

Bill Smith: Wisconsin Businesses Need Liability Protection

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Across Wisconsin, businesses have shut down and workers gone without paychecks after the state's private sector was largely shuttered to address the COVID-19 crisis. Our economy has taken a severe blow, the worst since the Great Depression. Slowly, parts of Wisconsin's economy are reopening, but the road to recovery will not be easy.

For many Wisconsin businesses, a major concern as they reopen is the threat of frivolous lawsuits from potential COVID-19 outbreaks beyond their control, and which they may not be responsible. Businesses, large and small, are working hard to bring back family supporting jobs and serve their customers. During these unprecedented times, business owners should not be at risk of potentially bankrupting litigation.

A bipartisan majority of Americans support COVID-19 lawsuit protections for businesses, according to recent polling from the U.S. Chamber Institute for Legal Reform. According to a recent NFIB survey, nearly 70% of small business owners are concerned about increases in liability claims as they reopen. States across the country - both red and blue - have begun enacting important litigation reforms. Governor Evers and the Wisconsin Legislature must work together soon to enact the following four-point agenda to protect Wisconsin businesses.

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To assist business owners, some public health orders have established criteria and recommendations for businesses to follow as they reopen. That's helpful, but

following such criteria may still leave businesses vulnerable to lawsuits alleging a businessowner exposed a person to COVID-19. Wisconsin needs a “safe harbor” for businesses that comply with government recommendations, and practice appropriate protocols. These measures will help ensure Wisconsin business owners and their employees are comfortable reopening.

COVID-19 is widespread in Wisconsin. Thankfully, it appears that the vast majority of those who become infected are either asymptomatic or suffer minor symptoms. For many, COVID-19 is no worse than a severe cold or the flu, but unfortunately trial lawyers may still see lawsuits as fertile ground to make a profit from Wisconsin businesses. Wisconsin needs to preclude “no injury” suits. People often get sick with illnesses like the flu, but typically aren’t the basis for lawsuits. COVID-19 shouldn’t be any different.

We believe Wisconsin should create a civil liability exemption for any person providing aid or support to those suffering from the disease. This will help ensure those rendering aid do not have their humanitarian efforts come back to haunt them.

The Wisconsin Legislature’s first COVID-19 bill, Wisconsin Act 185, contained a good first step at enacting protections for manufacturers and distributors of medical supplies and equipment. However, it falls short because it is limited to businesses which sell products at cost. As a result, there’s no protection for businesses who manufacture such equipment as part of their regular business model. Furthermore, this language provides no financial incentive for manufacturers to repurpose their facilities to make medical equipment. Wisconsin needs to do more to protect those make vital equipment the state needs to fight COVID-19.

Businesses who take adequate precautions to keep their businesses safe and open should be shielded from predatory lawsuits alleging liability for an invisible virus spreading throughout our communities. If Wisconsin lawmakers take quick action, the road to recovery still won’t be easy, but it will be better. Unless Wisconsin takes action, it will be “open season” on employers and a wave of COVID-19 related lawsuits will seriously undermine efforts to restart and rebuild our state’s economy.

-Bill G. Smith is the state director of the Wisconsin National Federation of Independent Business (NFIB) -and is president of the Wisconsin Civil Justice Council, whose mission is to promote fairness and equity in Wisconsin’s civil justice system, with the ultimate goal of making Wisconsin a better place to work and live. WCJC

achieves this objective through policy development, legislative lobbying, and our appellate programs.