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Business Liability Issues due to COVID-19

Guest Speaker



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Columbia, MO Chamber of Commerce Business Liability Due to COVID-19

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U.S. CHAMBER OF COMMERCE

Greetings From the Work from Home Swamp



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Growing Concern Plaintiffs Bar Will Take Advantage

Employers—especially small businesses—are worried even though they will abide by public health guidelines for reopening an employee or customer will contract the disease and sue the employer, claiming that they got sick because of something else the business could have done to protect the person.



Lawsuit Industry Kicking Into High Gear

- Ads for COVID-19 related lawsuits are airing in states like Ohio, Florida and Tennessee.
- Lawsuit marketers are soliciting firms to take advantage of cheap media buys.
- Even litigation funders—the group that finances lawsuits in exchange for a cut of settlements—are aggressively touting their services.
 - Most actions are filed looking for cash settlements instead of court wins.



Potential Targets/Types of Actions

- All businesses will be vulnerable to litigation grocery stores, restaurants, banks, furniture stores, food producers, farmers, and manufacturers all face potentially astronomical liability risks:
 - exposure-related lawsuits
 - product lawsuits
 - shareholder class actions
- Even schools, churches, charities and non-profit organizations will be vulnerable
- Companies that make COVID-19 related products are also vulnerable including medical device and equipment makers, the local brewery or distillery making hand sanitizer, makers of disinfection products and even home-based or small businesses making masks.



Already Happening—Examples

Customer Discrimination and Injuries

- Plaintiffs are claiming in suits against Walmart, Walgreens, and Dollar General that they cannot safely wear face masks due to their chronic respiratory conditions, and that defendants' policy requiring customers to wear face masks denies them equal access.
- A protective Plexiglas partition prompted a lawsuit against a Texas grocery chain when one partition was improperly installed, fell on a woman's foot, and required her to have foot surgery.

Workplace

- Anesthesiologists suing for breach of contract claims for salary and bonus reductions; a restaurant worker claims her employer threatened to remove her from work if she wore a face mask; and an assisted living facility's medication technician sued for wrongful termination and denial of paid FMLA and sick leave.
- An age discrimination lawsuit in NYS alleges that the defendant employer (a law firm) chose the 62-year old plaintiff to be the first employee fired as part of COVID-19 related layoffs because of his age.



Chamber Message

- Employers want to protect the people who work for them and the people who do business with them.
- When they follow guidelines issued by public health authorities, they need to know that safe harbors are in place to provide some degree of security against additional financial jeopardy.
- Liability protections must be **timely, targeted, and temporary** to shield employers from legal risk when following an appropriate standard of care to protect employees and customers.
- Liability protections **are not** a license for gross negligence, misconduct, or recklessness.



Chamber Proposal—Liability Protection

Liability Protection

- Provide liability protection to a person or entity that is providing business services against personal injury claims related to actual or alleged exposure to COVID-19 in the course of providing such business services;
- For this protection to apply, the business must have been generally following applicable government standards and guidance related to COVID-19 exposure at the time the actual or alleged exposure occurred;
- Allow liability, without limitation, in cases where clear and convincing evidence shows that a business was grossly negligent, intended to inflict harm, engaged in willful misconduct, or intentionally committed a crime.



Chamber Proposal—Procedural

Procedural Implementations

- Preempt state law to the extent that there is a conflicting state law that allows for a lesser level of protection;
- Create a one-year statute of limitations;
- Apply to all actions for an actual or alleged exposure to Coronavirus between December 1, 2019 and the later of October 1, 2024 or the expiration of any declaration issued by the Secretary of Health and Human Services regarding the public health emergency; and
- Provide federal minimal diversity jurisdiction for claims covered by the legislation, if the amount in controversy exceeds \$75,000, to avoid cases going to state courts when parties are from different states.



Chamber Proposal—Pleading Requirements

Specific pleading standards

- Plaintiff would have to show in their pleadings all the other places they have been besides the defendant business over the prior two weeks;
- Plaintiff would also need to provide an expert report indicating why that business is the only place they could have gotten COVID.



Support for Chamber's Approach

Chamber's Institute for Legal Reform Poll found:

- 84% support liability protections for essential businesses that are currently open during the pandemic.
- 82% support lawsuit protections for businesses that have been shut down but looking to reopen.
- 75% support lawsuit protections for hand sanitizer companies, soap companies, and other cleaning supply companies.
- The survey shows strong majorities of Republicans, Democrats, and independents agree with these liability protections.



Outlook

- Senator McConnell unequivocal that liability protection must be in next bill
- Senator Cornyn handling development of legislation
- House and Senate not close to bill—not expected until June



Follow Up

- Questions: mfreedman@uschamber.com



Thank You for Attending!

Additional COVID-19 resources are available on the Chamber's website. We are updating our page daily to assure that you have access to accurate information.

<https://columbiamochamber.com/resources/covid-19-resources>