



STATE OF ARKANSAS GENERAL LIABILITY COVID-19 QUICK GUIDE

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1. **Statute of Limitations:** Three years for negligence actions.
2. **Negligence:** For a professional to be found negligent for spread of infectious disease, he/she has a duty to use ordinary care to protect others from injury or danger. *David v. Rodman*, 147 AR 385 (1921). To hold an individual negligent for transmitting an infectious disease, defendant must have actual or constructive knowledge of the presence of the disease.
3. **Standard of Care:** The general standard is ordinary care to maintain premises in a reasonably safe condition.
4. **Causation:** Because COVID-19 has a latency period of 2-14 days and because data suggests up to 40% of infections are asymptomatic, it will be difficult for a person to identify where and when he/she was exposed. Expert testimony will be necessary to establish a definite time and location of exposure.
5. **Premises Liability:** Owner of premises owes a duty to use ordinary care to maintain the premises in a reasonably safe condition. No such duty is owed for obvious conditions. Businesses should at least meet the guidelines established by the Arkansas Health Department and CDC, including signage, advising persons with symptoms in the last 14 days not to enter, social distancing, and wearing of masks inside (per executive order of Governor July 16, 2020).
6. **Violation of Statute/Executive Orders as Evidence of Negligence:** Violation of a statute, ordinance, or regulation is evidence of negligence, but is not negligence per se. The Arkansas Governor, pursuant to statute, has issued executive orders; also, pursuant to statute, the health department has issued directives to businesses regarding reopening and safety. Courts can be expected to apply the orders and directives, like statutes, as evidence of negligence. However, constitutional challenges to the executive orders and directives can be made.
7. **Contributory Negligence:** Arkansas applies modified comparative fault. If a plaintiff is found to be 49 percent or less at fault, he/she may receive damages, but if the plaintiff is at least 50 percent liable, he/she cannot be awarded damages.
8. **Assumption of the Risk:** Arkansas' comparative fault includes assumption of risk for which a separate jury instruction is provided. It requires proof a person voluntarily exposing himself/herself to a dangerous situation inconsistent with his/her safety, knowing of the danger and risk of injury.
9. **Statutory Cap on Non-Economic Damages:** No cap.
10. **Death Cases:** Action of wrongful death must be brought by the personal representative of the deceased person's estate, but both the estate and family may claim damages. Damages for the estate may include medical bills, pain and suffering the deceased endured, and the loss of the value of the deceased person's remaining life, including wages. Damages for the family may include loss of financial support, loss of household services and loss of care, comfort, and guidance.

11. Punitive Damages: Plaintiff has the burden of proving by clear and convincing evidence that defendant knew his conduct would result in injury or continued such action with malice or in reckless disregard or that defendant intentionally pursued conduct for the purpose of causing injury/damage.

FAQs

- 1. Can a plaintiff recover for fear of exposure to COVID-19?** Doubtful. There can be no recovery for fright or mental pain and anguish where there is no physical injury. The tort of outrage requires plaintiff to prove by “clear cut evidence” that defendant intended to inflict emotional distress or should have known and the defendant’s conduct was extreme and outrageous beyond all possible bounds of decency and utterly intolerable in a civilized society.
- 2. Will Commercial General Liability Insurance apply to COVID-19 claims?** Possibly, depending on the terms of the insurance contract. Under a standard policy, numerous exclusions might apply. For instance, a virus might be an “occurrence” but typically there is an exclusion for “expected or intended” injuries. If an insured business failed to post signs or properly sanitize, an injury might be “expected.”
- 3. Is there immunity from COVID-19 claims?** On June 15, 2020, the Arkansas Governor issued three executive orders under the Arkansas Emergency Services Act. Two orders, 20-33 and 20-35, target the risks of COVID-19 infections arising from opening businesses by clarifying worker’s compensation laws and establishing business immunity. The third, EO 20-34, ensures that medical providers have immunity from liability. For business owners, the immunity has exceptions for “willful, reckless, or intentional conduct.” Constitutional challenges to the executive orders can be expected.

BEST PRACTICES FOR AVOIDING/REDUCING FUTURE LIABILITY FOR COVID-19 CLAIMS

- Follow or exceed industry, Arkansas Health Department 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](#)
- [OSHA's COVID-19 Page](#)
- [OSHA's Guidance on Preparing Workplaces for COVID-19](#)
- [World Health Organization COVID-19 Updates](#)
- [Arkansas Health Department COVID-19](#)
- [GovStatus.eGov.com/AR-COVID-19](#)

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