

Insights

U.S. - CORONAVIRUS (LEGAL) IMMUNITY – THE RISKY BUSINESS OF RE-OPENING

Apr 28, 2020

In the midst of unprecedented business and court closures, the Coronavirus (COVID-19) pandemic has already caused a flood of litigation. Businesses are facing a slew of lawsuits ranging from employment and commercial disputes to allegations of price-gouging for critical supplies necessary to respond to the spread of the virus. Because the highly-contagious virus spreads rapidly, lawyers anticipate a wave of class action litigation as employees and customers are exposed to the virus and fall ill. Class action lawsuits are likely to be seized upon as allegedly perfect vehicles for such claims, allowing large groups of consumers and workers to collectively challenge alleged wrongdoing. Indeed, class actions have already been filed over refunds for all types of memberships, school tuition and expenses, price gouging, data privacy, and securities law violations.

As many states begin to introduce plans to reopen, businesses should be mindful of the legal risks to which they will be exposed in advance of the anticipated wave of class action litigation as employees return to work and customers return to shuttered stores. White House Economic Adviser Larry Kudlow, however, has a different plan, suggesting that businesses should not be held responsible for employees or customers getting sick as governors move to reopen state economies. He told CNBC that “[b]usinesses, particularly small businesses that don’t have massive resources, should not be held liable—should not be held to trial lawyers putting on false lawsuits that will probably be thrown out of court.” Kudlow’s comments come after President Donald Trump stated that the White House is looking for ways to protect companies from liability, shielding them from lawsuits and other legal problems that could emerge if the virus affects employees and customers. Joining the Trump Administration in these efforts are the U.S. Chamber of Commerce and conservative advocacy groups, all of whom are lobbying Congress to protect companies from being held liable for illness, death, lost wages, or other COVID-19 related effects after businesses reopen.

While it is not yet clear whether or how Congress will address this issue, Trump Administration officials have discussed including in the next stimulus package “a waiver that would clear businesses of liability from employees who contract the coronavirus on the job.” Some states, like Utah, are already giving immunity to businesses and property owners that might face lawsuits for exposing someone to COVID-19. But there are limits to the legal immunity offered by the Utah bill,

which does not offer liability protection for cases resulting from willful, reckless, or intentional infliction of harm. Justin Wolfers, an economics and public policy professor at the University of Michigan, offered the following opinion in a widely circulated [post on Twitter](#): “The whole point of making employers liable for risking the lives of their staff is to prevent them from exposing their staff to undue risk. Businesses are asking for the right to expose their workers to fatal risks with no consequences.” As a result, we can expect any immunity offered by state or federal legislation to be qualified, leaving the door open to class action litigation if businesses do not take appropriate steps to protect their customers and employees.

As the country prepares to re-open, companies should regularly consult with legal counsel, the CDC website, and state and local health departments to ensure that they have the most up-to-date information and are in compliance with CDC guidelines. Be sure to check in periodically, as we will provide updates regarding developments as they unfold.

BCLP has assembled a COVID-19 Legislation taskforce to assist clients with legislative issues across various jurisdictions. You can contact the taskforce at: COVID-19Legislation@bclplaw.com. You can also view other thought leadership, guidance, and helpful information on our dedicated COVID-19 / Coronavirus resources page at <https://www.bclplaw.com/en-GB/topics/covid-19/coronavirus-covid-19-resources.html>.

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