Association Letter - Legal Safe Harbors for Essential Industries

May 1, 2020

The Honorable Nancy Pelosi
Speaker
United States House of Representatives
H-232, The Capitol
Washington, D.C. 20515

The Honorable Mitch McConnell
Majority Leader
United States Senate
S-230, the Capitol
Washington, D.C. 20510

The Honorable Charles Schumer
Minority Leader
United States Senate
S-221, The Capitol
Washington, D.C. 20510

The Honorable Kevin McCarthy
Minority Leader
United States House of Representatives
H-204, The Capitol
Washington, D.C. 20515

Dear Speaker Pelosi, Leader McConnell, Leader Schumer and Leader McCarthy:

Our associations represent the tens of millions of women and men in America working in essential industries that have been called upon to continue operating to support our nation’s response to the COVID-19 crisis. Our member companies are doing their best to serve the public interest, protect our communities and minimize harm to the American people during these uncertain times. Yet because they have remained operational during times of remarkable legal uncertainty, they risk becoming the targets of coronavirus-related lawsuits that will ultimately do nothing to reduce the spread of this disease or address the suffering that Americans have endured because of it. Congress must act to ensure that such misguided litigation does not derail our recovery.

Companies that have continued to operate to serve the public have confronted new and difficult legal questions every day. Federal and state rules and guidance on how to operate during this crisis have evolved rapidly and at times have created legitimate confusion over even ordinarily simple tasks like cleaning a work site. Businesses reopening in the coming weeks will soon face these questions as well. In the face of such uncertainty, our members consistently strive to do the right thing, continually implementing new safety protocols to reduce the risk of transmission among employees and the public in response to updated guidance from the CDC, OSHA and state authorities. Companies doing their best to control the spread of this disease with the limited guidance available deserve legal protection. Congress should not allow good actors to be held liable for events beyond their control.

By providing limited and rational safe harbors for good actors, Congress can help ensure that the critical needs of the American people are met during this time of crisis and enable the continued operation of critical infrastructure. Basic “Good Samaritan” provisions under the PREP Act, designed to address product and volunteer liability issues, have already enabled companies that may not normally produce protective equipment to do so to serve front line health care workers. Congress can go further by expanding the scope of these provisions. In addition, workplace provisions that recognize the value of modern safety regulation as a far better alternative to one-off lawsuits will give businesses of all kinds clearer expectations on how to manage a safe workplace. Temporarily suspending suits that threaten to shut down vital industries—including even health care providers—is a sensible step to ensure every American has access to basic life essentials without creating new shortages and exacerbating the crisis.

Providing businesses with targeted and limited safe harbors during these difficult times is not the same as shielding companies from all liability. We are not seeking to protect bad actors that operate in reckless or intentional disregard of available guidance on reducing the spread of COVID-19. Therefore, liability protections should be appropriately tailored and limited to the present emergency and a reasonable period of recovery.
Our country is facing an unprecedented crisis, and America’s essential businesses are stepping up to provide for the critical needs of our people, despite incredible uncertainty and a constantly shifting environment. We look forward to working with members of Congress to put in place fair, sensible rules that protect businesses that have worked to keep Americans safe and healthy during our response to this crisis and those that will soon get back to work as our country reopens and moves toward recovery and renewal.

Sincerely,

Michelle Griffin Young  
EVP, Government & External Affairs  
The Chamber  
(610) 739-1514