



BUSINESS & INDUSTRY ASSOCIATION  
New Hampshire's Statewide  
Chamber of Commerce

May 8, 2020

The Honorable Christopher Sununu  
Governor of New Hampshire  
107 North Main Street  
Concord, NH 03301

Dear Governor Sununu:

On behalf of the thousands of enterprises we collectively represent in all corners of New Hampshire, we the undersigned respectfully request that you promulgate an emergency order under the powers conferred upon you during this pandemic to create a legal "safe harbor" for employers to protect them from COVID 19 related liability litigation. Absent such protection, business of all shapes and sizes will be deterred from reopening or returning to pre-pandemic operations, slowing New Hampshire's economic recovery.

We will also be supporting legislative efforts to adopt safe harbor language into statute once the New Hampshire legislature has fully reconvened. Until then, businesses will need the immediate protection afforded by your emergency order. We are suggesting that language offered recently by the Business & Industry Association (attached) be considered as a foundation for your emergency order.

Thank you for your consideration of, and action upon, this request.

Respectfully,

Jim Roche  
President

Peter McNamara, President  
NH Auto Dealers Association

Robert J. Sculley, President  
NH Motor Transport Association

Bruce Berke, Executive Director  
National Federation of Independent Business (NFIB)

John Shaer, Executive Director  
New England Convenience Store & Energy Marketers Assoc

Mike Somers, President & CEO  
NH Lodging and Restaurant Association

John Dumais, President & CEO  
NH Grocers Association

Jessyca Keeler, President  
Ski NH

Kate Luezko, President & CEO  
Greater Nashua Chamber of Commerce

PROMOTING A HEALTHY CLIMATE FOR JOB CREATION AND A STRONG NEW HAMPSHIRE ECONOMY

**Safe Harbor Protections**

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Tim Sink, President  
Greater Concord Area Chamber of Commerce

Laura Ring, Executive Director  
Greater Rochester Chamber of Commerce

Karmen Gifford, President  
Lakes Region Chamber of Commerce

Wendy Hunt, President  
Greater Merrimack-Souhegan Valley Chamber of Commerce

Kyle Knapton, President  
Greater Hillsborough Area Chamber of Commerce

Ginks Leiby, President  
Greater Peterborough Chamber of Commerce

Janice Crawford, Executive Director  
Mt. Washington Valley Chamber of Commerce

Jodi Gilbert, Executive Director  
North Country Chamber of Commerce

Tracey Hutchins, Executive Director  
Upper Valley Business Alliance

John Nyhan, President  
Hampton Area Chamber of Commerce

Mary Devries, Executive Director  
Wolfeboro Area Chamber of Commerce

Brenda Collins, Executive Director  
Greater Hudson Chamber of Commerce

Kathleen Flammia, Executive Director  
Jackson Area Chamber of Commerce

Sandy Marshall, Executive Director  
Meredith Area Chamber of Commerce

Janice Crawford, President  
Mt. Washington Valley Preservation Alliance

# 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.

Produced May 5, 2020