

## What Covid-19 Has Revealed About Business Risk Liability

By James Vogt

On July 26, 1990 the Americans with Disabilities Act was signed into law. This signaled a significant shift for all businesses and public service organizations in America. From that day forward, businesses were assigned the responsibility of ensuring that, "People with disabilities have the same rights and opportunities as everyone else."<sup>1</sup> This appropriate and needed legislation required businesses to examine and, if necessary, adapt their operational practices in order to comply with these new standards. In short, *operating a business changed permanently.*

In the early months of 2020, Covid-19 made its presence known to the world. It disrupted life as usual and forced the globe to rethink the procedures and patterns that dominate daily life. And, just like the ADA, *it has forever changed the way businesses must operate.* Specifically, the risks a business assumes in relation to epidemiological events are now front and center, highlighted and in bold font.

The Risk Liability businesses now must address are:

- **New standards of safety set and enforced by OSHA** – These standards and practices are rapidly changing during the Covid-19 episode.<sup>2</sup>
- **Increased level of Workers Compensation claims** – Any unregulated epidemiological event can be inconvenient at best and crippling at worst. The time and expense charged to a business with a large number of workers compensation claims can be costly both in the short and long term. Businesses will need to determine their risk based on specific state guidelines. "States have responded to COVID-19 by issuing directives and proposing legislation impacting workers compensation. Some states have enacted legislation and issued executive orders that expand workers compensation coverage for certain workers, while other states are considering similar initiatives."<sup>3</sup>
- **Employees/customers abandonment of the business due to perceived lack of safety** – "Employers must weigh the employees' legal rights and understandable health concerns with the organizations' business needs... [because] ...employees can refuse to work if they reasonably believe they are in imminent danger, according to the Occupational Safety and Health (OSH) Act."<sup>4</sup>
- **Insurance premium cost increase, claim denials or policy termination** – What businesses and organizations thought was assurance of protection for events like the Covid-19 pandemic is turning out to be just the opposite. The reality is there are, "...A growing contingent of business owners across the country who are suing insurance companies for denying claims for business interruption insurance as revenues take a nosedive during the COVID-19 pandemic."<sup>5</sup>
- **Increased number of Tort Claims** – These lawsuits can be crippling to a business, especially if they come in waves and are not protected by insurers. This very real threat is causing many to take preemptive action. "Dozens of business and governmental groups -- representing real estate agents, bankers, restaurateurs, hotel owners, farmers and others -- asked lawmakers during a special session of the Oregon Legislature last week to shield them from lawsuits."<sup>6</sup>

At issue in a lawsuit is negligence. At its most basic level, avoiding negligence means, “Doing the best you can with what you know.” Covid-19 has set a new standard for safe health practices to which businesses simply must adapt and adhere in order to avoid negligent practice or policy. Moving forward the best strategy a business or organization can have for surviving this and future epidemiological events, whether global or local, is to proactively manage their risk liability.

The economy, businesses, and families are depending on it.

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<sup>1</sup><https://adata.org/learn-about-ada>

<sup>2</sup><https://www.osha.gov/memos/2020-05-19/updated-interim-enforcement-response-plan-coronavirus-disease-2019-covid-19>

<sup>3</sup><https://www.ncci.com/Articles/Pages/Insights-Coronavirus-FAQs.aspx>

<sup>4</sup><https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/coronavirus-when-scared-workers-do-not-report-to-work.aspx>

<sup>5</sup><https://www.chicagotribune.com/coronavirus/ct-coronavirus-business-interruption-insurance-lawsuits-20200416-b5kl3xaweja7refbqfr4cpkp3u-story.html>

<sup>6</sup><https://www.oregonlive.com/coronavirus/2020/07/eager-to-avoid-coronavirus-lawsuits-some-oregon-businesses-are-requiring-customers-to-sign-away-their-rights-to-sue.html>