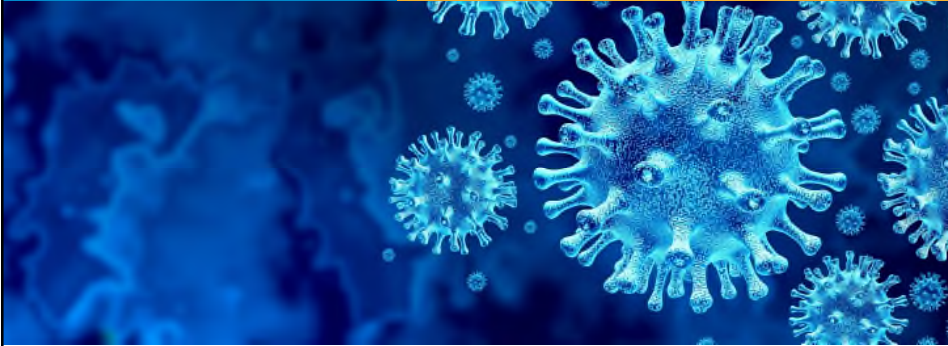


Bond


Coronavirus: Update and Discussion on Legal and Practical Issues April 14, 2020




 **BOND** SCHOENECK
& KING ATTORNEYS

1

Introduction



Peter A. Jones
Deputy Chair, Labor & Employment
pjones@bsk.com
315.218.8337

 **BOND** SCHOENECK
& KING ATTORNEYS

2

The Latest Guidance from ESDC and Update on Complaints to AG's Office



Andrew D. Bobrek

Member
abobrek@bsk.com
315.218.8262



3

New ESDC Guidance (4/9) on E.O. 202.6

- Allows manufacturing of “any parts or components necessary for essential products”
- Allows delivery of remote orders at non-essential entities, so long as only one employee present
- Allows remote instruction from public or private schools or health/fitness classes (no in-person classes)
- Allows only “essential” construction, and limited non-essential construction needed to safely suspend work



4

E.O. 202.16 (4/12)

- For all essential businesses or entities, any employees who are present in the workplace shall be provided and shall wear face coverings when in direct contact with customers or members of the public. Businesses must provide, at their expense, such face coverings for their employees. This provision may be enforced by local governments or local law enforcement as if it were an order pursuant to section 12 or 12-b of the Public Health Law. This requirement shall be effective Wednesday, April 15 at 8 p.m.



5

NYS Inquiries About “Essential” Operations

- Are you on the list of essential employers?
- If you are not on the list, are you operating?
- If you are not essential and are operating, have you applied to ESD for a designation to operate as an essential business at this link
- Has that request been determined?
- If not, what are your reasons for which you believe you are essential?



6

NYS Inquiries About “Essential” Operations (con’t)

- If you are lawfully operating as an essential business, have you provided for the health and safety mandates in the Governor’s Executive Orders?
- Are you providing for telecommuting (working from home) to the maximum extent possible?
- Are you cleaning and disinfecting according to DOH guidelines (<https://coronavirus.health.ny.gov/home>)?
- Are you taking particular precautions to prioritize the health and safety of vulnerable employees — i.e. those 70 years of age or older; those with underlying health conditions; those who live with underlying health conditions?



7

Update from Albany



Caitlin A. Anderson

Associate

canderson@bsk.com

518.533.3234



8

Leave Documentation



Erin S. Torcello

Member
etorcello@bsk.com
716.416.7058



9

Product Liability and Other Issues



Richard L. Weber

Member
rweber@bsk.com
315.218.8375



10


Bond
INFORMATION MEMO
APRIL 6, 2020

Minimizing Products Liability When Retooling to Produce COVID-19 Supplies


Manufacturers have jumped to the aid of their communities, re-tooling existing manufacturing facilities to produce desperately needed supplies such as hand sanitizer, face masks and ventilators. These acts of corporate citizenship are to be commended, yet businesses that produce emergency product lines must take care to minimize the risk of future product liability claims. Such claims could present in several ways:

- I. **Claims of Defective Product Design.** For example, in the case of a hand sanitizer product, if the product lacks sufficient potency to kill viruses at an appropriate level, an injured party may argue that the design of the product itself is defective. Care should be taken to ensure that the product is designed to accomplish the intended purpose.
- II. **Claims of Defective Product Manufacture.** In the hand sanitizer example, a manufacturing process that inadvertently reduces the content or potency of a key component (alcohol), for example could constitute an actionable manufacturing defect. In these cases, the design of the product is not the issue – the problem is a faulty manufacturing process.
- III. **Claims of Improper or Incomplete Product Labeling.** A product supplier should make reasonable efforts to warn the end user of the limitations of the product and the risks of its use for the intended purpose. For example, face masks that meet the N-95 standard are relied on to remove a high percentage of airborne particulates; a hand-stitched mask made of a standard cotton bandana traps far fewer particulates. Furthermore, a number of products are subject to specific regulatory requirements – for example, many chemical compounds fall under regulation by the Food and Drug Administration. Care should be taken to warn end users of proper product use and product limitations.
- IV. **Claims of Inaccurate Advertising and Marketing.** New York law prohibits “false advertising” in the conduct of any business, trade or commerce or in the furnishing of any service. Under certain circumstances, the New York Attorney General can invoke General Business Law Section 349 to restrain products and deceptive marketing practices. Care should be taken to accurately market the new product line.
- V. **Claims Under the Laws of Different States.** Each state has its own body of law concerning consumer products sold within its boundaries. When manufacturing a new product line, care should be taken to conform to the laws of any state into which the product would be marketed or sold.

If you have any questions about this Information Memo, please contact [Richard L. Weber](#) or the attorney at the firm with whom you are regularly in contact.



Bond has prepared this communication to provide you general information. This is not intended as legal advice or should not be used as a substitute for legal advice. The contents of this memo are not intended to constitute an offer of legal services. You should consult your attorney for advice on any legal matter. For information about our firm, please visit [www.bsk.com](#) or contact us at [www.bsk.com/contact-us](#). © 2020 Bond Schoeneck & King P.C.



11

Main Street Lending Program



Erika D. Wood

Associate

ewood@bsk.com

518.533.3238



12



Questions?

