



News

Appellate Spotlight: Ninth Circuit Reacts to California Supreme Court Ruling, Dismisses "Take-Home COVID" Case

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A number of news media outlets reported on the Ninth Circuit's decision to reject the notion of an employer's "take-home COVID" liability to the household of an employee where a worker allegedly contracted COVID-19 on the job and then infected a family member. Previously, the California Supreme Court had decided that though the workers' compensation exclusive remedy may not bar such a claim, the employer owed no duty to the employee's household to protect them from the virus. In response to the Supreme Court's decision, the Ninth Circuit affirmed that the U.S. District Court properly dismissed the suit.

Partner William Bogdan, who successfully defended the case at the District Court, Ninth Circuit, and California Supreme Court, noted that the thoroughness of the California Supreme Court's response to the certified questions and the Court's acknowledgement that "recognizing a duty of care to nonemployees in this context would impose an intolerable burden on employers and society in contravention of public policy," led the Ninth Circuit to affirm that U.S. District Court Judge Maxine Chesney was correct in dismissing plaintiff's complaint two years ago.

Bogdan noted that the Ninth Circuit "picked up on the fact that you can't regulate an employee's behavior 24/7. You always deal with the issue of whether people are being truthful about who exposed them to the virus and when. There's no way for someone at home to show that the droplet they inhaled came from the person employed, and no way to prove the employee inhaled a droplet at work."

Media Coverage

"9th Circ. Axes 'Take-Home' COVID Suit, Citing Calif. Justices," *Law360*, July 25, 2023.

[Read the full *Law360* article](#) (subscription required)

"9th Circuit Oks limits on employers' COVID liability," *Daily Journal*, July 26, 2023.

[Read the full *Daily Journal* article](#) (subscription required)

"Appeals court ends lawsuit over workplace Covid infections which threatened dangerous 'deluge' of future lawsuits," *Northern California Record*, July 28, 2023.

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[Read the full *Northern California Record* article](#)