

## ARIZONA GENERAL LIABILITY COVID-19 QUICK GUIDE

September 3, 2020 | Publications



By: [Michael Ludwig](#)

In Arizona, there are eleven considerations of general liability that need to be reviewed as general liability due to COVID-19 infection. These include:

- 1. Statute of Limitations:** Two years for personal injury claims.
- 2. Negligence:** Arizona does not have specific negligent standards for the transmission of an infectious disease. Generally, a complainant must identify a legal duty the defendant owed the plaintiff, prove the defendant's breach of that duty, and show an injury to the plaintiff proximately caused by the defendant's breach.
- 3. Standard of Care:** The standard of care to be applied in COVID-19 claims will play a significant role in their outcome. Arizona Department of Health Services and CDC guidelines will likely establish the basic level of care individuals and businesses are required to follow.
- 4. Causation:** It will be difficult for a claimant to establish when and where they became exposed to COVID-19 because symptoms can begin as early as two days and as long as 14 days after initial exposure.
- 5. Premises Liability:** Businesses are not strictly liable for injuries that occur on their premises. Claimants must instead prove that any damages sustained arose from an unreasonably dangerous condition on the premises of which the business had notice. Whether a condition is "unreasonably dangerous" often hinges on the business's ability to demonstrate compliance with appropriate standards of care.
- 6. Violation of Statute/Executive Orders as Evidence of Negligence:** Violation of a statute may be evidence of negligence and, in some cases, negligence per se. Pursuant to statute, the Governor may issue Executive Orders during the State of Emergency that he considers necessary to preserve the peace and order. Arizona courts must give extreme deference to Executive Orders.
- 7. Contributory Negligence:** Arizona is a pure comparative fault and several liability jurisdiction. This means each defendant is liable only for that amount of the plaintiff's damages apportioned by a jury. Three exceptions apply to allow joint liability: where defendants act in concert, where a person acts as an agent or servant of another, and where liability arises out of a duty to the Federal Employers' Liability Act.
- 8. Assumption of the Risk:** In all cases, this defense is a question of fact for the jury. Even if the jury finds that a plaintiff assumed the risk, it still has discretion to find for the plaintiff or the defendant or assign percentages of fault to both.
- 9. Statutory Cap on Non-Economic Damages:** The Arizona Constitution prohibits passing a law that would limit the amount of damages in personal injury or wrongful death actions. Arizona case law has interpreted the Due Process Clause to prohibit grossly excessive or arbitrary awards.
- 10. Death Cases:** Action can be brought by and in the name of the surviving spouse, parents, or children. If none of them survive, the decedent's estate may bring a wrongful death action. Wrongful death damages are not limited to pecuniary damages, but also includes allowance for such things as loss of companionship, comfort, and guidance.
- 11. Punitive Damages:** Plaintiff must show, by "clear and convincing evidence", the defendant's conduct is "aggravated, outrageous, malicious or fraudulent" combined with an "evil mind." Punitive damages are limited to consciously malicious or outrageous acts of misconduct where punishment and deterrence is both paramount and likely to be achieved.

### FAQs

Q: Can a plaintiff recover for fear of exposure to COVID-19?

A: Possibly. The case law for negligent infliction of emotional distress requires: (1) the plaintiff witness an injury to a closely related person, (2) suffers mental anguish that manifests itself as a physical injury, and (3) be within the zone of danger so as to be subject to an unreasonable risk of bodily harm created by the defendant. It is questionable whether this analysis would apply to a fear of exposure to COVID-19.

Q: Will Commercial General Liability Insurance apply to COVID-19 claims?

A: Possibly. To determine if coverage exists, careful of each policy is necessary. A policy may contain provisions that limit or preclude coverage for COVID-19 damages. These provisions may include bacteria and virus exclusions, specific exclusions for claims arising from a pandemic, or a broadly worded pollution exclusion.

Q: Is there immunity from COVID-19 claims?

A: As of July 17, 2020, only healthcare professionals, volunteers, and organizations providing care services in support of the State's COVID-19 public health emergency are immune from COVID-19 claims. This immunity is in place until December 31, 2020. However, these individuals and organizations are not immune from civil liability for gross negligence or willful misconduct claims. Future governmental intervention may provide immunity from COVID-19 claims to individuals and business entities.

#### **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 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 daily implementation of the same.

#### **Helpful Links**

- Arizona Revised Statutes
  - o Contagious Diseases (§§ 36-621 — 36-631)  
? [Lexis Westlaw Find Law](#)
  - o Communicable Disease Information (§§ 36-661 — 36-670)  
? [Lexis Westlaw Find Law](#)
  - o Communicable Disease Information (§§ 36-661 — 36-670)  
? [Lexis Westlaw Find Law](#)
  - o 13-2308.03. Unlawful use of infectious biological substance or radiological agent  
? [Lexis Westlaw Find Law](#)
- [Arizona COVID-19 Workers' Compensation Claims](#)
- [Key COVID-19 Insurance Coverage Cases Tracker \(US\)\(Westlaw\)](#)
- [Insurance Coverage for COVID-19 Losses Chart \(Westlaw\)](#)
- [Official Updates Arizona COVID-19](#)
- [Arizona Executive Orders](#)
- [CDC Workplace Guidance](#)
- [Centers for Disease Control and Prevention – COVID-19](#)
- [EEOC's COVID-19 Page](#)
- [OSHA's COVID-19 Page](#)
- [OSHA's Guidance on Preparing Workplaces for COVID-19](#)
- [World Health Organization COVID-19 Updates](#)

**Michael Ludwig** currently serves on USLAW's Board of Directors and is a past Chair of USLAW's Construction Practice Group. He represents developers, owners, subcontractors, design professionals and product manufacturers in matters involving construction defect, personal injury and wrongful death, premises liability, and professional liability.

[USLAW NETWORK'S COVID-19 General Liability Quick Guide Compendium of Law](#) contains a brief overview of certain laws concerning various litigation and legal topics and is not intended to explore lengthy analysis of legal issues. This compendium is provided for general information and educational purposes only. It does not solicit, establish, or continue an attorney-client relationship with any attorney or law firm identified as an author, editor or contributor. The contents should not be construed as legal advice or opinion. While every effort has been made to be accurate, the contents should not be relied upon in any specific factual situation. These materials are not intended to provide legal advice or to cover all laws or regulations that may be applicable to a specific factual situation. If you have matters or questions to be resolved for which legal advice may be indicated, you are encouraged to contact a lawyer authorized to practice law in the state for which you are investigating and/or seeking legal advice.