



CLE Appendix

Navigating the New Normal:
Legal Considerations for Businesses in the
Pandemic and Post-Pandemic Era

State Laws Addressing COVID-19 Exposure Tort Claims					
State	Lowest Standard for Liability	Clear & Convincing Evidence Required	Compliance with Guidance Defense?	Other Defenses / Notes	State Law
Alabama	Reckless	✓	✓	Damages generally limited to economic loss	Alabama Proclamation (May 8, 2020) Alabama S.B. 30 (enacted Feb. 12, 2021)
Alaska	Gross negligence	✗	✓	Must act in substantial compliance with applicable COVID-19 mandates to qualify for protection.	Alaska SCS CS H.B.76 (enacted May 1, 2021)
Arkansas	Reckless	✗	Presumption not reckless		Ark. Exec. Order 20-34 (June 15, 2020) Arkansas H.B. 1521 (enacted Apr. 1, 2021)
Arizona	Gross negligence	✓	✗	Must act in good faith to protect a customer, student, tenant, volunteer, patient, guest, or neighbor or the public from injury from a declared public health pandemic.	Arizona S.B. 1377 (enacted Apr. 5, 2021)
Florida	N/A	✗	✓	Plaintiff has burden of showing lack of a good faith effort to substantially comply. Complaint must be pled with particularity and include a physician affidavit. One year statute of limitations.	Florida S.B. 72 (enacted Mar. 29, 2021)
Georgia	Gross negligence	✗	✗	Posting of sign or notice provides assumption of risk defense	Georgia S.B. 359 (enacted Aug. 5, 2020)
Idaho	Reckless	✗	✗		Idaho Coronavirus Limited Immunity Act, H.B. 6 (enacted Aug. 27, 2020)
Indiana	Gross negligence	✓	✗	Prohibits class actions	Indiana S.B. 1 (enacted Feb. 18, 2021)
Iowa	Reckless	✗	✓	No claim unless hospitalization or death	Iowa S.F. 2338 (enacted June 18, 2020)
Kansas	N/A	N/A	✓		Kansas H.B. 2016 (enacted June 8, 2020, expired January 26, 2021)

					Kansas S.B. 283 (enacted March 31, 2021)
Kentucky	Gross negligence	✖	✓	Orders and guidance do not create a duty of care.	Kentucky S.B. 5 (enacted Apr. 11, 2021)
Louisiana	Gross negligence	No	✓	No claims against employers unless intentional act	Louisiana H.B. 826 (Act No. 336) (enacted June 13, 2020); <i>see also</i> Louisiana S.B. 435 (Act No. 362) (enacted June 12, 2020)
Michigan	N/A	N/A	✓	Must comply with all federal, state, and local requirements	Michigan H.B. 6030 , 6031 , 6032 , and 6101 (enacted Oct. 22, 2020)
Mississippi	Malice or willful, intentional misconduct	✓	✓	Two-year statute of limitations	Mississippi Back-to-Business Liability Assurance Act and Healthcare Emergency Response Liability Protection Act, S.B. 3049 (enacted July 8, 2020)
Missouri	Reckless	✓	✖	Rebuttable presumption plaintiff assumed risk if business posts or provide a warning/notice. One-year statute of limitations.	Missouri S.B. 51 and S.B. 42 (enacted July 7, 2021, effective Aug. 28, 2021)
Montana	Gross negligence	✖	✓	Failing to comply is not a basis for liability. Orders/guidance do not create cause of action. No liability for conduct of third parties	Montana S.B. 65 (enacted Feb. 10, 2021)
Nebraska	N/A	✖	✓	No liability if substantial compliance with any federal public health guidance.	Nebraska COVID-19 Liability Act, LB 139 (enacted May 25, 2021)
Nevada	Gross negligence	✖	✓	Plaintiff must show business was not in substantial compliance	Nevada S.B. 4 (enacted Aug. 11, 2020)
New Jersey	Gross negligence	✖	✖	Applies only to planned real estate developments. Requires posting of a notice at the entrance of any communal space.	New Jersey S.B. 3584 (enacted July 1, 2021)
North Carolina	Gross negligence	✖	✖	Businesses must give notice of actions taken to reduce risk on premises	North Carolina COVID-19 Limited Immunity, H. 118 (enacted July 2, 2020)
North Dakota	Intended to cause harm or actual malice	✖	✓		North Dakota H.B. 1175 (enacted Apr. 23, 2021)

Ohio	Reckless	✖	✖	Prohibits class actions Orders or guidance do not create duty of care or create cause of action Orders and guidance are inadmissible	Ohio Am. Sub. H.B. 606 (enacted Sept. 14, 2020)
Oklahoma	N/A	N/A	✓		Oklahoma S.B. 1946 (enacted May 21, 2020)
Pennsylvania	Gross negligence		✓	Limited to enforcement of face covering requirement	Pennsylvania Order of the Governor for Mitigation, Enforcement, and Immunity Protections (Nov. 23, 2020)
South Carolina	Gross negligence	✓	✓	Must reasonably adhere to public health guidance to qualify for liability protection.	South Carolina S. 147 (enacted Apr. 28, 2021)
South Dakota	Intent to expose	✓	N/A	Requires COVID-19 diagnosis	South Dakota H.B. 1046 (Feb. 17, 2021)
Tennessee	Gross negligence	✓	✖	Requires Certificate of Good Faith	Tennessee COVID-19 Recovery Act, S.B. 8002 (enacted Aug. 17, 2020)
Texas	Knowing failure to warn or remediate condition or knowing failure to comply w/guidance.	✖	Plaintiff must prove	Requires expert report on causation within 120 days of defendant's answer.	Texas S.B. 6 (enacted June 14, 2021)
Utah	Reckless	✖	✖		Utah S.B. 3007 (enacted May 4, 2020)
West Virginia	Intentional conduct with actual malice	✖	✖		West Virginia S.B. 277 (enacted Mar. 19, 2021)
Wisconsin	Reckless or wanton conduct	✖	✖		Wisconsin S.B. 1 (Spec. Sess.) (enacted Feb. 25, 2021)
Wyoming	Gross negligence	✖	✓	Applies only when follow instructions of state, city, town, or county health officer	Wyoming S.F. 1002 (enacted May 20, 2020)

STRONGEST (5)

- Mississippi – No liability unless malicious or willful misconduct. 2-year statute of limitations.
- North Dakota – No liability unless intended to cause harm or actual malice. Safe harbor defense.
- South Dakota – No liability unless intended to expose. COVID-19 diagnosis required.
- Texas – No liability unless knowingly failed to warn or remediate a condition or knowingly failed to implement or comply with government standards or guidance. Requires plaintiff to file expert report on causation within 120 days of answer or requires dismissal plus payment of defendant's attorney's fees and costs.
- West Virginia – No liability unless intentional conduct with actual malice. Reaffirms that only remedy for employees is workers' compensation.

STRONG (10)

- Alabama – Clear and convincing evidence of reckless conduct. Damage limits. Safe harbor defense.
- Arkansas – No liability except for reckless, willful, or intentional misconduct. Presumption of no liability if substantially comply with health and safety directives.
- Florida – Plaintiff must show business lacked a good faith effort to substantially comply. Plead with particularity, physician affidavit requirement, 1-year statute of limitations.
- Idaho – Liable only for intentional, willful, or reckless misconduct.
- Iowa – No exposure-only, asymptomatic, or fear of disease claims. Liable only for reckless disregard. Safe harbor defense.
- Missouri – No liability except for clear and convincing evidence of reckless or willful misconduct. Presumption plaintiff assumed the risk upon posting of warning notice. One-year statute of limitations. Limit on punitive damages.
- Montana – Liable for gross negligence. Safe harbor defense. No liability for conduct of third parties. Not required to mandate wearing of masks, vaccinations, or temperature checks.
- Ohio – Liable only for reckless, willful, or intentional conduct. Class actions prohibited.
- Utah – Liable only for willful, reckless, or intentional infliction of harm.
- Wisconsin – Liable only for reckless, wanton, or intentional misconduct.

BASIC (13)

- Alaska – If act in substantial compliance with mandates, no liability unless gross negligence.
- Arizona – If act in good faith to protect customers, liable only for gross negligence.
- Georgia – Liable for gross negligence. Presumption that customer assumed the risk if business posts warning at entry.
- Indiana – Liable if clear and convincing evidence of gross negligence. No class actions.
- Kansas – Safe harbor defense for substantial compliance with public health directives.
- Kentucky – Liable for gross negligence. 1 year statute of limitations.
- Louisiana – Liable if fail to substantially comply with applicable procedures and grossly negligent. Reaffirms that there are no lawsuits by employees against employers outside workers comp except for intentional acts.
- Nebraska – No liability if act or omission was in substantial compliance with any federal public health guidance, applicable to claims filed on or after May 25, 2021.
- Nevada – Plaintiff must show business was not in substantial compliance plus gross negligence.
- North Carolina – Business must give notice of actions taken to reduce risk on premises and are liable for gross negligence.
- Oklahoma – Safe harbor defense.
- South Carolina – Business that reasonably adheres to public health guidance is liable only for gross negligence. Plaintiff must make showing by clear and convincing evidence.
- Tennessee – Liable only if clear and convincing evidence of gross negligence or willful misconduct. Certificate of good faith required.

WEAK / LIMITED APPLICATION (4)

- Michigan – Safe harbor defense if comply with ALL federal, state, and local requirements.
- New Jersey – Applies only to planned real estate developments with common areas.
- Pennsylvania – Protection limited to enforcing face covering mandate/gross negligence.
- Wyoming – When follow instructions of a state or local health officer, liable only for gross negligence.