



Coronavirus waivers and immunity bills are a big mistake

Opinion by Shanin Specter

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(CNN)As America reopens, business owners wonder how much physical protection to provide for themselves, their employees and their guests. Patrons wonder whether it'll be safe to go out to eat, to shop or walk into an office.



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With immunity bills for businesses under legislative consideration and President Donald Trump's campaign foisting waivers on people attending his upcoming rally, you might wonder whether you need medical and legal degrees to protect yourself.

The short answer to all of this is: just follow the rules.

The rules are easily accessed. The Centers for Disease Control and Prevention has guidelines. They revolve around basics like social distancing, wearing a face mask, cleaning of surfaces and hands and common sense.

State and local governments have issued health orders, with the force of law. Many pivot off CDC guidelines and vary depending on local virus prevalence. In some places, work must be done remotely if possible.

If you run a business, it's close to a sure thing that if you follow the rules you won't be successfully sued. Compliance with detailed government guidelines and laws is nearly always a successful defense. The law requires reasonable care, not perfection. If someone gets sick despite your reasonable care, liability is unlikely to follow.

What about waivers? They're a bad idea.

First, a signed form providing that a patron won't sue even if the business was negligent is unenforceable in most states, as it's considered against the public interest.

Second, the form itself sends the wrong message. It discourages reasonable care by owners and staff. It suggests that the business isn't operating safely. And it's a turnoff to an already jittery public.

How about immunities? They're bad too.

A law that says that a business is immune from lawsuits is a government blessing for bad behavior. Like a waiver, it encourages a lack of due care. And as with a waiver, it punishes someone victimized by another's fault by denying them their day in court.

What makes more sense is a positive statement. Businesses should consider communicating safety messages. The message should say something like: "We care about you, your family, our employees and the public. We strive to obey the law and CDC guidelines. If you think we're falling short, please, tell a manager."

That's a business sending the right signal: You should feel good about being here because we're careful.

And what responsibility do patrons have? Plenty.

If you see something wrong, you should speak up. You're at risk, and so is everyone with whom you'll come in contact. If you're part of the problem — such as by not socially distancing — the business is at fault, but so are you.

If you contract Covid-19 in a crowded bar or similar circumstance, you're what's called comparatively negligent for putting yourself in that situation. You knew better than you acted.

In the unlikely event a lawyer would take your case, a jury would be asked to compare your negligence to that of the bar. You'd likely be found mostly at fault and in the vast majority of states, you'd collect nothing because most venues bar recovery for plaintiffs whose fault exceeds that of the defendant.

How should a business regard their legal responsibility to others beyond their patrons and employees? With concern.

Yes, it's true that the patron not socially distanced will have a weak claim. And yes, the employee not socially distanced will be limited to recovery under the worker's compensation system.

But the business that permits unsafe practices is subject to successful suit from those who catch the virus from a patron or employee. While it may be hard to prove causation, the possibility of successful suit is real.

So even if a campaign rally goer has no claim, his mom might. That's a good reason for everyone to be careful.

American tort law has flaws, but usually one who acts unreasonably must pay for the harm they cause. That's a critical principle in a pandemic, where law must serve to deter yet more deaths and compensate victims of others' fault.