



STATE OF ILLINOIS GENERAL LIABILITY COVID-19 QUICK GUIDE

Prepared by

Margaret C. Firnstein

SmithAmundsen LLC

150 N. Michigan Ave., Suite 3300

Chicago, IL 60601

312.894.3243

mfirnstein@salawus.com

www.salawus.com

1. **Statute of Limitations:** Two years for negligence actions.
2. **Negligence:** Illinois pattern jury instructions define “negligence” as the failure to do something which a reasonably careful person would do, or the doing of something which a reasonably careful person would not, under circumstances similar to those shown by the evidence.
3. **Standard of Care:** CDC guidelines will likely be adopted as basic level of care individuals and businesses are required to follow.
4. **Causation:** The public has been told that coronavirus has an incubation period of approximately 2 weeks. Accordingly, in order for a claimant to successfully argue that s/he contracted COVID-19 as a result of exposure at a premises/business, that claimant would have to credibly prove that s/he could not have been exposed elsewhere. Moreover, if the claimant practiced social distancing and wore a mask pursuant to CDC guidelines, the plaintiff will have an even more difficult time proving his/her case without injecting speculation and conjecture. It is expected that expert testimony will be required to establish exactly when and where any claimant contracted the virus.
5. **Premises Liability:** In Illinois, one who owns or is in charge of premises owes invitees and licensees thereon a duty to warn them of any danger of which he or she knows or should know and of which the invitees or licensees are not aware. *Geraghty v. Burr Oak Lanes*, 5 Ill.2d 153 (1955). The duty to warn of a particular hazard will be imposed only when the defendant has *unequal* knowledge, either actual or constructive, of the hazard and only if the defendant knows or should know that an injury may occur if no warning is given. *Hodges v. St. Clair County*, 263 Ill.App.3d 490 (5th Dist. 1994). The possessor of land need not anticipate every conceivable distraction that invitees or licensees may succumb to, and has a duty to warn against a hazard only where he or she should reasonably anticipate injury to patrons who are present on the premises and who are generally exercising reasonable care for their own safety. *Id.* There is no duty to warn against risks that are known or obvious. *Briones v. Mobil Oil Corp.*, 150 Ill.App.3d 41 (3d Dist. 1986).
6. **Violation of Statute/Executive Orders as Evidence of Negligence:** Violation of a statute, ordinance or regulation is not negligence per se, but only prima facie evidence of negligence. Such prima facie evidence may be rebutted by a showing that, under all the facts and circumstances of the case, the party who violated the statute acted reasonably.
7. **Contributory Negligence:** Illinois is a “pure form” comparative negligence state, meaning a plaintiff’s recovery for injury is reduced by the percentage of his own negligence which proximately caused the injury, regardless of the degree of that negligence. However, a plaintiff is barred from recovery if his contributory fault exceeds 50%. Importantly, jurors are instructed that plaintiff’s claims are barred if they find plaintiff over 50% at fault for his/her own damages.
8. **Assumption of the Risk:** There are two main categories of assumption of risk: express and implied. Under express assumption of risk, the plaintiff and defendant explicitly agree, in advance, that the defendant owes no legal duty to plaintiff and therefore, that plaintiff cannot recover for injuries caused either by risks inherent in the situation or by dangers created by the defendant's negligence.

Implied assumption of the risk is that which is unspoken but inferred from the plaintiff's conduct. It may also be subdivided into two categories: primary and secondary. Primary assumption of risk is where "the risk of harm is not created by the defendant but is inherent in the activity which the plaintiff has agreed to undertake." Secondary assumption of risk refers to the situation where the plaintiff is aware of and appreciates a danger that has been created by the defendant's negligence or other fault, but the plaintiff nevertheless voluntarily proceeds to encounter it.

9. **Statutory Cap on Non-Economic Damages:** There is no statutory cap on non-economic damages in Illinois.
10. **Death Cases: Illinois recognizes separate causes of action for survival and wrongful death.** The Survival Act of Illinois, 755 ILCS 5/27-6 was enacted to preserve causes of action that accrued and existed before the death of the plaintiff. The Survival Act created a way for the representative of the decedent to preserve the actions for medical expenses, lost earnings, and pain and suffering from the time of the occurrence to the time of death. The Wrongful Death Statute creates a claim that the victim's surviving spouse or the deceased's (referred to as decedent) next of kin may file in court. Such a case would seek emotional and monetary damages suffered as a result of the death of the loved one.
11. **Punitive Damages:** Illinois Pattern Jury Instruction 35.01 instructs jurors that there can be an award for punitive damages in addition to compensatory damages if the defendant's conduct was intentional, willful and wanton, or fraudulent. The wrongful or grossly negligent conduct must also have been the direct cause of some injury to the plaintiff. Plaintiffs must file a motion to include a prayer of relief for punitive damages, if the evidence so warrants, before any such instruction may be given to the jury.

FAQs

Can a plaintiff recover for fear of exposure to COVID-19? The Illinois Supreme Court has ruled that plaintiffs must prove actual exposure to an infectious disease if they hope to recover damages "in fear-of" lawsuits. Plaintiffs cannot be compensated for negligent infliction of emotional distress unless there is a substantial, medically verifiable possibility of contracting an infectious disease.

Will Commercial General Liability Insurance apply to COVID-19 claims? Possibly. The legal determination of whether insurance coverage is available depends on the language of the insurance policy and is dictated by principals of contract and statutory interpretation.

Is there immunity from COVID-19 claims? On April 1, 2020, Governor J.B. Pritzker issued an executive order granting immunity from civil liability to health care providers and facilities. This immunity extends to any injury or death that occurs while providing health care services in response to the COVID-19 outbreak unless the provider or facility acts in a grossly negligent manner.

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.
- Require waivers be signed by any visitors.
- Require that visitors sign documentation of current health status.

HELPFUL LINKS

- [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](#)
- [SmithAmundsen COVID-19 Resource Page](#)
- <https://www.chicago.gov/city/en/sites/covid-19/home/reopening-business-portal.html>

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