

In The News

Texas Reopens Without Covid Liability Safe Harbor In Place

03.15.21

Bisnow

While Texas has led the country in lifting coronavirus restrictions, it lags other states in providing businesses with legal protections in the case of coronavirus spread in their facilities.

Texas Gov. Greg Abbott pushed state lawmakers in his State of the State Address in early February to "quickly get a bill to my desk that provides civil liability protections for individuals businesses and healthcare providers that operated safely during the pandemic."

The idea behind this so-called safe harbor legislation is to make sure businesses are not sued for alleged virus outbreaks or illnesses spread within their facilities.

But Texas has yet to pass any such legislation, and now Abbott has lifted mask requirements and allowed businesses to open to full capacity without those protections in place, opening them up to legal liability.

Now that the restrictions are lifted, getting liability protection coverage passed in Texas seems a difficult endeavor.

"Liability protection is now at odds with the political narrative behind removing the restrictions," Munsch Hardt attorney Michael Huddleston said in a statement. "If it is safe, then who needs liability protection, or so the argument goes."

Huddleston said insurance companies should be offering loss control assistance to restaurants, but insurers have some reservations about getting too involved.

"Many carriers are afraid to provide recommendations because it in effect admits that there is a loss of use of property resulting from the pandemic, which then affects Covid-19-related business interruption claims," Huddleston said.

Since the onset of the pandemic, insurance companies have been declining requests from closed businesses for their business interruption coverage to kick in on the grounds that these policies are not triggered without real property damage and/or are subject to pandemic-related exclusions in the insurance contracts.

At least one court has allowed a claim for business interruption coverage to make it past a motion for summary judgment, but overall, insurance coverage related to the pandemic has been a herculean task for end users and most business interruption insurance claims have been denied.

One of the greatest areas of risk yet to be resolved is employees working inside hospitality venues getting sick, particularly with trade and advocacy groups pushing back at the idea of exposing unvaccinated restaurant and hospitality workers to 100% capacity crowds with no mask mandates.

"The biggest danger or exposure is in the context of workers' compensation claims," Huddleston said. "This has already been playing out to some extent since reopening even partially started."

It isn't an easy case to make: To be covered by insurance, claimants must prove their illness was contracted at a certain location. But because employees spend so much of their time at work, it's easier to point to the business as at-fault if they get sick than it is for a customer who was likely in the facility for a relatively short period of time.

"This makes the difficult causal connection issues with the virus somewhat easier to make," Huddleston said. "Trying to show where the virus came from is still going to be tough."

With no liability exception in place, Huddleston said restaurants will be playing both offense and defense in making sure they prevent and fight off any coronavirus-related claims they are not covered for.

"Clearly, many disagree with the governor's assessment that it is safe to go forward, especially with unresolved issues regarding variants and the efficacy of the vaccine for these variants," he said. "I believe that restaurants and their counsel are clearly going to be developing their own safety measures. Trying to follow CDC recommendations and using basic masking and distancing would appear to be a reasonable standard."

Many businesses interviewed by Bisnow indicated they are keeping their own mask and capacity limitations in place to protect against the virus's spread. Others expressed frustration that the state government left the responsibility of policing on-site safety to businesses.

[Read the full article here.](#)

Primary Contacts



Michael Huddleston

Dallas
214.855.7572
mhuddleston@munsch.com

Related Industries

Insurance