

# The Invisible Customer: What Owners Should Consider If a Customer Later Tests Positive for COVID-19

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With each passing day, more people seek medical treatment due to COVID-19, the disease caused by the novel coronavirus outbreak. Before they were diagnosed, many of these individuals visited stores and offices while they were likely contagious. What does this mean for the property owners visited by the COVID-19-positive individual?

## **General Property Owner Liability**

Generally, a business owner is required to maintain a safe visit for its customers. Many jurisdictions term a customer an "invitee," although the term has been abolished in some states. A business owner must maintain the property in a reasonably safe condition and warn of dangerous conditions about which the owner knows or should know about. However, an owner is not usually liable for harm caused by a dangerous condition that was known or obvious to the customer. Given the prevalence of the novel coronavirus, all property owners should follow CDC and local government guidelines regarding maintenance of their land.

## **Issues to Consider**

To ward off a customer's allegations of negligence, a property owner should take extra steps to ensure its property has been disinfected of the virus. Local health authorities may provide guidance on precautions and steps to take, and these recommendations should be followed. Given the virus' apparent reach, cleaning should be performed across the property and not be limited to areas where the customer visited.

The duty to warn customers of dangerous conditions raises the question of whether the owner needs to notify customers that a COVID-19-positive individual was previously on the premises. As mentioned, a business owner is sometimes not required to warn of a dangerous condition that is known or obvious to the customer. The coronavirus outbreak is inescapable in today's world, so a business may believe it need not take any further steps due to the presence of a COVID-19-positive individual. However, a customer may argue that although he knew of the virus generally, he did not know of its presence at this exact business. To date, we have seen many businesses disclose the information to their customers.



Accordingly, a business may wish to notify customers that an infected person had been on the premises and highlight what has been done to make the property safe. The business should consider what information it has regarding the customer's presence at the property and what later interactions other customers have had on the property. To the extent possible and practicable, notice may be provided to individuals who were at the premises at the same time as the infected individual.

How much information to disclose requires careful consideration. Oftentimes, governments have deferred to the private sector regarding what specifics to confirm regarding individuals who have tested positive. Businesses should consider any industry-specific regulations such as HIPAA which may govern what can and cannot be disclosed. The information should not be so detailed as to allow for the affected individual to be identified; doing so may create liability for certain torts such as public disclosure of private facts.

### **Where This May Go**

Just as the COVID-19 disease is unprecedented, so is the application of existing legal theories to the outbreak. Lawsuits will undoubtedly be filed attempting to impose liability on business owners related to the novel coronavirus. We have already seen numerous suits brought by passengers from the Princess Cruise Line ship that was quarantined in the Bay Area. The passengers allege the cruise line was negligent in allowing passengers onboard when staff knew passengers with the virus had travelled on the prior voyage. Similar lawsuits are sure to follow outside of the maritime industry.

Each individual business and situation is unique and must be analyzed separately. If any business has concerns regarding what information it should provide to the public and/or its customers and the legal ramifications, it should consult with an attorney.

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