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## Reopening in a pandemic: 5 things businesses can do to ward off lawsuits

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Small businesses across the country may be reopening their doors to new business as many regions enter a first phase of a return to business. But they may also be opening their doors to potential legal minefields, thanks to a lack of specific, Covid-19-related legal protections amid the virus' continued spread.

Still, business owners have some resources at hand to minimize those legal risks.

The effort to reopen businesses and relax social distancing standards come as Congress has stalled on proposals that would limit legal liability for business owners and employers, a concept pushed by top Republicans and business trade groups such as the U.S. Chamber of Commerce.

"Despite all of the discussion proposing legislation that would indemnify or hold harmless employers that are reopening when it comes to illness from their employees, that hasn't gotten any traction so far," said Laura Lawless, a partner at law firm Squire Patton Boggs, who represents employers before federal and state courts on employment matters. "So what we are living with is the same backdrop that we had before the coronavirus emergency."

That backdrop is largely the existing workers' compensation system, under which employees who get sick or injured on the job can pursue claims, or employee lawsuits alleging recklessness or gross negligence by the company. Business owners are under a legal obligation to provide a safe and healthy workplace — though, it's unclear what that means during a pandemic, Lawless said. That lack of clarity, she said, is a real problem.

"We don't have a lot of precedent on a virus of this type. You can't really look to influenza cases in the past, which have historically not been viewed as reckless behavior in the workplace," she said. "We haven't had a catastrophic-type virus like this."

John Berry, a partner at Berry & Berry PLLC, said he believes states — and Congress — will eventually take action to provide some sort of liability protection, including a fund that victims can file claims against.

Until then, businesses can:

**Conduct an assessment of operations and risks within the business.** Where are its highest concentrations of employees? What about ventilation? How adequate are personal protective equipment supplies? Which surfaces or spaces are touched regularly? Businesses that draft a plan specific to their spaces show they're thinking about safety.

**Follow every set of guidelines.** There are a dizzying array of standards to follow, but businesses must take into account industry-specific guidelines from the Centers for Disease Control and Prevention, Occupational Safety and Health Administration, state guidelines and even county and city-specific guidelines. Experts agree that if a business follows these standards, that helps show it's not being reckless and is prioritizing employee and customer safety.

**Stock up on PPE.** Employers may feel hesitant to enforce when and where employees wear masks, for example, but they should to reduce liability. Having enough personal protective equipment on hand also helps.

**Keep in mind high-risk employees.** Under CDC guidelines, businesses must make "every effort" to accommodate workers with a high risk of health problems to be able to work remotely. Consider how employees get to work, especially those reliant on high-risk public transportation.

**Don't be a jerk.** That's less flippant than it seems. Employers and managers who mistreat employees in a difficult situation raise the chances of getting sued, Berry said, even if their actions were legally justified. Right now, many employees are on



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Businesses are reopening. How can they minimize their legal liability amid Covid-19?

edge and seeking assurances from employers.

“You are not going to get as many claims if you are nice and reasonable to employees — even going a bit beyond what the executive orders required,” Berry said. “If you want to manage liability, you have to not only follow the rules and provide that thin layer of protection, but also be nice. It’s the right thing to do. Try and be a little bit flexible with employees.”

Businesses should expect such claims or requests for new accommodations to increase quickly as workforces return to the office, especially as workers race to protect their job status, said [Blank Rome LLP Partner Brooke Iley](#). Businesses should keep communication lines open with employees, she said, and let them know what to expect.

Nevertheless, even with best efforts, a business may face the task of having to determine if it’s at fault for an employee contracting the coronavirus, though it may be hard to prove it definitively stemmed from the workplace, Berry said. Even that obstacle aside, a wave of lawsuits against reopening businesses could ultimately cost time and money.

“Even if lawyers bring weak claims, the employer is still going to have to hire counsel or have insurance counseling,” Berry said. “It’s going to be expensive to defend.”

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