

R.I. companies push for COVID-19 liability protection

By **Mary MacDonald** - August 7, 2020 3:34 am



LOOKING FOR IMMUNITY: David Chenevert, executive director of the Rhode Island Manufacturers Association, says employers should be protected from COVID-19-related lawsuits if they're following guidelines to prevent the spread of the virus. / PBN PHOTO/MICHAEL SALERNO

If an employee gets sick with the novel coronavirus, should they be allowed to file a worker's compensation claim or a lawsuit against their employer as the source of their infection?

They can. But companies in Rhode Island, including manufacturers and professional-services companies, are seeking government-approved immunity from employee lawsuits relating to the COVID-19 pandemic.

In seeking the broad protections against lawsuits and claims, businesses are disputing the accuracy of contact tracing in determining where people acquired the infection.

The sample language provided to Rhode Island's legislators seeks to give the employers immunity from civil lawsuits, unless the company engaged in "gross negligence or willful misconduct," which is the same phrasing contained in a Republican-backed proposal in Congress.

That may set a high bar for workers to overcome, but David Chenevert, executive director of the [Rhode Island Manufacturers Association](#), said it's fair.

Both Iowa and Mississippi have passed legislation that provides immunity for employers, Chenevert noted. "If a company is doing the right thing and all the protocols are in place, they should not be penalized," he said.

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WILL ROTH, Add Temps president and Rhode Island Staffing Association president

Advocates for workers, including J. Michael Downey, president of R.I. Council 94 American Federation of State, County and Municipal Employees AFL-CIO, said anything that strips employees of their right to contest unsafe working conditions will be fought.

Downey, whose union local represents about 7,000 public and private employees, said workers need to have some opportunity to appeal an unsafe practice.

"It's a No. 1 right that an employee would expect to be able to come to a safe working environment," Downey said. "And have some type of access to remedial procedure if they weren't in a safe environment."

On a national level, a liability shield for infection-related complaints is part of the GOP stimulus bill. That plan would protect companies from lawsuits filed by employees and customers who fall ill with the viral disease. But its chance of approval looked dim. The Democrats, who control the U.S. House, were opposed.

In case the liability-protection measure fails in Congress, employers in Rhode Island say they're pressing for a version at the state level.

So far, the effort to get Ocean State legislative leaders to introduce a proposal shielding employers hasn't worked. No one has introduced legislation proposing liability protection, according to spokesmen for House Speaker Nicholas A. Mattiello and Senate President Dominick J. Ruggiero.

Will Roth, president of Pawtucket-based staffing agency Add Temps, said it's not fair for businesses to be blamed for infections, or to pay for attorneys to defend themselves, if the source of the infection can't be accurately traced back to a workplace. The burden shouldn't be on the employer to defend themselves from such actions, he said, if they're doing everything they can to follow public health guidelines.

He said most workplaces are following protocols.

"You have a situation where someone turns up sick. It's almost impossible to determine if that person got sick at work, or if they came to work sick and were infected somewhere else," said Roth.

Businesses want the same civil liability protection now extended in Rhode Island to health care workers and facilities, under executive orders by Gov. Gina M. Raimondo. The orders apply to pandemic-related workers and their employers, including hospitals, nursing homes and long-term care facilities.

Raimondo recently extended the executive orders.

To try to get those protections expanded to any Rhode Island employer, the Rhode Island Business Coalition, an association of business groups, has submitted letters and sample language to state leaders.

The letter sent on June 15 to Mattiello states that employers need to be protected from "speculative lawsuits" through pointed and limited liability relief.

"These crucial protections should safeguard businesses, non-profit organizations, and educational institutions, as well as healthcare providers and facilities, from excessive and speculative lawsuits arising out of the pandemic," the coalition's letter says.

Its members include the [Rhode Island Manufacturers Association](#), the American Council of Engineering Companies of Rhode Island, Associated Builders and Contractors of Rhode Island, and the [Rhode Island Association of Realtors](#).

Roth, who is president of the Rhode Island Staffing Association, which also supports the effort, said without the liability protections, employers are on the financial hook for worker's compensation claims or even lawsuits that could target them.

No one is arguing the employee with COVID-19 shouldn't be paid, he said. Federal rules will require them to have their salary covered through sick days or other programs, he said.

But "they shouldn't be able to turn around and sue the employer, to put the burden of proof on the employer," he said.

Ideally, Chenevert said, the matter will be resolved at the federal level. If that fails, he'll try harder in Rhode Island.

"We are still pushing it," he said. "If I have to push harder, I'll push harder."

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