



Legal Connections

LEGAL EXPERTISE FOR THE BUSINESS COMMUNITY

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Congratulations to all of our new board members for the 2020-21 year. You can see the full list on our website at cbalaw.org

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WHEN EMPLOYEES REFUSE TO RETURN TO WORK DUE TO COVID-19

As we now reopen our doors, what rights do employees currently have to refuse to work in light of the COVID-19 invasion? There may be no easy answers to many of these questions however federal and state laws provide some guidance.



MARIBETH MELUCH
Isaac Wiles

or death due to a hazardous condition, the employee may refuse to perform the task if they have notified the employer who has refused to remedy the situation and there is insufficient time, due to the urgency of the hazard, to correct it through regular enforcement channels.

For private employers, the Occupational Safety and Health Act requires that all such employers provide to each of its employees "employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm." That includes maintaining a workplace free of infectious disease.

There is no concomitant right under the OSH Act that entitles employees generally to walk off the job because of potential unsafe conditions at the workplace. However, when an employee in good faith believes that performing an assigned task will likely expose them to serious injury

What if the hazardous condition forming the employee's basis for the refusal to work is the potential presence of COVID-19 in the workplace? What will constitute evidence that the virus is present and poses a significant hazard of imminent danger of serious injury or death such as to support an employee's good faith reasonable belief that entitles the employee's refusal to work? Practically, it may be impossible to make a determination that the virus is present or that other employees who are sick with COVID-19 contracted it from the workplace, thus hampering an employee's claim of retaliation. However, if courts impose presumptions, the best defense

may be through evidence of the protocols the employer had implemented to prevent contracting COVID-19 such as following guidelines or mandates issued by states, OSHA and the CDC with respect to use of personal protective equipment, scheduled and regular sanitization, employee education on safe practices and increased personal hygiene, prohibiting sick & symptomatic employees form working, and social distancing through barriers and physical distancing. Not only is the virus a concern for health and safety, employers also must be mindful that the chemicals used in the sanitization protocols do not present an unsafe workplace by not following the use and exposure instructions for each chemical.

The fear of contracting COVID-19, alone, is generally not going to entitle an employee to any protection from returning to work. However, employees who may be particularly vulnerable such as the elderly and health-compromised may implicate other federal or state laws such as the Americans with Disabilities

Act. An employee who has an underlying condition that causes the employee to be particularly vulnerable to contracting COVID-19 and/or dying from it, may have a disability entitling the employee to an accommodation. That accommodation may include extended leave, paid or unpaid, depending on whether such leave would constitute an undue hardship for the employer. Or, if attendance at work is not an essential function of the employee's position, telework may be a reasonable accommodation.

Lastly, Section 7 of the National Labor Relations Act provides a right to concerted activity to employees, whether or not you have a present union shop. Concerted activity includes the right of employees to bring to an employer's attention, in concert, issues regarding terms and conditions of employment. That may include concerns regarding the employer's safe work practices with respect to COVID-19 which may implicate the prohibitions against retaliation and discrimination under Section 7. ■

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LEGACY PLANNING: WHY YOU SHOULD DO IT AND HOW TO START

Mortality is a sensitive topic. Although the process can be difficult, we all need to prepare for the end of our lives, and legacy planning can make the experience personal and purposeful.



CHRIS DONOVAN
The Columbus Foundation

What is legacy planning? Legacy planning combines the traditional aspects of estate planning—which focus on what will happen to your assets after your death—and adds a layer of meaning and mission. Through legacy planning, you define your values and the impact you would like to leave behind. Then, you work with your attorneys and advisors to make sure your assets follow your vision.

Why now? Adding another "to do" might sound overwhelming these days. But legacy planning provides a sense of purpose and helps shift focus to the more distant future, which is constructive during a pandemic. Additionally, most people know that they should get their affairs in order, but they keep delaying the task. Completing a legacy plan can leave you feeling accomplished and relieved, knowing that your wishes for your loved ones, your business and your philanthropy will be carried out. And, you can always revisit your legacy plans down the road.

Getting started Legal and financial expertise is critical for the technical components of your plan, so leave that to the professionals. When it comes your values and vision, you're the expert. Your attorney, financial advisor and community foundation can help you think about your goals. Here are some questions to get you started:

- What principles have guided your legacy planning to date? What principles do you want to focus on going forward?
- How do you want to provide for your children or other loved ones?
- When you think about the world, what do you want to change or preserve? How does philanthropy fit into your legacy?

Legacy planning is an important part of financial health. Although it takes work, establishing a plan can bring peace of mind, which is especially valuable in today's ever-changing world. ■

EDUCATION & EVENTS

Live Webinar: Electronic Research-Effective Use of Fastcase
Wednesday, June 24 • 12 – 1:30 p.m.
1.5 CLE/NLT Hours

All classes listed are offered as live webinars on Zoom through the Columbus Bar Association. To register, call 614-221-4112 or enroll online at www.cbalaw.org.



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