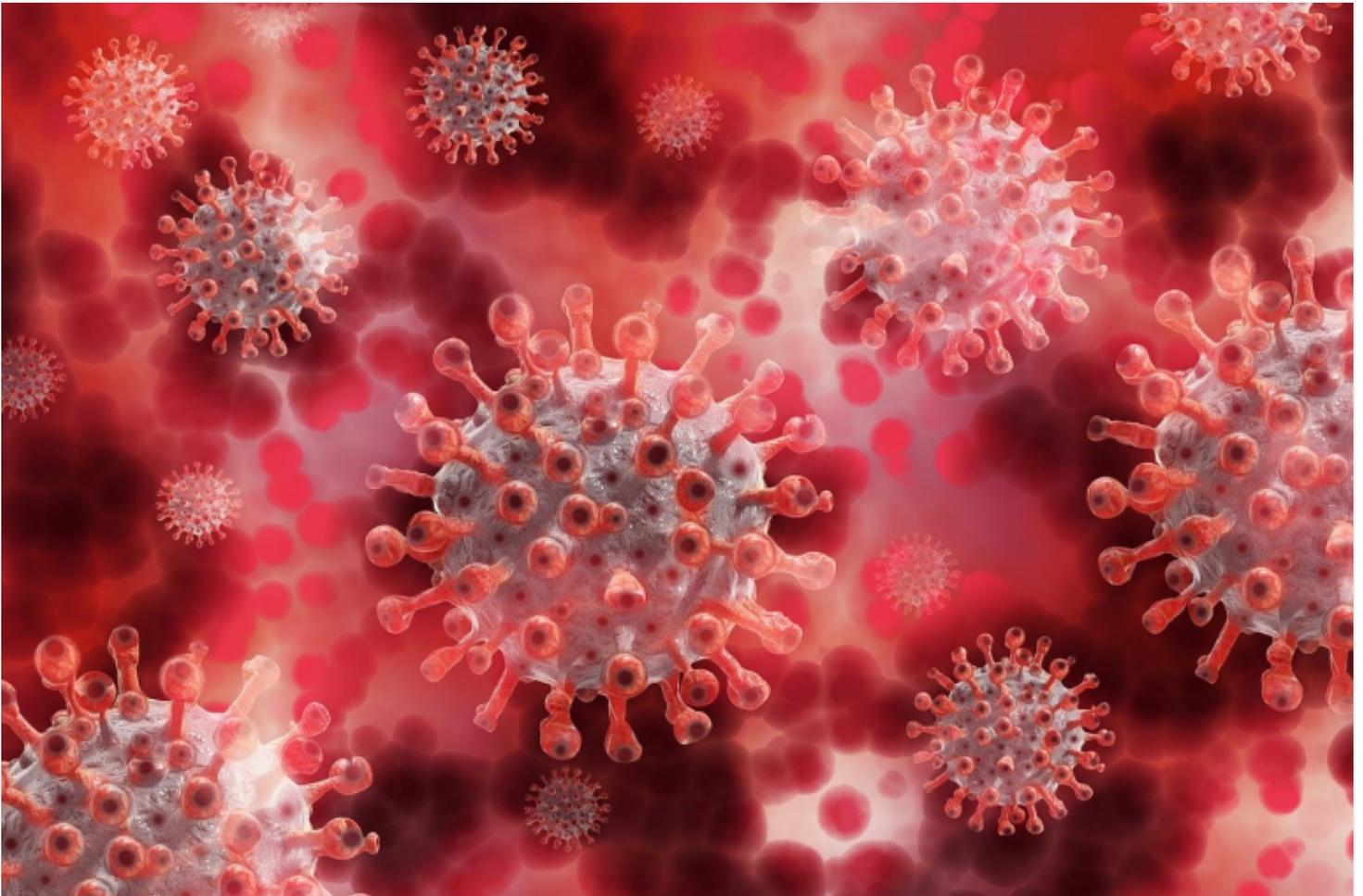


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overwhelm some employers. Knowing what may be around the corner and taking steps to avoid it may help employers successfully acclimate to the new environment.

Richard D. Alaniz • Jul. 14, 2020



The reopening of America's workplaces is creating a variety of challenges for employees and employers alike. In some cases, employers attempting to resume operations are hampered, and in some instances unable to do so due to laid off employees' reluctance or refusal to return to work. Many are receiving more in unemployment benefits as the result of the \$600 per week federal enhancement than they would make working. That additional amount is scheduled to end on July 31.

Despite the recent comments by some in Washington that it will not be extended, the

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in the near future anyway.

Even if they are able to reopen, employers are immediately confronted with the reality of the need to implement and consistently enforce, for at least some period into the future, the safety protocols against Coronavirus recommended by the CDC, OSHA, and the various state and local public health agencies.

These well-known protocols include, among other things the social distancing that has become commonplace, hand-washing stations, the use of face masks in some cases, regular monitoring of employees for COVID-19, and also where feasible, the reconfiguration of work stations to protect employees from possible exposure to the virus. Some employers are also requiring employee testing for COVID-19 before permitting employees to enter the workplace.

COVID-19 Lawsuits

In addition to the need to take reasonable measures to ensure their employees' safety and health, employers are also seeking to avoid possible federal or state agency enforcement actions as well as the potential liability, from lawsuits to which others have been subjected. OSHA has received over 5000 complaints related to worker safety involving possible Coronavirus exposure

. More than 2000 lawsuits raising claims regarding Coronavirus have also been filed in courts across the country. Some of these lawsuits accuse employers of not providing adequate personal protective equipment (PPE) to their employees. Others involve claims that the employer has endangered employees by permitting persons into the workplace without testing for COVID-19. Some allege that the employer has neglected to inform them of possible exposure from an employee who has tested positive. Many involve claims of employer failure to adequately enforce social distancing or related safety protocols. In those workplaces where jobs have been

permanently eliminated, the potential for claims of discrimination based upon a

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Workers Compensation claims related to Coronavirus. As an employer, you are aware, it generally covers any injury or illness "arising out of and occurring in the course of their employment." The complicating factor in COVID-19-related claims is that Workers Compensation does not apply to the "ordinary diseases of life."

Proving that the disease was contracted in the workplace may be difficult. The well-known community spread of COVID-19 may cause state Workers Compensation commissions to find that the illness is not work-related. Employers and their insurers have a viable argument for arguing against such claims.

In order to avoid the automatic denials of these types of claims at least nine (9) states, including Arkansas, California, Florida, Kentucky, Minnesota, New Hampshire, North Dakota, Utah and Washington, have issued executive orders that for the duration of the pandemic, create a rebuttable presumption that workers became infected on the job if they have worked during that period. It is likely that more states will take similar action.

Workplace Impact Due to COVID-19

The ability to convince a sufficient number of employees to return to work, maintaining strict Coronavirus safety protocols, and avoiding legal actions, while significant, are not the only troublesome issues confronting employers as they try to resume operations. In an effort to maintain some level of business continuity many workplaces instituted operational changes which impacted employees.

In some workplaces, where feasible, employees were permitted to work remotely, and many continue to do so. Some employers made job consolidations to work with reduced staff, many made work schedule changes and similar restructuring of normal operations. Where such changes were viewed as positive by employees, there will be pressure to continue the changed procedures after the resumption of

operations. For example, recent estimates indicate that approximately 30% of people

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their terminated co-workers as unfair or arbitrary.

Union Organizing and the Coronavirus

The perception of mistreatment of former employees whose jobs were eliminated, along with any potential concerns over the uncertainty of their own continued employment, could lead to a disgruntled workforce. If there are miscues in maintaining the COVID-19 protocols that are perceived as causing an increase in positive cases, employees may view the employer as not sufficiently protecting their health and safety.

Such employer frustrations could create a fertile field for union organizing. It is quite apparent that unions see the disorder in many workplaces caused by the pandemic as a unique opportunity to ramp up organizing efforts. The June 15, 2020 edition of Politico's "Morning Shift", its regular update on labor and related issues, had as its headline "Coronavirus fever incites union drives."

Other recent pro-union organizing articles urging employees and unions to take action have such titles as "Workers Just-In-Time Movement," "Organize or Die," "Turn Up The Heat," "A Simple Shop Floor Organizing Plan Any Essential Worker Can Use," and "Solidarity is Our Only Chance." Employers struggling to restore their businesses certainly do not need the additional distraction of a union attempting to organize their employees.

Conclusion

The post-pandemic workplace in many cases will be rife with obstacles that could overwhelm some employers. Knowing what may be around the corner and taking steps to avoid it may help employers successfully acclimate to the new environment.

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