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Legal Matters®

Reopening presents traps for employers

The coronavirus pandemic has created an unpredictable landscape for employers. As of right now, states are in various stages of their phased reopening plans and many employers have either brought employees back to the physical workplace or are planning to do so.

Wherever you currently find yourself, it is critically important to meet with an attorney to identify potential hazards that might result in a lawsuit.

Allegations of discrimination are possibly the biggest trap. When the coronavirus first hit and businesses had to shut down, many employers were forced to implement furloughs and layoffs quickly. Not all employers necessarily took the time to properly analyze (or better yet, engage an attorney to analyze) who was being affected. Some of those personnel decisions may be having a disproportionate effect on workers of a particular race, ethnicity, gender or age. If this has happened in your workplace, you could be vulnerable to a “disparate impact” claim under federal or state anti-discrimination law.

Similarly, if you have been lucky enough to avoid layoffs or furloughs in large numbers but expect to have to implement them in coming weeks, you’ll be setting yourself up for problems if you don’t do it right. Review your plan with an attorney ahead of time to make sure you can justify your personnel decisions on legitimate business grounds.

Wage-and-hour claims are another potential trap, particularly if you have had “non-exempt” (hourly or low-salaried workers) working from home during the pandemic. Work-at-home situations can lead to wage and hour claims because they lend themselves to blurred lines between



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company time and personal time, especially when workers are anxious about their job security. If you add in the lax recordkeeping that can occur during a chaotic time, your workers may end up with legitimate claims that you failed to pay overtime or minimum wage.

But non-exempt employees aren’t the only ones you need to worry about. Let’s say you’ve furloughed an exempt worker and she’s sitting at home not getting paid, but you are calling or emailing her so she can walk you through certain tasks that she would otherwise be handling. She now may be entitled to a full week’s salary for whatever time she spent helping you. It is also important to note that in many states, a wage law violation

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Move to reopen presents traps for employers

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means you'll have to cover not only any unpaid wages, but also the worker's attorney fees and double (or even triple) their damages.

Worker safety is a third area of risk for employers. Penalties can be significant under state and federal workplace health and safety laws, some of which may even provide financial incentives for "whistleblowers" to report violations. Employees could also potentially bring lawsuits claiming they contracted COVID-19 when they went back to work because their employer failed to follow state and federal guidelines for social distancing or provision of masks and other personal protective equipment.

Realistically, these may be tough suits for an employee to win. After all, it's difficult to prove where you contracted a virus and a court may also find that worker's compensation is the sole available remedy. But litigation is disruptive and costly even when you prevail,

so strict compliance with guidelines is still your best defense.

Yet another tricky issue is handling older workers and workers with preexisting conditions or who live with someone who is high-risk. Because of their heightened vulnerability to the coronavirus, such workers may be uncomfortable returning to the workplace. Before telling them, "come back or you're fired," you need to talk to your attorney and determine whether you're obligated to accommodate them under state and federal law and, if so, how best to do that. You might need to allow them to continue to work at home or give them time off from work. (Family and medical leave laws could come into play here.)

Finally, as you take steps to keep your workplace safe, remember that while guidelines permit you to take workers' temperatures and ask questions about symptoms, you must protect their privacy. If you fail to keep medical information confidential, you risk liability under HIPAA and state privacy laws.

Know your rights with vacation rentals

More people are now seeking out vacation rentals for longer stays and single-family living while traveling.



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A vacation property offers more space, privacy and easier social and physical distancing.

If you're planning to rent a property for your next vacation or an extended stay, keep in mind that your rights as a renter vary depending on what state you're visiting.

Generally, there are more rules in states that have typically had more visitors renting, such as Florida.

If you rent a vacation home in Florida, expect to see your rights enumerated clearly in a required rental agreement.

No matter where you're going, be sure to sign an agreement prior to making a payment. Request one if you aren't offered one in the first place, and read it completely.

Any fees or deposits should be clearly defined,

and you should understand when you will get your deposit back and under what circumstances. The agreement should make clear the condition of the property and you should be assured that it will be clean, with working appliances.

Also, it is highly advisable to pay by credit card in case any issues arise, because you will be able to dispute the charge through your credit card company.

When selecting where to go, don't assume that every listing you see on HomeAway, VRBO or Craigslist is legitimate.

Those websites are great marketing tools, but the listings aren't necessarily verified. There have been scams in which a person posts photos and descriptions like a real listing would have, but the guest arrives only to find people living in the home after the scammer took the money they had already paid.

It's worth your time to double-check the ownership of a property through the state's real property database before you sign or make a payment.

One way to protect yourself is to work through a vacation rental agency. Agencies require owners to meet specific requirements and have standard rental agreements that lay out your rights.

Different laws in different states can impact your divorce

It's very common for someone who's getting divorced to think about moving to a different state. Maybe they live far away from their parents, friends and extended family and want to go somewhere with more support. Maybe they've gone "home" during a separation and decided to stay, or finally feel free to pursue their dream job elsewhere.

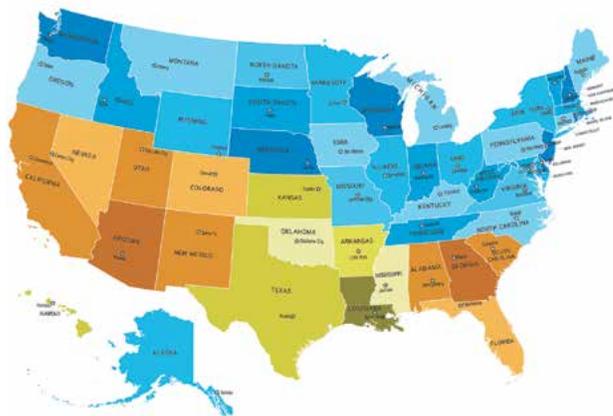
Whatever the reason, you should realize that different states have different laws. That means that, depending on which state has jurisdiction over your divorce, your marital property could be split up in very different ways. Also, the state with jurisdiction typically has the power to decide issues like custody and visitation, child support and alimony and, potentially, future disputes if you or your ex seek to modify arrangements. That's why, if you're contemplating a move in conjunction with a divorce, you should discuss all relevant considerations with a family law attorney.

For example, if you plan on seeking alimony, you may find that the state where you live may not provide for it at all or may have strict requirements, while the state you want to move to has more generous support laws. You may be able to file there instead, depending on your new state's residency requirements. Two states — Alaska and Washington — have no residency requirements, while some require that you reside there for as little as 60 days. Others require a full year of residency.

If you plan to file for divorce or avail yourself of the courts in a new state, be aware that you will need to prove your residency by showing a driver's license, a voter registration card or a residential lease. Also, if your spouse files for divorce first, the state where he/she lives will get jurisdiction over the proceedings.

If you plan to relocate and you have children, keep in mind that custody jurisdiction can be complicated. Typically, the child's "home state" (the state where the child has been living for at least six months) has jurisdiction over custody matters. But if a different state issued an original custody order, that state could retain the power to decide any modifications if one of the parents still lives there.

Parties can enter agreements as to which state will be considered the "home state" for the purpose of deciding custody issues, but a recent New Jersey case demonstrates that these agreements have limita-



tions, particularly if real-life facts don't match what's on paper.

In that case, an unmarried woman who lived in Virginia gave birth to "Jimmy." When Jimmy was almost a year old, his parents entered a "custody and parenting time" agreement that designated the father, who lived in New Jersey, as the parent of primary residence and gave both parents joint legal custody. The agreement also stated that it was governed by New Jersey law and any related disputes would be decided by New Jersey courts.

Several months later, the mother did not bring Jimmy back to New Jersey after her designated parenting time ended. The father went to a New Jersey court seeking an order that the child be returned. The mother argued that Jimmy was born in Virginia, enrolled in day care there and resided there, making Virginia his home state for custody purposes. She also claimed the father's legal paternity was never established. The court still found that New Jersey had jurisdiction over the agreement and ordered Jimmy's return.

But the New Jersey Appellate Division disagreed, saying the lower court wrongly relied on the agreement between the parents as a basis for jurisdiction. Instead, the court should have determined which state Jimmy was most personally connected with. The trial court will now have to decide what state is Jimmy's "home state."

We welcome your referrals.

We value all of our clients. While we are a busy firm, we welcome your referrals. We promise to provide first-class service to anyone that you refer to our firm. If you have already referred clients to our firm, thank you!

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Walmart held accountable to man hurt by falling display

Supermarkets like to display merchandise in ways that maximize efficiency while catching the customer's eye. But sometimes storekeepers will set up displays without thinking through all the safety issues.

When this happens, unsuspecting customers can get hurt. If you or someone close to you has been injured as a result of a store's negligence in displaying items, you may be able to hold the store accountable for your harm. Just make sure you see an attorney quickly before you lose important rights, as a North Carolina case demonstrates.

In that case, John Cain was shopping for dog food at a Walmart. The store had laid out two piles of 50-pound bags. One pile was stacked seven feet high, while the other was much shorter. When Cain bent over to pick up a bag from the shorter pile, several bags toppled off the taller pile, knocking him to the floor.

He was treated at the hospital and released that day, but once he got home he was unable to get out

of bed for the next three weeks. Before his injury he had been very active, but after the injury he stopped all physical activity.

Cain didn't see a lawyer until shortly before the deadline for filing a lawsuit, and he apparently received limited treatment before that. But once his case against Walmart was filed, he was diagnosed with a back injury that would keep him from lifting more than five pounds and would cause him permanent physical pain.

Walmart initially claimed Cain was not careful enough in picking up the bag, so the injuries were his own fault, but it dropped that defense before trial and admitted responsibility. The only issue at trial was how much compensation Cain was owed.

Relying on video surveillance footage of the incident and testimony from Cain's children as to how much their lives had been impacted by their father's injuries, a jury decided on a large damage award, nearly five times the amount of Walmart's highest pre-trial settlement offer.



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