

## COVID-19 Court Cases—Potential Implications for WC Insurance

Number	State	Case Name	Court	Filing Date (Month/Year)	Status (as of 9/18/2020)	Final Decision Date <sup>1</sup> (Month/Year)	Summary
1	Illinois	<i>Illinois Manufacturers' Association v. Illinois Workers' Compensation Commission</i>	Circuit Court of Sangamon County, Illinois	April 2020	Pending	Not applicable	On April 24, 2020, the circuit court entered a temporary restraining order enjoining the Workers' Compensation Commission from implementing an emergency amendment to the Illinois Workers' Compensation Act, which created a rebuttable presumption that a first responder's or front-line worker's exposure to COVID-19 arises in and out of the course of employment and is causally connected to the hazards of the employment. Subsequent to the court's decision, the Workers' Compensation Commission withdrew the emergency amendment. On April 30, 2020, a motion to dismiss and dissolve the temporary restraining order was filed in the case.
2	Illinois	<i>Evans v. Walmart, Inc.</i>	Circuit Court of Cook County, Illinois	April 2020	Pending	Not applicable	<p>The estate of an employee who passed away due to complications of COVID-19, sued the employer for negligence and recklessness, alleging that the employer failed to protect its employees from contracting COVID-19 and that it knew or should have known that there was a high risk of infection and exposure at the workplace.</p> <p>On June 25, 2020, the employer filed a motion to dismiss alleging that the lawsuit was barred by the exclusive remedy provision of the Illinois Workers' Compensation Act. The court has not issued a ruling on the motion nor set a date for a motion hearing.</p>

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3	New York	<i>Palmer v. Amazon.com Inc.</i>	US Federal Court, Eastern District of New York	June 2020	Pending	Not applicable	<p>A group of employees filed a lawsuit alleging that their employer failed to follow local, state, and federal public health guidance during the COVID-19 pandemic and caused injury and death to the employees and their families. The employees are not seeking monetary relief. Instead, they are asking the court to declare that the employer’s conduct constitutes a public nuisance under state law, and to enter an injunction requiring the employer to abate the nuisance and implement appropriate worker protections.</p> <p>On July 14, 2020, the employees filed a motion to withdraw their prior motion for a preliminary injunction asserting that the employer had addressed the public health issues that their prior motion was trying to resolve. Subsequently, the court granted the employees’ new motion, and set a date for a pre-motion conference on the employer’s motion to dismiss.</p>
4	Pennsylvania	<i>Benjamin v. JBS S.A, JBS USA Food Co., et al.</i>	US Federal Court, Eastern District of Pennsylvania	May 2020	Pending	Not applicable	<p>The estate of a meat processing plant worker, who also served as union representative and who died after contracting COVID-19, sued the worker’s employer in state court for negligence and gross negligence alleging, in part, that the employer ignored the risk of COVID-19 infection to its employees, failed to provide appropriate personal protective</p>

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							<p>equipment, and to follow official guidance related to the prevention of the pandemic in the workplace.</p> <p>In June, the employer removed the complaint to federal court and filed a motion to dismiss alleging that the estate’s claims are barred by the exclusive remedy provision of the Pennsylvania Workers Compensation Act.</p>
5	Illinois	<i>Massey v. McDonald’s Corporation</i>	Circuit Court of Cook County, Illinois	May 2020	Pending	Not applicable	<p>A group of workers filed a class action lawsuit against their employer alleging that the employer disregarded expert recommendations and government guidance on how to best protect workers and the public from the spread of COVID-19. The complaint further alleged that the employer’s actions were negligent under state law and constituted a public nuisance. Plaintiffs asked the court to enter an injunction ordering the employer to provide a safe work environment.</p> <p>On June 24, 2020, the court entered a preliminary injunction requiring the employer to provide social distance training in accordance with state guidance, and to enforce mask wearing policies. The court did not grant the preliminary injunction as to the negligence claim reasoning that there was no evidence that the employees were directly exposed to or infected by COVID-19.</p>

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6	California	<i>Zuniga v. Safeway, Inc., Albertsons Companies, Inc., et al.</i>	US Federal Court, Northern District of California	May 2020	Pending	Not applicable	The surviving spouse of an employee, who died after contracting COVID-19, sued the employer for negligence and gross negligence alleging, in part, that the employer failed to comply with federal and state guidelines, and to implement a pandemic response plan, policies and procedures designed to prevent an outbreak in the workplace. In July, the employer removed the case to federal court and filed a motion to dismiss the complaint asserting that the California Workers' Compensation Act provides the sole and exclusive remedy for the injuries suffered by the employee.
7	Ohio	<i>Lanzo v. Generations Behavioral Health-Youngstown, LLC</i>	Court of Common Pleas, Trumbull County, Ohio	June 2020	Closed	September 2020	The estate of an employee who died of COVID-19 sued the employer alleging, in part, that the employer acted negligently, carelessly, recklessly, willfully, and wantonly in failing to implement state and federal COVID-19-related policies and procedures, and willfully created a situation that exposed the employee to the illness and caused his death.  The employer countered, in a motion for judgment on the pleadings, that the estate failed to state a claim for relief because the allegations in the complaint do not meet the threshold for the intentional tort exception to workers compensation exclusive remedy and are, therefore, preempted by the exclusive remedy provision of the Ohio Workers' Compensation Act.

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							On September 8, 2020, the estate voluntarily dismissed the case.
8	California	<i>Brooks v. Corecivic of Tennessee, LLC</i>	US Federal Court, Southern District of California	May 2020	Pending	Not applicable	<p>On September 4, 2020, the federal District Court for the Southern District of California ruled that workers compensation exclusive remedy barred claims by a former detention officer against her former employer, a private detention facility, for negligent supervision and intentional infliction of emotional distress in connection with the former employer’s alleged failure to maintain a safe and healthy work environment at the facility during the COVID-19 pandemic, leading to the spread of the virus among other employees and detainees there.</p> <p>While the former employee did not file a separate claim for benefits, the court found that the claims for negligent supervision and intentional infliction of emotional distress were barred by exclusive remedy because they were based on the alleged failure to maintain a safe and healthy workplace which, the court noted, is inextricably part of the “compensation bargain” of the workers compensation system. The court reasoned that an employer’s response to a pandemic does not fall outside the risk inherent in the employment relationship, and though pandemics are uncommon, employers are expected to have protocols in place to deal with these type of events, particularly when engaged in operations susceptible to the spread of diseases.</p>

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							The court, however, did not entirely dismiss the case. It allowed the former employee to move forward with claims of constructive discharge against the former employer.

For more information on other cases monitored by NCCI’s Legal Team, visit previous [Court Case Updates](#) and [Court Case Insights](#) under the Legal section of **INSIGHTS** on **ncci.com**.

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