



**West**

THE COUNCIL OF STATE GOVERNMENTS

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## Legislative Responses to COVID-19

In February of 2020, Coronavirus Disease (COVID-19) hit the United States in earnest. Many state and local officials, as well as industry leaders, quickly issued stay-safe-at-home requirements for non-essential workers. Little would have led us to believe, at that point, that the United States would eventually rank among the highest numbers of positive coronavirus cases and deaths. Despite early efforts, the U.S. now has over 1.6 million cases confirmed positive and over [93,000 deaths](#). Facing a health pandemic of unseen proportions, or at least not since 1918, federal, state and local officials have made difficult decisions calling for partial economic shutdowns requiring residents to endure economic impacts in an effort to preserve public health.

After several months of severe distancing measures, the U.S. is experiencing the highest unemployment rates since the Great Depression. Most states are now embarking on a process of reopening their economies and facing the great challenge of balancing the need to get people back to work without worsening public health outcomes.

According to a recent [Harvard Global Health Institute \(HGHI\) and NPR analysis](#), six of nine western states have capacity to conduct enough tests to safely approach reopening, as of May 15. However, the extenuating issue is the continued need for tracing and isolating those who test positive, as well as their contacts. The six states considered to have sufficient testing capabilities by this criterion are: Alaska, Hawaii, Montana, Oregon, Utah, and Wyoming. Additionally, these states met the benchmark of positive test results coming from less than 10% of those tested, as recommended by the World Health Organization (WHO).



As states begin the process of lifting restrictions results from a [Pew Research Center survey](#) have been frequently cited as they appear to indicate concern among Americans that state restrictions are being lifted too quickly (68%). There are, however, differences in responses that appear to be partially dependent on political party, ideology and whether the state they resided in enacted strict provisions. For those concerned with lifting restrictions too soon, the primary worry is a resurgence of cases and deaths. As states relax restrictions, many cities and establishments have required residents, employees and patrons to wear face masks and visits to grocery stores or office buildings now include stickers on the floor marking six feet distancing for added convenience. In a recent radio interview Dr Ashish Jha, director of the HGHI and professor of health policy at the Harvard T.H. Chan School of Public Health, highlighted the need for very robust testing, tracing and isolation programs. This is one way that we, as a society, can start returning to a routine of normalcy. He cited Germany and South Korea's success with this method.

Another emerging concern related to business reopening is the [risk of lawsuits](#) by employees or customers who contract the virus and want to hold business owners liable for their positive results. U.S. Senate Majority Leader Mitch McConnell has called passing congressional legislation to protect businesses from these legal liabilities "an urgent need," but House Speaker Nancy Pelosi has yet to indicate agreement. While it seems that this issue might be better handled at the state level, experts on tort law have indicated that it would be extremely difficult for plaintiffs to prove negligence and causation of COVID-19 related to their employment given the unpredictable virus' inconsistent, and sometimes long, incubation period.



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Addressing the concern of civil liability, [the U.S. Chamber of Commerce](#), along with other associations representing various industries, issued a statement that even if causation of contracting the virus is difficult to prove in a state court, should many lawsuits be filed “the scope and magnitude of litigation still may exert enough pressure to threaten businesses or industries with bankruptcy.” In the West, [Utah recently passed legislation](#) to shield business from this liability although “willful misconduct” is not protected. In Alabama, New Jersey and Ohio similar legislation has been introduced, while North Carolina passed legislation as part of the state’s [COVID-19 Recovery Act](#). On May 26, the U.S. Chamber of Commerce [reissued a call](#) “for Congress to provide temporary and targeted liability relief legislation” against these lawsuits with over 200 trade associations and other groups signing [the letter](#).

Addressing the concern of employees vulnerability from another perspective, California Governor Gavin Newsom signed an [executive order](#) granting workers who contract COVID-19 eligibility to receive workers’ compensation. This time-limited legal presumption is based on the requirement that those working outside their home must have contracted the virus within the course of employment. An employer can rebut the claim within 30 days (90 days are typically provided under the Labor Code) and provide evidence, but it would be a surmountable challenge for an employer to prove that the employee did not contract the illness during business. Certain criteria must be met, with slight variations, whether the diagnosis was prior to or after the enactment of this executive order, hospital costs and full treatment including surgery, disability indemnity and death benefits are all covered benefits although specific COVID-19 paid sick leave benefits (such as the ones under the Families First Coronavirus Response Act - FFCRA) must be exhausted before benefits apply.



In the West, Alaska ([SB 241](#)), see Sec. 15, and in the Midwest, Minnesota ([HB 4537](#)) have enacted workers' compensation presumption of compensability but exclusively for first responders and health care workers. Additionally, California [Senate Bill 1159](#) (for critical workers) and [Assembly Bill 664](#) (for public safety and health care workers) aim to create presumption for COVID-19 positive diagnosis resulting in illness or death providing workers compensation benefits from the State Compensation Insurance Fund (State Fund).

In April, the Illinois Workers Compensation Commission adopted an emergency rule creating “a reasonable rebuttal presumption” for first responders, health care workers and employees of essential businesses (grocery/home improvement) that their exposure was “connected to their employment.” In this case [a county judge blocked it and they had to repeal it](#). The Illinois Manufacturers' Association and the Illinois Retail Merchants Association filed a lawsuit on behalf of two dozen business organizations against the rule, and expressed that they were [pleased with the repeal](#).

Many more policy challenges will emerge and need to be addressed by public officials in the following months as reopening efforts continue. James Stock, Harold Hitchings Burbank Professor of Political Economy at Harvard University, outlined [four points](#) in a recent briefing paper titled [Reopening the coronavirus-closed economy](#) which he believes are key for a successful execution of the reopening process. New York University (NYU) Professor and 2018 Nobel Laureate, Paul Romer, also offers a [Roadmap to Responsibly Reopen America](#). He advocates for a comprehensive “test and isolate” policy which he believes could keep the pandemic infection rate below 5% of the population by testing every U.S. resident every two weeks and isolating those who test positive.



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If you are interested in viewing [Coronavirus-Related Restrictions By State for CSG West States](#), National Public Radio (NPR) has a series broken down by regions. CSG has also compiled a trove for your use at [COVID-19 Resources for State Leaders](#).