

D.C. General Liability COVID-19 Quick Guide



- 1. Statute of Limitations:** Three years for negligence actions.
- 2. Negligence:** For a person to be found negligent for transmission of an infectious disease, actual or constructive knowledge of the underlying condition is crucial. A person who knows they are infected has a duty to take reasonable precautions-whether by warning others or by avoiding contact-to avoid transmitting the disease.
- 3. Standard of Care:** Plaintiff has the burden to establish breach of the standard of care. The standard of care to be applied in COVID-19 claims will play a major role in their outcome. CDC guidelines will likely be adopted as a basic level of care individuals and businesses are required to follow.
- 4. Causation:** With COVID-19 having a five to 14-day latency period, it will be extremely difficult for a claimant to say exactly where and when they were exposed. Expert testimony will likely be required to establish the particular point in time when exposure occurred.
- 5. Premises Liability:** When an owner or operator of a premises knows or should know of a dangerous condition, it owes a duty of reasonable care to invitees to warn of or correct the condition when there is time to do so. That duty does not generally apply to open and obvious conditions. Businesses should at least meet or exceed all sanitation and cleaning guidance issued by governmental authorities, the CDC, and industry standards. Displaying signage to warn invitees of the potential for exposure to COVID-19 and of CDC social distancing guidelines should be considered.
- 6. Violation of Statute/Executive Orders as Evidence of Negligence:** Violation of a statute or regulation may constitute negligence *per se* if the statute is meant to promote safety, the plaintiff is a member of the class to be protected by the statute, and the defendant is a person upon whom the statute imposes specific duties. Pursuant to statute, the Mayor of D.C. may issue executive orders she considers necessary to protect public peace, health, safety, or welfare during a State of Emergency. It is anticipated that courts will apply those orders like any other statute.
- 7. Contributory Negligence:** D.C. is a pure “contributory negligence” jurisdiction.. Violations of CDC guidelines for personal safety precautions may be used as an affirmative defense to COVID-19 claims.
- 8. Assumption of the Risk:** In D.C., the theory of “assumption of the risk” bars recovery where a plaintiff voluntarily encounters a known risk. Assumption of the Risk defense may be raised if the plaintiff failed to follow CDC guidelines.
- 9. Statutory Cap on Non-Economic Damages:** There is no statutory cap on non-economic damages in D.C.
- 10. Death Cases:** D.C. recognizes separate survival (by a legal representative of the decedent) and wrongful death (by the Personal Representative) actions.
- 11. Punitive Damages:** Plaintiff must show, by “clear and convincing evidence”, “actual malice” (i.e., a subjective intent to harm). Such damages are rarely awarded in D.C. negligence actions.

FAQS:

1. Can a plaintiff recover for fear of exposure to COVID-19? Possibly. A plaintiff may recover emotional distress damages for fear of contracting a disease by pursuing a case of negligent infliction of emotional distress. To prevail on a claim of negligent infliction of emotional distress, a plaintiff must prove: (1) he or she was in the zone of physical danger created by the defendant's conduct and (2) the plaintiff was caused by the defendant's conduct to fear for his or her own well-being. The emotional distress must be serious and verifiable.

2. Will Commercial General Liability Insurance apply to COVID-19 claims? Possibly. Insureds and insurance companies will both need to carefully review the terms of their policies. The legal determination of whether insurance coverage is available involves principals of contract and statutory interpretation. Self-insured entities and excess carriers will also want to carefully review the terms of any excess or umbrella policies.

3. Is there immunity from COVID-19 claims? Governmental intervention may provide immunity from COVID-19 claims to individuals and business entities. The Secretary of the Department of Health and Human Services issued a declaration providing liability immunity to some against certain claims relating to the manufacture, distribution, administration, or use of medical countermeasures, except for claims involving "willful misconduct." Some governors have issued executive orders purporting to provide liability protection for health care providers and other essential entities. The extent and efficacy of any grant of immunity from civil claims will certainly be litigated in the future. As of May 4, 2020, there is no immunity from civil claims under D.C. law.

Best Practices for Avoiding/Reducing Future Liability for COVID-19 Claims

- Follow or exceed industry and CDC standards for hygiene, sanitization, and safety.
- Follow or exceed local, state, and federal prevention guidelines and recommendations.
- Follow or exceed OSHA's recommended procedures for workplace safety.
- Adopt, implement, and enforce practices that limit person-to-person interaction and promote social distancing (i.e., mobile order, curbside pickup).
- Develop and execute procedures for monitoring the health and well-being of employees.
- Educate employees about prevention and safe practices.
- Display signs/warnings encouraging customers to follow CDC guidelines.
- Prohibit persons who do not comply with CDC guidelines from entering premises.
- Develop policies for communication with local and/or state health department representatives to ensure your business stays current on all guidelines, recommendations, and regulations.
- Develop and implement an incident investigation procedure for all potential COVID-19 related claims (i.e., workers' compensation, liability).
- Retain documents reflecting all precautions, policies, procedures, and the daily implementation of the same.

Helpful Links:

[CDC Workplace Guidance](#)

[Centers for Disease Control and Prevention – COVID-19](#)

[D.C. Coronavirus website](#)

[D.C. Department of Employment Services – workers' compensation](#)

[D.C. Health](#)

[D.C. Stay-at-home Order and FAQ](#)

[EEOC's COVID-19 Page](#)

[Executive Office of the Mayor](#)

[OSHA's COVID-19 Page](#)

[OSHA's Guidance on Preparing Workplaces for COVID-19](#)

[Resources for D.C. Businesses](#)

[World Health Organization COVID-19 Updates](#)