

A Missed Opportunity for Immunity

Articles, COVID 19: Answers to Business Challenges, News December 29, 2020

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The new pandemic aid legislation was eight months in the making, includes 5,600 pages, and \$2.3 trillion in aid and spending. With national unemployment at a record high, and moratoriums on evictions, and utility shutoff abeyance soon set to expire, media outlets have focused on the impact of the bill for individual Americans. In a rare alignment, our outgoing President and Democratic lawmakers have voiced the shared opinion that \$600 direct payments to individuals are inadequate.

The dollar amount of the direct payments was not however the sole stumbling block that delayed the bill's passage. For months, Republican lawmakers were insistent on including an immunity protection provision, that would prohibit COVID-related lawsuits against businesses, nonprofit entities and local government branches...allowing lawsuits only in cases of gross negligence or willful misconduct. As recently as mid-December, a joint press release from Sens. Manuchin and Romney summarized the immunity provision, in the then-proposed draft of the bill, indicating that the goal was to: "Provide short term federal protection from coronavirus-related lawsuits with the purpose of giving states time to develop their own response." Opponents of this blanket immunity proposal had their heels dug in, with Sen. Bernie Sanders issuing his own statement in response, calling the provision a "get-out-of-jail free card to companies that put the lives of their workers and customers at risk."

In order to break the impasse on this issue, Republican lawmakers agreed to water-down the "blanket immunity" provision to include a "sunset" date, after which the filing of COVID-related personal injury lawsuits, and Workers' Comp claims, would be barred. When negotiations over *that* revised proposal stalled, the immunity provision was removed altogether. To be clear, the final version of the new economic stimulus legislation includes no immunity protection provision against COVID-related lawsuits and Workers' Comp claims.

Part of the rationalization for removing the provision altogether was apparently based on research regarding already-filed, COVID-related, lawsuits. Lawmakers reviewed this "data from the spring" in an effort to gauge whether a wave of lawsuits and Workers' Comp claims would come on the heels of our nation's recovery from the pandemic. Relying on such data is flawed logic. Rearview mirrors warn us that things "MAY BE CLOSER THAN THEY APPEAR" – which is an apt analogy for COVID-related claims yet to be filed.

The impact of personal injury lawsuits and Workers' Comp claims will take much longer to be fully known than it took lawmakers to enact this legislation. In Pennsylvania, the statute of limitations for a personal injury or wrongful death lawsuit is two years, and the deadline for filing a Workers' Comp claim is three years. Relying on "data from the spring" will create a false sense of security for business owners, and local governments. As we have spent much of 2020 on preparedness and protection, it appears that 2021 and beyond will require preparedness and protection of another kind.

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