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[safetyofficerattorneys.com](http://safetyofficerattorneys.com) ★ [www.law1199.com](http://www.law1199.com) ★ SCOTT A. O'MARA, THOMAS I. HAMPTON  
BETH A. WILLIAMS, DANIEL J. PALASCIANO & JOSEPH P. HEATHMAN

## **HAVING A COVID-19 PREVENTION PROGRAM IS *NOT* AN OPTION; IT IS A NECESSITY: *LONG COVID IS HERE***

**BY: SCOTT A. O'MARA**

Two doctors from Johns Hopkins Hospital in Baltimore, Maryland, Dr. Robert Bollinger and Dr. Stuart Ray, have posted their medical opinions regarding a new strain of the coronavirus and its potential impact. They state that viruses do mutate over time, and there currently have been some mutations of COVID-19 which are different from what was first found in China.

One new strain of COVID was first discovered in southern England in September 2020. This same strain was then detected in Denmark, the Netherlands and other European countries, and it now has been found in the United States.

Drs. Bollinger and Ray discuss the concept that the new virus may be more contagious than the original strain of COVID-19, but at this point no scientific data supports that possibility. However, they also indicate that there has been a surge of cases where the new strain has been found, which may be suggestive of greater contagion. Fortunately, however, while the new strain of the coronavirus may spread faster from person to person, it does not appear more likely to cause severe disease or death.

We must keep in mind that these medical opinions are *preliminary*, and clearly will be subject to change as more information is learned. Drs. Bollinger and Ray emphasize that as more people become infected, the more likely it is that mutations will occur, and they strongly embrace the importance of mask wearing, physical distancing and thorough hand washing.

The state of California, though executive decrees, has set forth particular plans and steps for employers to take to protect their employees. *Law1199.com Newsletter 2020 Issue #18* contains a brief review of the COVID-19 Prevention Program established by the Department of Industrial Relations. Significantly, this program gives some direction to employers regarding what is needed for them to provide a safer work environment.

A lawsuit was filed on 12/16/20 suing Cal OSHA concerning their implementation of emergency COVID regulations. This lawsuit, which was filed in San Francisco on behalf of the National Federation of Independent Businesses and the National Retail Federation, states that employers are not being directed to deal with COVID exposures in a proper manner, and further states that the Government has ignored the money employers have spent in an attempt to minimize exposures at their work sites. Discussions continue to take place regarding the projected economic consequences of shutting down or minimizing businesses, as reflected in the legal pleadings.

It is very clear that certain occupations have a much higher and more frequent incidence of exposure to the virus than the norm for the general population. Therefore, the presumption of industrial causation was created for those occupations. Even with such passage, however, a review of the establishment of the COVID-19 Prevention Program is a necessity.

Your agency must re-examine the exposure you have and determine what steps should be taken to minimize those exposures. Failure to do so will result in further spreading of the disease, thereby impacting the safety of the labor force, and creating a greater risk for the general public because of not having enough safety people available to fulfill their duty to protect and serve. In addition, your agency must meet with your association/union and seek information from them as to what additional steps may be taken to prevent or minimize exposure to the coronavirus.

The Prevention Program is pretty much a program of common sense, as it minimizes contact through such protective devices as gloves, goggles and face shields; the use of hand sanitizers; and the cleaning of work areas which have been touched or visited by various individuals.

The recent litigation which has been filed on 12/16/20 demonstrates an attack which is related to some private employers, not public employers. However, I anticipate a denial factor is present at different levels of the Government relative to the impact of the coronavirus and the absolute need for protection, such as the Prevention Program. The paramount actions to be taken now are the implementation of the Prevention Program and the use of vaccines as they become available.

If there is no Prevention Program, a meeting must occur. If there *is* a Prevention Program, a review of same must occur by the union or association, and the employer should be made aware of other ideas the union or association may have.

One of the groups I have spoken with said their management did not want to incur the costs associated with the Prevention Program because, by its very nature, it *will* be costly. *But far more expensive than the costs related to this program will be the potential costs for not using it.* If employers fail to employ the Prevention Program and then more of their workers are impacted by COVID-19, which will result in even greater costs related to covering workers for their time off work, the medical care they need, and, ultimately, their level of impairment. Therefore, the narrow

view regarding the initial costliness of using the Prevention Program is without substance and ignores the current COVID-19 situation and what currently is developing – i.e., the new strain of the coronavirus which has already been found in the United States.

*LONG COVID is here. Workers must identify subjective complaints, even if their doctor has returned them to full duty. If workers fail to identify their subjective complaints, the employer can use this lack of documentation to deny their responsibility for care related to LONG COVID. (See [Law1199.com Newsletter 2020, Issue #14.](#))*

The bottom line: *Management and employees must work together to create and implement the Prevention Program, and workers with COVID based on the new studies and the discovery of LONG COVID must inform their doctor of all their subjective complaints so their doctor is fully aware of any remnants of LONG COVID. Therefore, prior to meeting with their doctor, workers need to write down all their subjective complaints, even if there has been improvement, as their condition could worsen as set forth in the LONG COVID findings.*



**LAW1199.COM NEWSLETTER™  
THE LAW OFFICES OF  
SCOTT A. O'MARA**

2370 Fifth Ave.  
San Diego, CA 92101-1611

4344 Latham St. – Ste. 250  
Riverside, CA 92501-1766

1-800-LAW-1199  
(1-800-529-1199)  
951-276-1199

[www.law1199.com](http://www.law1199.com)

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