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COVID-19 LEGAL REFORM: LIABILITY PROTECTION FOR OKLAHOMA BUSINESSES



THE COVID-19 PANDEMIC: FROM THE PERSPECTIVE OF PLAINTIFFS' LAWYERS

- 42,000 DEATHS NATIONWIDE
- 800,000 CONFIRMED DIAGNOSES
- COUNTLESS PEOPLE EXPOSED

THE LAWSUITS HAVE ALREADY BEGUN

Passengers sue over coronavirus-hit Grand Princess cruise ship for over US\$1m

Wrongful death lawsuit filed against Kirkland nursing home after coronavirus outbreak

Lieff Cabraser Files First Class Action Over Quarantined Grand Princess Cruise Ship

Costa Cruises passenger sues company over alleged mishandling of coronavirus response

Portland homeowner sues tenant over volunteering during coronavirus, claims exposure risk

Walmart sued by family of worker killed by coronavirus

The brother of Wando Evans, who died of COVID-19, is suing Walmart, alleging a Chicago-area store failed to notify workers after several employees began showing symptoms.

LEGAL EXPERTS ARE CONCERNED ABOUT THE RISE OF LITIGATION

Coronavirus goes to court: After lives and livelihoods come the lawsuits

[Richard Wolf](#) USA TODAY

Trial lawyer greed in time of need

by Victor Schwartz | April 14, 2020 12:00 AM



Ending Virus Shutdowns Too Soon Poses Legal Risk for Businesses

April 17, 2020, 8:00 AM



LITIGATION RED FLAGS: WHERE LAWSUITS MAY POP UP

Premises Liability

- Retailers, entertainment venues, and other businesses
- Nursing homes, hospitals, apartment buildings, and childcare facilities where COVID-19 spreads despite attempts to limit exposure
- Businesses that reopen, even if they follow government guidelines.

Product Liability

- Manufacturers ramping up production to meet demand for PPE and medical supplies
- Businesses making products they do not ordinarily make
- Companies making or donating tests and medications
- Individuals donating products to help protect others from contracting COVID-19

LITIGATION RED FLAGS: WHERE LAWSUITS MAY POP UP

Healthcare Providers

- Operating with limited staff, beds, medical equipment, and supplies

Employment

- Claims against employers by employees who get sick
- Claims against employers alleging wrongful termination

THE OKLAHOMA APPROACH

- **One Package to Represent the Business Community**
- **Two Pieces of Legislation**
 - COVID-19 Product Protection Act
 - Oklahoma Open for Business COVID-19 Liability Relief Act
- **Looking for business feedback and support**
 - Logos for Letter of Support by Thursday COB



COVID-19 PRODUCT PROTECTION ACT

No product liability when:

- A business that manufacturers, sells, distributes or donates “qualified products”
 - PPE, medical devices, medical supplies, medications, or diagnostic tests
- To a government entity, health care provider, health care facility, first responder, or essential business
- In response to the COVID-19 pandemic

No product liability when:

- A person or business makes, sells, distributes or donates household cleaning and disinfectant supplies or PPE
- When the business does not ordinarily make these products
- But does so in response to the COVID-19 pandemic

COVID-19 PRODUCT PROTECTION ACT

Does not apply if the business:

- Knew the product was defective when put to the use for which it was provided
- Acted with complete indifference to or conscious disregard of a substantial and unnecessary risk that the product would cause serious harm to others

Plaintiff must still prove all elements of a tort claim (such as causation)

COVID-19 PRODUCT PROTECTION ACT

This would protect well-intentioned producers:

- Individuals making and donating or selling masks
- Distilleries shifting operations to create hand sanitizer
- Manufacturers of diagnostic testing working expediently to meet state needs
- Manufacturers supplying government-sanctioned treatments for COVID-19 patients
- US manufacturers stepping up to meet high demand for PPE

This would not protect:

- Businesses that misrepresent or overstate the benefits of goods
 - “This cures COVID-19!”
- Businesses that knowingly sell something that is misrepresented
 - Someone selling water marketed as hand sanitizer
- Businesses that know a product is defective when it’s sold
 - Selling PPE the manufacturer knows has holes in it

OKLAHOMA OPEN FOR BUSINESS COVID-19 LIABILITY RELIEF ACT: **OPTION 1**

- **Relief from liability when you follow government guidance**
- **No liability in any civil action alleging injury from exposure to COVID-19 when:**
 - The business operated in substantial compliance with written guidance for operating during the COVID-19 pandemic issued by the state or federal government that applied when the alleged exposure occurred.
 - Following any written guidance is sufficient if there are multiple sources with conflicting messages.
- **No protection for willful and wanton misconduct.**

OKLAHOMA OPEN FOR BUSINESS COVID-19 LIABILITY RELIEF ACT: **OPTION 2**

- **Siphon out no-injury lawsuits**
- **No person may file a civil action alleging injury from exposure to COVID-19 if that person was:**
 - Not diagnosed with, or did not experience symptoms consistent with, COVID-19;
 - Diagnosed with COVID-19, but was asymptomatic; or
 - Diagnosed with COVID-19 when the illness did not require inpatient hospitalization or result in serious injury or death.
- **Does not apply to a deliberate act intended to cause or threaten exposure.**

SIGN ON TO THE CHAMBER LETTER TO SUPPORT REFORM



QUESTIONS?



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THANK YOU

