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Has pandemic become excuse for corporate safety lapses?

On March 11, 2020, the World Health Organization declared COVID-19 a pandemic. Almost instantly, countries started to seal borders, sports leagues suspended seasons, “social distancing” became a norm and our world changed in almost every manner.

Illinois courts remained open throughout the COVID-19 pandemic by moving most court proceedings to remote hearings, while the Illinois Supreme Court created a task force comprised of circuit judges, trial court administrators, circuit clerks and practicing attorneys to implement measures to increase court access for litigants and advance pending cases.

The world and almost every industry were forced to adapt to a global pandemic.

Few attorneys had ever conducted a “Zoom deposition” or had “shared” an exhibit remotely. Hopefully, we’ve come out of the pandemic more technologically savvy, with better means and know-how to advance our cases. What was once

impossible, is now a reality.

A lawyer can depose an opposing out-of-state expert via Zoom in one case, and later that day present a witness in another case, without leaving the office. This efficiency comes to the benefit of law firms, lawyers, court dockets and our clients.

Discovery, however, in too many personal injury and wrongful death cases is beginning to reveal that the pandemic led to companies placing a pause on safety. Whether the facts reveal that a truck driver never completed a required road test, a corporation failed to conduct emergency drills, or a life-guard or instructor failed to undergo scheduled safety training, too often a corporate witness will testify, “Well, it was during COVID.”

COVID-19 was a pandemic, not an excuse to disregard safety. The pandemic is becoming a blanket excuse for too many corporations who allow their safety programs to “quarantine” or take a break during the pandemic.

According to the Bureau of Labor Statistics, the rate of



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workplace fatalities increased in 2021 in comparison to the pre-pandemic rate in 2019. There were 5,190 fatal work injuries in the United States in 2021, according to the bureau’s Census of Fatal Occupational Injuries. The fatal work injury rate in 2021 was 3.6 fatalities per 100,000 full-time workers. Excluding deaths related to COVID-19, the rate was the highest annual rate since 2016.

For example, construction workers in New York state

died at a higher rate in 2021 than the year prior, and those deaths outpaced pre-pandemic fatalities, according to a report from the New York Committee for Occupational Safety and Health. The committee reported that workplace inspections conducted by OSHA in 2020-2021 were the fewest in the agency’s history due to the pandemic.

This begs the question if construction companies, like other workplaces, knew that cutting safety corners could go undiscovered. Further, it is not unimaginable for a defendant-doctor in a medical malpractice case, which certainly has occurred in Illinois courtrooms, to testify as to their role on the “front lines of the pandemic” in hopes of garnering sympathy from jurors.

Plaintiffs should consider filing motions in limine to bar mention of COVID-19 where applicable, whether it be to prevent defendants from seeking to garner sympathy or to excuse letting safety measures lapse during a time most corporations were fearful of losing profits.