

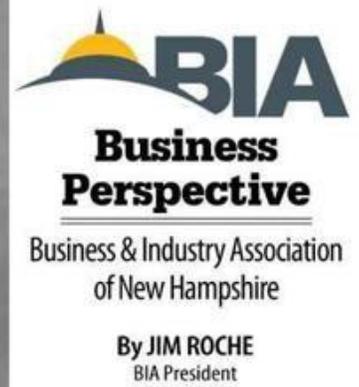
# NEW HAMPSHIRE UNION LEADER

## BIA Business Perspective: Legal safe harbor protects against squall

By Jim Roche BIA President

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While there's agreement over many of the provisions of the latest "Phase 4" coronavirus relief package being constructed in Washington, negotiators are still far apart on several key issues, one of which is protecting businesses from exposure to COVID-19 related liability litigation.



Creating COVID-19 liability protections, or a legal "safe harbor" for employers, will help our economy rebound more quickly. Here's why.

It's critical for businesses, schools, colleges and universities, places of worship and others that are in various stages of reopening be protected from lawsuits from employees, customers or visitors claiming they contracted the coronavirus at the enterprise. Without legal protection, these enterprises will be hampered in their ability to return to pre-pandemic operations. To be clear, safe harbor protections are not a blanket immunity. Employers who are grossly negligent, ignoring federal and state health guidelines, would be held accountable under provisions of a legal safe harbor. This is appropriate.

BIA raised this concern last spring with the governor, New Hampshire legislative leaders and members of the Governor's Office for Emergency Relief & Recovery and the Governor's Economic Reopening Task Force. We even provided legal safe harbor draft

language for policy makers to use. We also brought this issue to the attention of our two U.S. senators and two congresspersons. Under normal circumstances, a liability case brought against an employer who follows appropriate health guidelines would likely fail because it would be difficult to prove the business acted unreasonably. Nevertheless, valuable resources would be deployed to defend against such a suit. That's time, money and human resources that could be more productively spent on hiring or bringing people back to work, providing employee training, maximizing efficiency or reinvesting in operations.

A legal safe harbor would enable employers to allocate fewer resources to defending themselves from misplaced legal action, and more resources into reopening or returning to pre-pandemic operations. That will in turn help our economy recover more quickly.

Back in May, the Governor's Economic Re-Opening Task Force requested an opinion from New Hampshire's Attorney General regarding potential liability for employers from COVID-19. The AG's opinion states that employees who contract COVID-19 at the workplace will need to file a workers' compensation claim instead of going through the court system, and business would be liable for such claims if the workplace presents a greater hazard for contracting the illness than outside of the workplace in the general public.

This opinion is helpful, but it doesn't address the full range of potential liability challenges facing employers. That's because employees are not the only people who visit a workplace. Employers are regularly visited by non-employees.

Any space where people gather creates vulnerability to COVID-19 and lawsuits including businesses, colleges and universities, primary and secondary schools, places of worship and other settings. Lawsuits could arise from employees, parents, teachers, staff, students at post-secondary schools, worshipers, maintenance contractors and many other settings. These claims would not use the workers' compensation system but would instead be channeled through the normal court system— all of which is costly and time consuming for employers.

Additional anxiety for employers arises from the fact that property-casualty insurance contracts contain exceptions for bacteria and communicable diseases. That means if an enterprise had not opted for this level of coverage and a lawsuit is successful, insurance would not cover the loss, and the business would pay the entirety of the claim. Many employers would be forced to liquidate for lack of resources to pay out.

If we hope to accelerate a return to pre-pandemic operations and revive our economy, we need businesses to be unencumbered by misguided legal threats. Already, some businesses have chosen not to reopen, in part due to the liability risk associated with COVID-19. Closed enterprises, or those that are not fully functioning, are not stimulating the economy through robust hiring, vendor purchases, subcontracting and myriad ways businesses drive commerce.

COVID-19 liability protections are not only important but are well-supported. Results from a U.S. Chamber of Commerce poll show 82% of Americans support protecting businesses from lawsuits from people claiming they contracted coronavirus at the business unless the business was grossly negligent. In late July, 21 governors around the country, including our own Gov. Chris Sununu, sent a letter to congressional leaders asking for liability protections in the next round of coronavirus relief legislation.

While the focus right now is at the federal level, there's no guarantee that liability protections will be included in the "Phase 4" stimulus or any other federal legislation. That means that New Hampshire policy leaders may need to make this a top priority early in the 2021 legislative session. Employers who are doing the right thing by following state and federal health and safety guidelines should not be burdened by unprecedented and unwarranted legal challenges brought on by the COVID-19 pandemic.

Most federal and state policy leaders stress their support for business, particularly small businesses. Their opportunity to walk that talk is now.

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Jim Roche is president and CEO of the Business and Industry Association. The BIA, New Hampshire's statewide chamber of commerce, produces this column monthly exclusively for the Sunday News.