

# **SAFE TO WORK Act**

## **Safeguarding America's Frontline Employees**

### **To Offer Work Opportunities Required to Kickstart the economy**

As essential businesses continue operations and as the American economy more broadly continues re-opening, our businesses, nonprofits, schools, colleges, universities, workers, and health care providers face a growing threat from abusive litigation. This litigation threatens the paychecks Americans have received to date, and their ability to start earning wages again if businesses can't fully participate in the economy. Thousands of coronavirus-related lawsuits have already been filed, and this trend shows no signs of slowing down. Even if many of these lawsuits are ultimately unsuccessful, they each have the potential to paralyze and bankrupt individuals, businesses, and nonprofits who are trying to do the right thing by getting kids back to school, parents back to work, and ensuring our health care system is strong. The everyday Americans who are helping our economy recover while following public health guidelines deserve better than to be sued out of existence by trial lawyers seeking to get rich from the suffering of others. Moreover, Congress invested trillions of dollars into the economy in the numerous coronavirus relief packages, and has an obligation to ensure that those dollars do not go directly from the pockets of businesses, schools, colleges and universities, religious, philanthropic and other nonprofit institutions, and local government agencies into the pockets of the trial bar.

The **SAFE TO WORK Act** establishes temporary rules for specific types of coronavirus-related claims designed to facilitate and foster a prudent reopening of our businesses, schools, colleges and universities, religious, philanthropic and other nonprofit institutions, and local government agencies, while also ensuring that those who contract coronavirus because of the gross negligence of others can recover for their injuries. It also protects health care providers from coronavirus-based claims, grants temporary labor and employment law protections, and clarifies already-existing products-liability protections.

#### **The SAFE TO WORK Act will:**

- Help those essential businesses that have remained open to stay open, and help other businesses to reopen safely and without fear so that American workers can earn paychecks;
- Assist schools, colleges, and universities with reopening in the fall so that America's students can resume their educations;
- Encourage and protect workers who return to their jobs by rewarding compliance with coronavirus-related public health guidelines;
- Provide uniformity and predictability for good actors; and
- Ensure that bad-faith actors are held accountable for coronavirus-related related injuries.

#### **Section by Section**

*11001 – Short Title*

*11002 – Findings and Purposes*

*11003 – Definitions*

## **Subtitle A – Liability Relief**

### **Part 1 – Exposure Actions**

#### *11121 – Federal Cause of Action.*

Creates a federal cause of action for coronavirus exposure claims. This cause of action is the exclusive remedy for all claims against a defendant for personal injury caused by an actual, alleged, feared or potential exposure to coronavirus. This cause of action covers all alleged injuries that arise from conduct taking between December 1, 2019 and the later of either the end of the coronavirus emergency declaration or October 1, 2024. It governs all cases, including those pending on the date of enactment.

The cause of action governs any covered claim against almost any defendant, including natural persons, schools, colleges, charities, churches, government agencies, associations, and businesses, so long as those defendants are engaging in conduct subject to Congress’s regulation under the Interstate and Foreign Commerce Clauses.

This section preempts all state laws, including common law, that impose liability for coronavirus exposure on broader grounds than those contained in the statute. It instructs courts, however, to apply state laws that impose further liability limitations alongside the provisions of this statute. The statute therefore imposes a floor on liability, but makes clear that states are free to further limit liability for coronavirus exposure. The statute does not preempt or interfere with workers’ compensation schemes, government enforcement actions, claims of intentional discrimination, or a seaman’s right to maintenance and cure.

This section also sets a one-year statute of limitations.

#### *11122 – Requirements for Liability and Safe Harbor.*

This section sets out the rules for the coronavirus exposure claims. A plaintiff must satisfy each element of the claim by clear and convincing evidence.

Safe harbor – A defendant is not liable for coronavirus exposure so long as the defendant undertook reasonable efforts in light of all the circumstances to comply with the applicable mandatory coronavirus standards and regulations in effect at the time of the alleged exposure.

- If the defendant was not subject to mandatory standards, it can claim the benefit of the safe harbor so long as it followed some set of applicable public-health guidelines.
- Should multiple sets of applicable mandatory guidelines conflict, compliance with one set will satisfy the safe harbor.

Gross negligence or willful misconduct – If a plaintiff can establish that the defendant did not take reasonable steps to comply with the applicable standards and regulations, the plaintiff must further show that the defendant’s gross negligence or willful misconduct caused the plaintiff’s coronavirus injuries.

- Gross negligence is defined as a conscious, voluntary act or omission in reckless disregard of a legal duty, the consequences to another party, and applicable government standards and guidance.
- Willful misconduct is defined as an act or omission that is taken to achieve a wrongful purpose, knowingly without legal factual justification, and in disregard of a known or obvious risk that is so great as to make it highly probable that the harm will outweigh the benefit.

## **Part 2 – Healthcare Protections**

### *11141 – Federal Cause of Action.*

Creates an exclusive federal cause of action for coronavirus medical liability claims. This cause of action is the exclusive remedy for personal injury caused by the treatment, diagnosis, or care of coronavirus, or care directly affected by the coronavirus. This protection applies to health care providers, including doctors, nurses, facilities, administrators and volunteers. This cause of action covers all alleged injuries that arise from conduct taking place between December 1, 2019 and the later of either the end of the coronavirus emergency declaration or October 1, 2024. It governs all cases, including those pending on the date of enactment.

As with coronavirus exposure actions, all state laws that impose liability on broader grounds than those contained in the statute are preempted. Courts, however, must apply state laws that impose further liability limitations alongside the provisions of this statute. The statute therefore imposes a floor on liability, but states are free to further limit liability for coronavirus medical liability claims. The law does not preempt the Public Readiness and Emergency Preparedness (PREP) Act, government enforcement actions, claims of intentional discrimination, or the already-existing federal laws governing vaccine injuries.

### *11142 – Requirements for Liability.*

To recover for personal injuries caused by coronavirus medical care, the plaintiff must show that his or her injuries were caused by the defendant’s gross negligence or willful misconduct.

## **Part 3 – Procedural and Substantive Provisions for Suit**

### *11161 – Jurisdiction.*

Authorizes plaintiffs to file coronavirus-related lawsuits in either federal or state court. Authorizes defendants in state court to remove their cases to federal court.

### *11162 – Limitations on Suit.*

This section forecloses joint and several liability (except in cases of fraud or intentional injury) and instead requires defendants to pay their proportionate share of damages owed to a plaintiff.

The section limits compensatory damages to economic losses and prohibits punitive damages, except in cases involving intentional misconduct.

The section also preempts state laws that permit liability on broader grounds, or authorize higher damages, than those contained in this section.

#### **Part 4 – Labor and Employment**

##### *11181 – Application of Federal Laws.*

This section protects employers from liability under federal labor and employment laws—including the Occupational Safety and Health Act (OSHA), the Fair Labor Standards Act (FLSA), the Age Discrimination in Employment Act (ADEA), the Worker Adjustment and Retraining Notification (WARN) Act, Title VII of the Civil Rights Act of 1964, Title II of the Genetic Information Nondiscrimination Act (GINA), and Title I of the Americans with Disabilities Act (ADA), for actions taken to comply with coronavirus-related public-health guidance and regulations.

This section further protects from liability under the ADA and Civil Rights Act of 1964 businesses and employers who cannot offer requested accommodations because they would pose a serious risk to public health.

##### *11182 – Workplace Testing.*

This section forecloses lawsuits for injuries caused by workplace coronavirus testing unless the injuries were caused by gross negligence or intentional misconduct.

##### *11183 – Joint Employment and Independent Contracting.*

This section clarifies that providing coronavirus-related assistance to an independent contractor or to the employee of another employer does not create an employment relationship between the person who provided the assistance and the person who received it.

##### *11184 – WARN Act modifications.*

This section creates an exception to employer notification laws that normally require a notice period for employment decisions made due to the coronavirus emergency.

#### **Subtitle B. Products**

##### *11201 – Protections for Products*

Limits liability for additional products, such as types of PPE and hand sanitizer, if they meet certain FDA requirements. Clarifies liability protections based on methods of distribution of approved countermeasures.

#### **Subtitle C. General Provisions**

##### *11301 – Severability.*

Provides that if a court holds any provision of the statute unconstitutional, the remaining provisions of the statute remain intact. It also limits that finding to the affected plaintiff and

others similarly situation, so the provision would continue to apply to persons and circumstances other than those in the case holding it unconstitutional.