



## COVID-19 Related Workplace Deaths: Rise Of Wrongful Death Claims

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**Mark Wallin**  
Partner



**Christina M. Janice**  
Partner

Now in its 16th week, the Barnes & Thornburg Wage & Hour Practice Group's [COVID-19 related workplace litigation tracker](#) has now analyzed almost 300 complaints filed across the United States, in twelve different categories. This week's spotlight is on a category of COVID-19 related workplace complaints that undoubtedly has caused many sleepless nights for employers around the country: deaths caused by COVID-19 infections allegedly connected to the workplace.

This week's update to the tracker includes two such cases – one relates to the alleged wrongful death of an employee from COVID-19, and the other concerns the death of an employee's spouse. In each case, the plaintiffs allege a lack of effective institutional response to the virus, as well as a failure to warn employees who may have come in contact with the COVID-19 virus in the workplace. The allegations in these cases demonstrate the importance of employers implementing a plan of action to mitigate the dangers to the workforce.

First, in *Iniguez v. Aurora Packing Company, Inc.*, the plaintiff, administrator of a deceased woman's estate, filed a wrongful death and survival action against the defendant, a meat-packing facility. The defendant employed the decedent's husband as a butcher. The plaintiff alleges that in late April 2020, the decedent's husband contracted COVID-19 while at work, and infected his wife, who died from the virus on May 2. According to the plaintiff, the

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defendant knew employees had contracted COVID-19 at its facility, yet did nothing to mitigate the spread of the virus in the facility. The plaintiff alleges that the defendant was negligent by, among other things, failing to warn employees of a COVID-19 outbreak and failing to implement an infectious disease preparedness and response plan or infection prevention measures consistent with CDC and state department of health guidelines. The plaintiff also asserts that the defendant actively created risk, including by “choosing not to”: provide employees with PPE, implement engineering controls to prevent the virus from spreading, take reasonable measures to allow for social distancing, screen and monitor workers, implement and communicate leave policy, and provide handwashing breaks, hot water, and sanitizer.

In *Montgomery v. Prevarian Senior Living, LP*, the plaintiffs, the surviving family members of a deceased assisted living facility worker, allege wrongful death and gross negligence under Texas law. The plaintiffs allege that both the deceased and their daughter, one of the plaintiffs, worked for the assisted living and memory care facility, and both were exposed to COVID-19 when assigned by their employer to sit for hours at a time, unprotected, with a resident whom the employer knew (but did not tell its employees) had tested positive for the virus. The plaintiffs allege that assisted living facilities “have often been described as “epicenters” for COVID-19,” and that the deceased in particular was at higher risk of experiencing severe COVID-19 complications, including death, due to being overweight and a minority. The plaintiffs allege that the employer owed the deceased a duty to provide a safe workplace, including:

- To warn the deceased that a resident with whom she was required to interact for an extended period of time had tested positive for COVID-19
- To consider reasonable risk factors before assigning the deceased to spend time in a room with an infected resident
- To not place her at increased risk of exposure to COVID-19 without adequate personal protective equipment
- To implement safety protocols to prevent the spread of and exposure to COVID-19; and
- To seek out and remove sources of harm on the premises controlled by the employer

The plaintiffs further allege that with conscious indifference the employer created an extreme risk of harm by failing to inform the plaintiff-daughter and other co-workers of the resident’s infection or to adequately address the danger before instructing the plaintiff-daughter and other workers to work near the resident.

As the pandemic continues, the unfortunate reality is that we expect to see more illness among employee populations, and more litigation alleging that an employer’s alleged unpreparedness and lack of transparency relative to COVID-19 resulted in the spread of the virus among an employee population, and caused sickness or even death. As ever, mindful employers would do well to understand and follow the public health guidance coming out at the local, state, and federal levels. When in doubt, seek guidance from your labor and employment attorney.

Contributors to the COVID-19 Related Workplace Litigation Tracker will

continue to present on the trends we are seeing in our [monthly webinar](#), with the next one scheduled for August 26. We will continue to track these trends as they unfold, and will continue to update the tracker each week. As always, stay tuned.