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**2020 Reader's Choice**

**6th Annual Edition**

Wednesday, April 29, 2020

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# National Law Day

## May 1st

### SAFETY

# What to do if your workplace doesn't follow COVID-19 health regulations

By **Andrew Kulp**

akulp@readingeagle.com

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The vast majority of businesses and manufacturers are doing what they can to protect the health and safety of customers and employees from COVID-19, whether out of self-interest or because it's the right thing to do.

But what about the small percentage of businesses who are not following the state's guidance for worker safety measures?

On April 15, Gov. Tom Wolf signed an order outlining additional protections for critical workers during the pandemic.

The new measures go into place on April 20 and include making masks mandatory for all customers and employees, more stringent social distancing and protocols for businesses with a suspected or confirmed exposure to coronavirus.

The state had recommended safety requirements when the governor issued the stay-at-home order that closed non-life-sustaining businesses effective March 19. Since then, the Reading Eagle has received numerous complaints from anonymous workers who worry their employers aren't taking neces-

sary precautions.

What should a worker do if he thinks his employer is not following the state's requirements?

### Make the call

First and foremost, if there is a legitimate concern about a business failing to comply with safety measures, you should notify local or state police — even if your job is threatened.

"We don't need to know who the complainant is," said Berks County District Attorney John Adams, suggesting businesses can be reported anonymously.

Adams has handled the majority of the area's 911 calls on the matter and acknowledged receiving "multiple complaints every day."

Some required no intervention, he said, while the rest have been "resolved very amicably."

"What I've seen is maybe a bit of negligence, but I think that most businesses are making the appropriate changes," said Adams, adding he's not aware of any citations issued in Berks.

In some cases, police responding on scene are providing direction to employers.

"Local police have been asked to go out and, not arrest people, not play big brother,

but do a welfare check and say, 'Do you realize you need to do this,'" said Berks County Commissioners Chairman Christian Leinbach.

### Allowed to operate or not?

Leinbach suggested part of the problem is rules are constantly changing and being updated as the spread of COVID-19 worsens, and businesses are having trouble keeping up.

There's also some confusion over the terms "life-sustaining" and "non-life-sustaining" businesses and just who exactly is allowed to operate, he said, referencing a recent complaint as an example.

"Based on my reading (of the industry operation guidance), the business was allowed to be open," said Leinbach. "In the opinion of this worker and their family, they heard the governor say life-sustaining or non-life-sustaining."

"That's a very poor choice of words to describe some of the businesses that are open."

When it comes to which businesses are shut down and which can continue, Leinbach believes it shouldn't be an issue of essential and non-essential.

"It should be which busi-



LAUREN A. LITTLE — MEDIANEWS GROUP

Berks County Commissioner Christian Leinbach speaks, holding a sign that is part of a campaign to promote safe shopping, during a press conference at Weaver's Hardware in Richmond Township.

nesses are using effective health and safety protocols to protect workers and customers," said Leinbach. "If they're able to do that, they should be open."

The state Department of Health did not respond to specific questions about enforcement, but Wolf said businesses that do not implement COVID-19 safety procedures could face fines.

### There's good and bad

Leinbach, Adams and other Berks officials and health care providers gathered for a press conference at Weaver's Ace Hardware in Richmond Township on

Thursday.

The site was chosen in part to highlight the chain's dedication to the health of its customers and employees.

For the last four weeks, owners Edward and Christine Shenk have been going to great lengths to prevent the spread of COVID-19 in their three stores, implementing strict social distancing policies and even installing a handwashing sink at the entrance of its Richmond location.

"Masking, washing hands and social distancing are the keys to any business being able to operate," said

Leinbach. "It's that simple."

### Finding the road ahead

Wolf directed a number of state agencies and local officials to enforce the safety orders, but there are naturally some challenges.

Sending officials to conduct checks doesn't comply with social distancing, and what business is going to say they're not trying to keep people safe?

Complaints can't simply be taken at face value, either, as some people might be scared even in situations where every precaution is being taken.

"I firmly believe that most businesses are doing what is proper, and the recent directives from the Department of Health are much more expansive," said Adams.

"But I also expect that we'll continue to get complaints."

Adams hopes he doesn't need to resort to citing businesses for not following the new rules. Still, if workers believe their employers aren't doing enough to stop the spread of COVID-19, they should contact their local authorities.

## COVER STORY

# Who's liable if you contact coronavirus at work?

By **Andrew Kulp**

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As essential businesses continue to operate, with many more across Pennsylvania eyeing a potential return in the coming weeks, the health and safety of workers and consumers are constantly under the microscope.

But what happens if, in spite of everybody's best efforts, a person happens to contract COVID-19 while on the job, or in a store?

Who is responsible in the eyes of the law?

That likely depends entirely on the circumstances, said Mahlon J. Boyer, attorney for Bingaman Hess, a Berks County-based firm with offices in Spring Town-

ship and Kutztown.

The bottom line is that it could be hard to prove in court exactly how and where a person came into contact with coronavirus — plus, workers in Pennsylvania typically cannot sue employers over a workplace injury anyway.

However, if a business isn't doing everything within its power to follow state-mandated health guidelines during the pandemic, it most definitely can still land in hot water legally.

## What if I get sick at work?

Whether a person contracts the virus at work due to bad luck, or it is suspected an employer is partly

to blame, the legal resolution could be the same.

"It may involve a workers' compensation claim," said Boyer.

The Pennsylvania Workers' Compensation act provides protections for both employees and employers. In the event of injury or illness, employees are compensated for lost wages and medical care, and in turn, employers are protected from litigation.

That means even if the business in question wasn't properly cleaning and sanitizing the facility or enforcing social distancing, workers' comp is probably the only recourse.

"It's a complicated situation, but generally an employee that gets injured on the job is able to make a claim, not sue," said Boyer.

Which is not to say there's nothing a worker can do if their employer refuses to abide by COVID-19 safety protocols.

**LIABLE » PAGE 27**

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# Liability

FROM PAGE 25

The best bet though is to do something about the situation before getting sick.

"If a business is open and operating, specific federal and state guidelines are ignored and employees get sick, sure, that's a problem for the employer," said Boyer.

## What if my workplace is unsafe?

First and foremost, if there's genuine concern an employer isn't following health orders, notify the police. Intervention by the authorities, where necessary, will help more people in the long run.

In the event a business continues its refusal to comply, there's a whole host of legal ramifications that could occur as a result.

A worker might be able to file suit for a hostile work en-

vironment if sanitizing and social distancing aren't being enforced, said Boyer. Or, if an employee is fired for reporting or refusing to work in unsafe conditions, they may have a case.

"It's not necessarily the injury itself," said Boyer.

"But if a person is thinking, 'My employer isn't sanitizing, they're doing nothing for social distancing,' and they tell their employer they're not going in anymore and are terminated, that should be a concern."

The burden of proof is on the plaintiff, so a person needs to be able to demonstrate the business is not taking the proper precautions.

Of course, that's going to be a challenge with any type of lawsuit related to the coronavirus.

## What happens if I get sick from a business?

For example, there's no question businesses can be held liable if they make their customers sick.

Proving that's how you be-

came ill could be a different story. Unless you can show you didn't visit any other locations or have contact with any other people, such a lawsuit might be an uphill battle.

"How do you prove it was that particular that location where you contracted the COVID-19?" said Boyer.

It's also an unlikely scenario, Boyer believes, because businesses are keenly aware of the threat and want to remain open.

"There is a concern on the part of those businesses to follow the guidelines," said Boyer. "But on the other side, to prove that is probably more difficult."

Boyer added Bingaman Hess hasn't received any calls related to coronavirus legal problems. Pennsylvania courthouses are also closed at the moment, perhaps reducing the interest in pursuing such matters.

When the courts reopens though, he suspects law firms will be fielding calls related to various employment issues stemming from the pandemic.

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A WINNING TEAM FOR OVER A HALF CENTURY

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**MAKING THEIR MARK** Founding shareholder, **Murray S. Eckell**, Chair of the Real Estate Department, is a former judge. Murray concentrates his practice in Commercial Real Estate Law and Mediation. Co-Founder, **W. Donald Sparks** principally practices Family Law and Criminal Law. **David E. Auerbach** is recognized as one of the top Family Law lawyers in the state. **Joseph L. Monte Jr.** concentrates his practice in Estates, Wills and Trusts law. Joe has earned advanced degrees in taxation.

**Joseph E. Lastowka, Jr.** has been one of the foremost Wills, Trust & Estates lawyers in the suburban Philadelphia area for over 45 years. **Leonard A. Sloane**, Chair of the Litigation and Personal Injury Department, had been selected for ten years to the Top 100 Pennsylvania and Philadelphia Super Lawyers list. Len has achieved numerous multi-million dollar recoveries for his injured clients. **Guy F. Matthews** brings a virtuoso background in business administration and financial consultancy to his Business, Estate and Financial Planning Practice. Guy has a reputation of always being available to his clients. **Sam S. Auslander**, Chair of the Municipal Law Department, has served as Solicitor to a number of County municipalities. As an experienced municipal litigator, he provides exception legal representation in land development, zoning and tax assessment matters. **Stephen J. Polaha** specializes in both Real Estate and Municipal Law. **Jay M. Levin** concentrates in Business and Corporate Law and Estate Litigation. **Craig B. Huffman** concentrates his practice in Family Law. **Patrick T. Henigan** is a superb commercial litigator. **Michael J. Davey** exhibits superiority in Employment, Labor and Personal Injury Law. **Matthew J. Bilker** specializes in Civil Litigation, Personal Injury Law and Municipal Law.

**Daniel R. Coleman** concentrates his practice in Orphans' Court Legal Matters. **Christopher M. Brown** specializes in Estate Planning and Orphans' Court Litigation, **Jonathan E. Becker** is an experienced Estate and Tax lawyer, and **Melanie E. Tunaitis** concentrates her practice in Family Law. The firm also recognizes its Senior Paralegals, Elizabeth R. Lindsay, Anne M. Vecchiolli, A. Renee Hixson and Deborah J. Marone.

**Congratulations to all of our attorneys, who were selected to both the Daily Times Readers Choice Best Lawyers and the Main Line Today Top Lawyers Lists.**



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