

COVID-19 TASK FORCE

**Expect
Insights**

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COVID-19 and Unprecedented: Litigation Insights, Issue 32

How quickly things change. This, perhaps more than anything else, encapsulates the world of COVID-19 and the related litigation. Between Issue 31 and Issue 32 of *Unprecedented*, the United States has seen its reported COVID-19 cases increase from 10 million to 11 million, while also seeing encouraging developments on vaccines that might be ready in limited quantities as early as December. This same theme of change plays out in this week's updates. A court decision affirming an El Paso, Texas shutdown order is reversed within the week. And a meat processing industry that initially found itself the target of employee lawsuits is now suing to keep open its doors. Continue through this 32nd issue of *Unprecedented* and observe with us these trends in COVID-19-related litigation.

We hope you enjoy reading.

[COVID-19 Task Force](#)



Class Action Lawsuit Filed Against Amazon for Failing to Protect Black and Brown Workers During COVID-19

"Former Amazon, Inc. employee Chris Smalls sued his former employer on behalf of a class of similarly situated African American and Latino workers for its failure to provide personal protective equipment and complying with other safety guidelines during the COVID-19 pandemic."

Why this is important: A former Amazon employee has filed a proposed class action lawsuit against the e-commerce giant for allegedly failing to provide personal protective equipment to African American and Latino workers and for allegedly failing to comply with other pandemic-related safety guidelines. The plaintiff alleges that Amazon knowingly subjected its majority-minority line workers to unsafe and dangerous working conditions compared to white employees working in managerial positions. The plaintiff further alleges that when he tried to organize opposition to Amazon's discriminatory policies, he was terminated. More and more pandemic-related class actions like this are being filed across the country. As the number of coronavirus cases continues to climb, we should expect to see the number of class action lawsuits rise as well. --- [Joseph A. \(Jay\) Ford](#)

El Paso's Shutdown Order Can Stay in Place Despite Attempts by the State to Intervene

"Local restaurants, joined by the Texas attorney general's office, had asked a judge to halt the El Paso county judge's order closing nonessential businesses for two weeks during a new COVID-19 spike."

Why this is important: We frequently have discussed in *Unprecedented* how quickly legal issues around COVID-19 are working their way through the courts, and this case is the perfect example. The decision affirming an El Paso County judge's shutdown order lasted only a week before it was reversed on appeal by the Court of Appeals for the Eighth District of Texas. Unlike the district judge, who found precedent for the exercise of local authority in the response to the Spanish Flu, the Court of Appeals held that Governor Abbott's own executive order preempted the more restrictive standards imposed by the El Paso County judge. That means that many El Paso County businesses can stay open -- most notably restaurants -- and that similar gathering restrictions must likewise fall. As the Court of Appeals made clear, however, any restrictions not in conflict with the Governor's order can remain, and it instructed the district court on remand to parse the permissible from the impermissible. Click [here](#) for a copy of the Court of Appeals order. ---- [Joseph V. Schaeffer](#)

NM Meat Plant Fights to Reopen

"Stampede Meat said in a lawsuit filed in the U.S. District Court for the District of New Mexico that the company had taken steps to safeguard workers, alongside working with state and federal officials."

Why this is important: Meat processing facilities were among the very first businesses to face worker safety and wrongful death claims from the COVID-19 pandemic. Now one New Mexico facility is bringing a lawsuit of its own, this one against a New Mexico order closing down its facility for 14 days in response to positive tests. The facility argues that New Mexico's shutdown order is preempted by President Trump's executive order designating meat processing facilities as "essential businesses." They also argue that New Mexico's shutdown order is unconstitutionally arbitrary and capricious because the facility is already taking steps to meet or exceed all relevant regulations and guidelines relating to COVID-19. Whatever the outcome of this case, it highlights the difficulties that businesses face when navigating a myriad and ever-changing regulatory scheme. --- [Joseph V. Schaeffer](#)

Gov. Carney Settles Federal Case Over Restrictions Impacting Places of Worship in Pandemic

"In exchange for the Rev. Christopher Bullock dropping his lawsuit, Carney agreed that in any future emergency requiring state actions, the governor 'must treat churches and religious worship in a neutral manner.'"

Why this is important: As we've noted in several *Unprecedented* issues, churches have fared better than most plaintiffs in challenging government-imposed restrictions intended to stop the spread of COVID-19. Delaware Governor John Carney may have seen the writing on the wall, then, because his administration recently settled a lawsuit with a church challenging restrictions on religious worship in his state. As part of the settlement, Governor Carney has agreed to take a number of immediate actions easing restrictions on religious worship, most notably the elimination of caps on the number of weekly services and their duration. Governor Carney also pledged to treat religious institutions as, and on par with, essential businesses in any future orders. --- [Joseph V. Schaeffer](#)

Metro East Bar Sues Gov. Pritzker Over COVID-19 Restrictions

"The lawsuit claims the state's restrictions on bars and restaurants are in violation of the First and Fourth Amendments to the Constitution."

Why this is important: Faced with competitors allegedly flouting Illinois state coronavirus restrictions, and anticipating a significant loss of business as cold weather approaches, a bar in Illinois has taken the preemptive step of bringing a federal lawsuit that could cripple the state's emergency enforcement authority -- if successful. Hi's Bar, located in St. Clair County, Illinois, is seeking a permanent injunction that would remove the state's authority to close down businesses that fail to comply with COVID-19 restrictions, alleging that the state's emergency rules are in violation of both the First and Fourth Amendments. Interestingly, while the lawsuit is targeted against Illinois' enforcement authority, the impetus behind the lawsuit is apparently based on Illinois' failure to invoke its

enforcement authority properly. According to the bar's owners, they tried to follow the COVID-19 restrictions, but found it difficult to be successful when their competitors stopped following the rules and subsequently started drawing customers away -- without any penalty being issued by state and local authorities. While obtaining a permanent injunction will prove difficult (to say the least), if it is true that Illinois has systematically failed to enforce its restrictions in St. Clair County, then the bar owners may have the ability to raise creative public policy arguments before their judge. --- [James E. Simon](#)

Family of Correctional Officer Who Died from COVID-19 Plans to Sue N.J. County for Not Providing PPE

"While he worked without PPE, Waddell was made to interact with inmates who his family claims were exhibiting symptoms of the coronavirus that had hit New Jersey less than a month before he died, said da Costa."

Why this is important: More COVID-19 lawsuits continue to appear alleging failure to provide or allow personal protective equipment ("PPE"). The family of a law enforcement officer in New Jersey who died from COVID-19 sent a torts claim notice regarding its plans to sue Hudson County for failure to provide PPE. A torts claim notice must be filed in New Jersey before suing a government body. The attorney representing the family states that the law enforcement officer was not given PPE from March until his last day of work and was made to interact with inmates who were exhibiting symptoms of COVID-19. More than 60 inmates and employees of the Hudson County Jail tested positive for COVID-19, and five died from COVID-19. According to a county spokesperson, the law enforcement officer had various underlying health conditions and had been out of the jail since March 17. As the multitude of lawsuits related to COVID-19 continue, employers should monitor the progress and outcomes of these cases. --- [Kayla I. Russell](#)

Nation's 1st COVID-19 Business-Interruption Suit Headed to Trial

"The judge said there is a genuine question of material fact whether the restaurant, located in the heart of New Orleans' French Quarter, suffered a direct physical loss because of the presence of coronavirus in the environment."

Why this is important: Insurers beware: the barbarians are at the gates, and they are bringing claims for damages under All-Risk Insurance policies caused by the pandemic. The first trial associated with claims for damages under All-Risk Insurance policies issued to restaurants is set for trial this week. The key factor at play in All-Risk policies is whether there is an exclusion for virus, bacteria and pandemics. If the policy has said exclusions then courts have been siding with the insurer, but if that exclusion is not included on the policy then the insureds have been surviving dispositive motions. However, this will be the first jury trial to decide this issue, which will allow for a more robust appellate review that could set precedent throughout the country on whether the damages associated with the pandemic are insured under the All-Risk policies. It would be prudent to keep a close eye on the outcome of this trial. --- [Matthew W. Georgitis](#)

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