

Practice Update

New Environmental Tort Risk for Health Care Facilities & Sensitive Populations: Legionella in Building Water Systems

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Legionella – a potentially dangerous bacteria that can pose significant health and legal risks when in a building’s interior water systems – is a growing concern with major tort litigation exposure for hospitals, health care facilities, senior living facilities, schools, and other facilities serving sensitive populations across the United States. Facilities can mitigate risk and outbreaks by implementing best practices for assessment, prevention, and remediation of Legionnaires’ disease when planning for or responding to a Legionella outbreak and in conducting appropriate due diligence in evaluating facilities.

Legionnaires’ disease, a severe and sometimes fatal pneumonia, is caused by the colonization of Legionella bacteria in human-made water systems. The transmission of Legionella can have serious impacts on inhabitants and employees at health care and senior living facilities. Vulnerable populations are particularly susceptible. It is estimated that there are more than 25,000 Legionnaires’ disease cases annually in the United States, causing more than 4,000 deaths. However, there is generally no or very limited current federal, state, or local laws or regulations specific to Legionella bacteria in domestic water systems or relating to the prevention and control of Legionnaires’ disease, except for

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usually narrow requirements as to hospitals and certain health care facilities, such as nursing homes.

In response to the growing number of reported or alleged Legionnaires' disease outbreaks, some plaintiffs have brought suits and obtained millions of dollars in damages. Lawsuits involving Legionnaires' disease have yielded large damages awards, *see, e.g., Silivanch v. Celebrity Cruises, Inc.*, 171 F. Supp. 2d 241 (S.D.N.Y. 2001) (\$2.36 million in compensatory damages and \$7 million in punitive damages in case involving Legionnaires' disease identified on cruise ship), and Legionnaires' disease outbreaks show no sign of slowing. Recent reported cases include:

- 13 cases of Legionnaires' disease linked to a pool or fitness facility at a residential community in North Port, Florida;
- 4 cases of Legionnaires' disease linked to a veterans home in Quincy, Illinois;
- 4 cases of Legionnaires' disease linked to a gym in Orlando, Florida;
- 2 cases of Legionnaires' disease linked to a nursing home in Croton-on-Hudson, New York;
- 2 cases of Legionnaires' disease linked to a senior living facility in Lady Lake, Florida;
- 1 case of Legionnaires' disease linked to a senior living facility in Dallas, Texas; and
- The closure of 3 Illinois schools due to increased levels of Legionella.

Risks to Health Care Facilities

Your health care or senior living facility could be at risk. While Legionnaires' disease is not transmitted by person-to-person contact, Legionnaires' disease proliferation occurs in water systems due to the amplification of Legionella bacteria caused by biofilm buildup, scale and sediment, water temperature fluctuations, water pressure changes, inadequate disinfection, and water stagnation. Much of the recent literature notes that Legionnaires'

disease is transmitted via aerolization and inhalation of *Legionella* bacteria, but no epidemiological data confirms this as an infection route.

Limited Regulatory Schemes

In Florida, under Rule 64D-3.029(2)(e)(3), Florida Administrative Code, which pertains to practitioners, hospitals, and laboratories, Legionellosis is a reportable disease and *Legionella* is a reportable bacteria. Reporting to the Florida Department of Health is required by the next business day. However, there are no specific current state regulations to ensure that a particular facility is compliant or safe at a given time.

Despite the lack of current robust regulatory schemes, monitoring recommendations regarding bacteria in water systems have been made by various state agencies and professional organizations. For example, OSHA, the U.S. Environmental Protection Agency, and the Centers for Disease Control (CDC) are actively involved in research, water quality issues, and public health issues related to Legionnaires' disease. There are also relevant industry standards that provide guidance, including from the American Society for Testing and Materials and the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE).

Your facility's key personnel should be armed with the latest information. Many guidelines and information sources contain outdated information. In 2007, ASHRAE Journal published an article concluding that the prior industry standard – ASHRAE 12-2000 – included many tools and recommendations considered to be “weak” or not current. The past hallmarks of Legionnaires' disease remediation – descaling, disinfection and/or replacement of faucets and showerheads, routine maintenance programs, and periodic monitoring – were not shown to reduce disease. ASHRAE also concluded that there is no relationship between the

level of Legionella concentration from site sampling and risk of illness that has been scientifically validated and that complete elimination of bacteria is not necessary to reduce or eliminate disease.

More recently, in June 2016, ASHRAE issued Standard 188-2015 and the CDC issued a guide for practical use of this new standard, which provides steps to determine whether a water management program is needed and gives information on how to develop such a program. Notable points from the 2016 CDC guide include:

- Use of more detailed descriptions of the water systems in a building, including how the sources can produce exposure risk, as well as the creation of a flow diagram of the building's water system, which may help identify areas where Legionella is likely to grow and spread;
- When a Legionnaires' disease case is suspected, in addition to notification and decontamination, review and revision (if necessary) of the water management plan is recommended; and
- Instead of only taking steps limited to sampling for Legionella, preventative corrective actions are recommended when certain initial conditions are noticed, such as biofilm buildup, scale and sediment, water temperature fluctuations, water pressure changes, inadequate disinfection, and water stagnation.

Protect Your Interests

Risks can be mitigated by choosing an experienced, integrated environmental and health care team and implementing best practices for assessment, prevention, and remediation of Legionnaires' disease when planning for or responding to a Legionella outbreak. If litigation involving a health care or other facility is threatened or has already begun, risk can be managed by engaging an experienced, integrated litigation team and

implementing best practices to mitigate the potential for future episodes.

For more information regarding Legionella and its implications, Akerman's Environmental and Senior Living Facilities teams are available to assist.

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