

# BIA Proposed “Safer Harbor” Language for COVID-19 Related Litigation Against Employers

1. Definitions. Terms used in this statute have the following meaning:
  - a. COVID-19 and CORONAVIRUS. Means (i) severe acute respiratory syndrome coronavirus 2; or (ii) the disease caused by severe acute respiratory syndrome coronavirus 2.
  - b. Gross Negligence – Means an act or omission that:
    - i. when viewed objectively from the standpoint of the actor at the time of its occurrence, involves an extreme degree of exposure to risk, considering the probability and magnitude of the potential harm to others; and
    - ii. of which the actor has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.
  - c. Business Organization: means any enterprise, whether corporation, partnership, limited liability company, proprietorship, association, business trust, real estate trust or other form of organization that is carrying on any business activity within the state regardless of whether it is (1) organized for gain or profit, or (2) organized as a nonprofit or tax exempt organization.
2. Limitation of Liability for Exposure to Coronavirus and COVID-19. Notwithstanding any other provision of law to the contrary and except as provided in Section 3, as a matter of law, no Business Organization shall be liable for personal injury resulting from or related to an actual or alleged exposure to Coronavirus in the course of such Business Organization’s business activity, or in the course of working for such Business Organization in any capacity, provided that in the performance of its business activity at the time of alleged or actual exposure, the Business Organization was relying on and generally following applicable government standards and guidance related to Coronavirus exposure.
3. Liability Exceptions. Section 2 shall not apply if the personal injury resulting from or related to the actual or alleged exposure to Coronavirus if the person alleging injury proves by clear and convincing evidence that the injuries were the result of:
  - a. gross negligence;
  - b. willful misconduct;
  - c. intentional criminal misconduct; or
  - d. intentional infliction of harm.

4. Causation. Any person claiming to have suffered personal injury as a result of exposure to COVID-19 must prove by clear and convincing evidence that the defendant was the proximate cause of the injuries allegedly suffered.
5. Statute of Limitations. Any suit for any alleged injury arising from COVID-19 must be commenced not later than one year after the day the cause of action accrues.
6. Construction. Nothing in this Act shall be construed to create a new cause of action or expand any liability otherwise imposed, limit any defense, or affect the applicability of any law that affords greater protections to defendants that are provided in this Act.
7. Effect on other laws. Nothing in this Act will affect a person's rights under RSA 281-A.
8. Effective Date. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law. Once effective, it applies to all claims for personal injury arising from COVID-19, even if those claims accrued prior to the effective date of this law.

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