

Coronavirus

US business groups seek protection from coronavirus lawsuits

Companies worry about their legal risks as they begin to contemplate reopening



Non-essential businesses are looking for ways to safely reopen after weeks of being shut down amid the coronavirus pandemic © Bloomberg

Andrew Edgecliffe-Johnson in New York and **Lauren Fedor** in Washington 9 HOURS AGO

US business groups are calling on the federal government to shield companies from litigation if they expose employees to [Covid-19 infection](#) by calling them back to work before the pandemic abates.

Even as they do so, however, they face accusations that they are exaggerating the threat of being sued to weaken hard-fought employee protections.

As state governors [diverge](#) on the question of when companies should reopen, employers are calling for more clarity on how to resume operations without endangering their staff or exposing themselves to liability.

The National Association of Manufacturers [warned](#) on Tuesday that officials could not restart the economy without providing “strong liability protections” for business. It urged US lawmakers to limit lawsuits claiming damages for Covid-19 exposure in the workplace, make public nuisance claims from states “off limits” and prevent the “creative use” of tort claims such as negligence or wrongful death.

Evan Greenberg, chief executive of the insurer Chubb, argued in The Wall Street Journal that Congress should grant limited immunity from coronavirus-related litigation. “A wave of litigation” could disrupt an orderly recovery by adding to uncertainty, he said.

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Larry Kudlow, White House adviser

from these companies”, while Larry Kudlow, the US president’s top economic adviser, said on Wednesday that “guard-railing” from liability would be very important in reopening the economy.

“Businesses, particularly small business that don't have massive resources, should not be held liable [by] trial lawyers putting on false lawsuits that will probably be thrown out of court,” he told CNBC, the business news TV channel.

Democrats, however, are pushing for the federal government to [strengthen worker protections](#). Three Democratic senators — Tammy Baldwin of Wisconsin, Tammy Duckworth of Illinois and Patty Murray from Washington — introduced a bill on Monday that would establish a legal obligation for all workplaces to implement “comprehensive infectious disease exposure control plans” to keep workers safe.

Sherrod Brown, a Democratic senator from Ohio, wrote to President Trump at the weekend arguing that Congress must pass “strong, enforceable safety standards” to enable employers to protect both workers and customers.

The risk of lawsuits for exposing employees to the virus was “one of the most serious matters we face”, Tom Donohue, chief executive of the US [Chamber of Commerce](#), told CNN International television. Such litigation was “just not fair — it’s just not something you do when you have a once in a couple of centuries pandemic”, he added.

Such concerns have found a sympathetic ear in the White House, where officials are exploring their options for providing a federal backstop to limit companies’ exposure.

Donald Trump told a reporter on Monday that “we are trying to take liability away

Some critics have argued that companies' concerns are overblown. Jennifer Epps-Addison, network president of the Center for Popular Democracy, a progressive advocacy group, argued that powerful corporations were "trying to weasel their way out of any accountability by muzzling employees seeking damages for getting sick on the job".

Heidi Li Feldman, a professor at Georgetown Law in Washington, said "opportunistic" business groups were using the pandemic as a pretext to avoid their usual responsibilities.

"Every big business would like to neither be heavily regulated ex-ante or [sued] ex-post," she said. But employers could avoid tort liability by taking appropriate precaution, and employees seeking benefits for workplace injuries under workers' compensation programmes face the additional hurdle of having to prove the employer's actions caused them to contract Covid-19 at work, which could be "extremely difficult", Ms Feldman said.

Workers' compensation insurers in California and Illinois have moved to lift this requirement for essential workers, however, making it easier for healthcare and delivery workers to claim that they contracted the virus while doing their job. Two business groups have already challenged the Illinois move.

NAM rejected the idea that it was using the crisis as a pretext, saying the argument "demonstrates a fundamental misunderstanding of the liability threats our members face" and the limited scope of its request.

Several companies that have maintained operations as the pandemic has spread have faced pressure from politicians and unions after experiencing outbreaks. Tyson Foods shuttered a pork processing plant in Waterloo, Iowa, this week after many Covid-19 cases among its workforce, and labour leaders have protested at shortages of personal protective equipment in factories including a Kraft Heinz plant in Holland, Michigan.

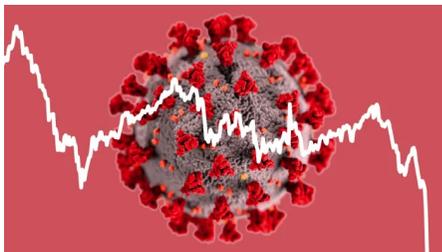
There have been few lawsuits to date. One case filed earlier this month [alleged](#) that "reckless disregard" by Walmart contributed to the death from coronavirus complications of Wando Evans, an associate at a store near Chicago. The retailer said it was "heartbroken", adding that the store had passed third-party inspections.

Lindsay Burke and Carolyn Rashby of Covington & Burling's employment practice group said their law firm had been flooded with questions about how employers could minimise their legal risks amid inconsistent guidance across different states.

Many were uncertain whether they could [test workers' temperatures](#) or ask them to sign waivers before returning to work, Ms Burke said, with others fearing enforcement actions if they could not provide the correct protective equipment.

The Occupational Safety and Health Administration, a federal agency overseeing worker safety, has relaxed its enforcement guidelines during the crisis, saying regulators should take into account employers' "good faith efforts" to protect staff, Ms Rashby noted.

Coronavirus business update



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Tiffany Powers, co-head of Alston & Bird's insurance litigation team, said "a trickle" of business interruption lawsuits, relating to insurance policies compensating companies for income lost when operations closed, had turned into "a wave" and insurers now expected workers' compensation suits to come to the fore.

Citing the claims from passengers and crew who blame cruise operators for exposing them to the virus, she warned that "it's almost like the reopening creates a cruise ship-like liability scenario for any employer".

Companies faced significant uncertainty about how judges and juries would interpret liability given the pandemic's extraordinary nature, she said, and would also have to deal with "the court of public opinion".

Additional reporting by Alistair Gray

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