



Hotel Industry Pandemic Liability Protection

Advocate for Exposure Liability Protections at the State Level

As states begin to assess additional executive and legislative branch actions intended to mitigate the economic strain on businesses and employers as a result of the pandemic, state policymakers must consider the potential threat that exposure liability litigation poses to the private sector, particularly the hotel industry. When businesses reopen to the general public, they will require exposure liability protection to ensure that the nation's economic recovery is not unnecessarily hampered by lawsuits or other costly claims stemming from unreasonable allegations of exposure to COVID-19.

Discussions regarding post-pandemic policy considerations are already underway with Governors and in state legislatures. These issues must be raised with relevant stakeholders urgently so that they are appropriately incorporated into future executive orders and/or state legislation where possible. If you are in a position to communicate these concerns and advocate for exposure liability protections at the state level, please do so using this outline as a guide. This is a critical step in creating a framework for a return to prosperity for the Hotel Industry.

Hotel Industry and Its Workers Provided Necessary Accommodation During the Pandemic Response

In response to the unprecedented challenges of the pandemic, the hotel industry voluntarily provided accommodation to healthcare workers and other responders on the front lines of the COVID-19 response. Additionally, the hotel industry has provided shelter to homeless individuals, populations in need of quarantine or isolation, and first-line responders. In most states, hotels were expressly designated as "essential businesses" by Executive Order, thus remaining open to serve the public and requiring the on-site presence of some employees.



Hotel Industry’s COVID Response Warrants Legal Protection and Fundamental Fairness

The hotel industry faces liability challenges that governments do not. Given the critical role played by the hotel industry in a time of great need, states are obliged to provide reasonable protections in response to the COVID-19 pandemic. Liability protections need not extend to acts or omissions that constitute crime, fraud, malice, gross negligence or willful misconduct. Such protections must, however, prevent frivolous lawsuits alleging that guests or workers were exposed and/or infected during some period of the pandemic, which would impede hotels or other lodging institutions’ ability to economically recover.

States Must Consider Safe Harbors and Grants of Immunity for the Hotel Industry

The state-based liability protections that should be considered fall into three non-mutually exclusive buckets: safe harbor, immunity, and indemnification. Appropriate legal protection could include one, two, or all three approaches, which are set out below as concepts (i.e., this language is not intended to be directly incorporated into any order or legislation).

Safe Harbor – A “safe harbor” establishes a legal defense from liability for injury or death resulting from alleged or actual coronavirus exposure for any person or entity that adheres to federal and state public health guidance for cleaning and disinfecting areas of public accommodation.

Immunity – “Essential Businesses or Services” and/or owners and managers of properties, including hotels, that in any way support(ed) the relief effort for the COVID-19 response, whether voluntarily or pursuant to government order, are granted immunity from liability for claims for injury or damages based on alleged COVID exposure related to the operation of the property as an essential business or during the COVID-19 response. This immunity should also apply to occupants, patients, property employees, visitors, and subsequent users of the property.

Indemnification of Worker’s Claims – Workers’ compensation claims, claims based on occupational disease or similar law, and claims for employer liability based on an actual or potential exposure to COVID-19 brought by workers against an employer and arising from any of the services provided as an essential business or a COVID-19 responder shall be indemnified by the government.