

Worried about Covid-19 lawsuits? Battle lines form over whether businesses should be liable.

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As Congress considers another round of Covid-19 relief funding, battle lines are forming around another dilemma for businesses: How much liability should they bear from workers and even customers by reopening in the midst of the coronavirus pandemic?

A recent [National Federation of Independent Business](#) survey of its members found 70% of small business owners are concerned about liability claims when reopening their businesses. Meatpacking plants, for instance, have already [faced lawsuits](#) over whether workers or their families are owed damages if they were infected with the coronavirus at work.

Business advocates are now appealing to Congress to lay out employer guidelines that define a safe workplace, one that goes beyond physical danger such as accidents or injuries on the job. In the era of Covid-19, that definition also needs to address the safety of employees who simply show up to work.

“What the business community would like is for a law that says just bringing somebody back at a time when there is no cure is not businesses’ fault and businesses could not be sued for bringing their employees back,” said [Joshua Gotbaum](#), guest scholar of economic studies at The Brookings Institution. “That is what they would like and that is what (Senate Majority Leader) [Mitch McConnell](#) would like to give them.”

NFIB has proposed a set of Liability Protection Principles that address coronavirus-related claims disputes with employees through the worker's compensation system. The group also proposes protections from customer claims unless they can prove injury and that a business knowingly neglected to develop a reasonable plan for reducing exposure to Covid-19.

NFIB also suggests that only those hospitalized with Covid-19 should be allowed to sue, with fines for “unscrupulous trial attorneys bringing frivolous Covid-19-related lawsuits.”

“We urge Congress to address these Liability Protection Principles so that our nation’s small businesses who have fought to survive over the course of this pandemic can get back to work without fear of costly legal battles,” said [Karen Harned](#), executive director of the NFIB Small Business Legal Center, in a statement.

They may get the ear of Republican leaders. McConnell, R-Ky., and House Minority Leader Kevin McCarthy, R-Calif., called protections from “frivolous lawsuits” “absolutely essential to future discussions surrounding recovery legislation,” in a joint statement May 1.

Worker and consumer advocates have cautioned against such measures. A coalition of labor unions, consumer rights groups and legal organizations said they strongly oppose any legislation that would grant nationwide immunity for businesses “that operate in an unreasonably unsafe manner” during the pandemic.

"Any recovery requires the public to have confidence that businesses are operating as safely as possible," read an April 29 letter, signed by the AFL-CIO, Consumer Reports, Public Citizen, the Service Employees International Union, the SPLC Action fund and dozens of others.

"Establishing legal immunity for businesses that operate unsafely would do the opposite of instilling public confidence.

Legal experts say failure to address business liabilities could overwhelm the worker's compensation system with claims. Conversely, they also said it's foreseeable the system could be bypassed entirely if workers or customers unite behind class-action lawsuits against a company over its reopening.

"It's possible that compensation for people who get sick or suffer in other ways is going to be handled in a different way than we would handle in what I called peacetime or when there wasn't such a serious threat," said Walter Olson a senior fellow at the Cato Institute's Robert A. Levy Center for Constitutional Studies.

Olson suggested Congress could simply place a cap on damages or, similar to NFIB's proposal, allow only workers and customers to sue for economic damages incurred by contracting the coronavirus. He also suggested creating a fund dedicated to paying out claims.

“The courts are friendlier to a system that has some sort of balance and compensation,” Olson said. “We have stopped you from suing, but we have opened up some other way to get your grievance paid for.”

Gotbaum agreed that if there is some blanket immunity from litigation, there needs to be a substitute for employer liability that contains health insurance, sick leave and some kind of death benefit for any fatalities that result from the coronavirus pandemic.

“As far as we know, there have been no actual negotiations yet on what a compromise might look like,” Gotbaum said. “There clearly needs to be one kind of compromise or employers are not going to want to bring workers back in this environment.”