



STATE OF COLORADO GENERAL LIABILITY COVID-19 QUICK GUIDE

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1. **Statute of Limitations:** Two years for negligence actions. COL. REV. STAT. § 13-80-102.
2. **Negligence:** A person who knows they are infected with a contagious or infectious disease must exercise reasonable care to prevent the spread of the disease to others and may be liable if a failure to act reasonably proximately results in harm to another.
3. **Standard of Care:** CDC and local government guidelines will likely be adopted as the basic level of care that individuals and businesses are required to follow and will play a significant role in the outcome of claims relating to COVID-19.
4. **Causation:** Because COVID-19 has up to a 14-day latency period, it will be difficult for a claimant to identify precisely when and where they were exposed to the virus. However, contact tracing technology and circumstantial evidence could be sufficient in many cases. Still, expert testimony may be required to establish the precise point in time when exposure occurred.
5. **Premises Liability:** When the owner or operator of a premises knows or should know of a dangerous condition, it owes a duty of reasonable care to invitees to protect them against that danger. Although this duty does not typically apply to open and obvious conditions, there is still risk of exposure. Businesses should at minimum meet or exceed all industry standards for sanitation and cleaning as well as guidance issued by governmental authorities, the CDC, and industry standards. Failure to adhere to the recommended procedures could give rise to increased liability. Businesses should also consider displaying signage warning invitees of the potential for exposure to COVID-19 and informing them of social distancing and mask-wearing guidelines.
6. **Violation of Statute/Executive Orders as Evidence of Negligence:** In Colorado, the violation of a statute adopted for the public's safety is negligence *per se* and establishes violator's civil liability for damages if the injured party was member of class that statute was intended to protect. Even if a court finds that a specific statutory violation was not negligence *per se*, the violation of a statute may still be used as evidence or *prima facie* evidence of negligence. Pursuant to statute, the Governor may issue Executive Orders he considers necessary to protect life. It is anticipated that Courts will apply those Orders like any other statute.
7. **Comparative Negligence:** Colorado is a "comparative negligence" state. A court or jury will calculate the degree of negligence of each party (expressed as a percentage) and reduce the claimant's recoverable damages accordingly. If the claimant's negligence is equal to or greater than 50%, they are not entitled to any recovery. Whether the Plaintiff took all of recommended precautions at the time of alleged contraction (i.e. mask wearing, maintaining distance, etc.), will be a key factor in this analysis.
8. **Assumption of the Risk:** Assumption of a risk by a person is considered for the purposes of comparative negligence. A person assumes the risk of injury or damage by voluntarily or unreasonably exposing themselves to injury or damage with knowledge or appreciation of the

danger and risk involved. An Assumption of the risk defense may be raised if the plaintiff failed to follow CDC or state and local guidelines.

- 9. Statutory Cap on Non-Economic Damages:** The cap on claims is \$250,000. As of January 1, 2020, the cap will be adjusted for inflation on January 1 every two years.
- 10. Death Cases:** Colorado recognizes separate survival (by the estate) and wrongful death (by eligible beneficiaries) actions. The non-economic aspects of both causes of action are subject to the statutory cap on damages.
- 11. Punitive Damages:** Plaintiff must prove “beyond a reasonable doubt” that the injury was “attended by fraud, malice, or willful and wanton conduct” in order to recover exemplary or “punitive” damages.. Accordingly, such damages difficult for a claimant to prove and are rarely sought in Colorado negligence actions.

FAQs

Can a plaintiff recover for fear of exposure to COVID-19? Possibly. In Colorado, damages for prospective and anticipated consequences are only recoverable when there is a “reasonable certainty” that a future injury (the disease) will arise. Traditional negligence principles which focus on proximate cause as well as the reasonableness of the plaintiff's fear are used to evaluate fear of disease claims. If there is alleged “outrageous conduct,” a claimant could bring a claim for the tort of intentional infliction of emotional distress. The elements of intentional infliction of emotional distress are: (1) the defendant engaged in extreme and outrageous conduct; (2) recklessly or with the intent of causing the plaintiff severe emotional distress; (3) causing the plaintiff to suffer severe emotional distress.

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 standard form Commercial General Liability (“CGL”) insurance policy used by most insurers covers an “occurrence” defined as “an accident, including continuous or repeated exposure to substantially the same general harmful conditions.” So, is contracting a virus an “occurrence” within the meaning of the standard CGL policy form? The answer may be “yes” if the claimant alleges the business accidentally caused him or her to contract a disease. The legal determination of whether insurance coverage for COVID-19 related claims is available will involve specific contract and statutory interpretation. Self-insured entities and excess carriers will also want to carefully review the terms of any excess or umbrella policies.

Is there immunity from COVID-19 claims? Governmental intervention in the form of a statute of executive order may provide immunity from COVID-19 claims to individuals and business entities. The extent and efficacy of any grant of immunity from civil claims will certainly be litigated in the future. As of July 21, 2020, there is no immunity from civil claims under Colorado law.

In general the Colorado government has exempted itself from immunity, and cannot be held accountable for its own negligence. Colorado has provided limited exemptions from governmental immunity and it is unclear whether any could apply in relation to a COVID-19 claim. Colorado has waived its governmental

immunity as to dangerous conditions in public buildings, including hospitals, jails, and parks. Moreover, even in situations where the government has exempted itself, short written notice requirements and caps on damages exist.

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](#)
- [EEOC's COVID-19 Page](#)
- [Colorado Workers' Compensation – Department of Labor and Employment](#)
- [Colorado COVID-19 Executive Orders](#)
- [Colorado COVID-19 Business Resources](#)
- [Colorado Department of Public Health and Environment](#)
- [OSHA's COVID-19 Page](#)
- [OSHA's Guidance on Preparing Workplaces for COVID-19](#)
- [World Health Organization COVID-19 Updates](#)

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