



# STATE OF NEW JERSEY GENERAL LIABILITY COVID-19 QUICK GUIDE

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1. **Limitations:** Two years for personal injury negligence actions. N.J. STAT. ANN. § 2A:14-2.
2. **Negligence:** To be found negligent for transmission of an infectious disease, a person must have actual or constructive knowledge that the underlying condition was present. Earle v. Kuklo, 26 N.J. Super. 471, 475 (App. Div. 1953).
3. **Standard of Care:** Although cases will be fact specific, the standard of care applied to defendants named in COVID-19 negligence claims will likely be a standard of reasonable care. CDC guidelines may be referenced to determine a basic level of care that individuals and businesses are required to follow.
4. **Causation:** COVID-19 has a latency period of 2-14 days. Identifying the exact contact that led to exposure can be very difficult. Expert testimony may be required to establish the particular point when infection occurred.
5. **Premises Liability:** A business owner owes a duty of reasonable care to its invitees on the premises by providing a reasonably safe place to do what was within the scope of the invitation. O'Shea v. K Mart Corp., 304 N.J. Super. 489, 492 (App. Div. 1997) (citing Hopkins v. Fox & Lazo Realtors, 132 N.J. 426, 433 (1993)).
6. **Violation of Statute/Executive Orders as Evidence of Negligence:** The violation of a statute is evidence of negligence. Horbale v. McNeil, 66 N.J. 99, 102 (1974). The New Jersey Governor has issued Executive Orders that address COVID-19. It is likely that violations of executive orders will also factor into assessments of liability. New Jersey Tpk. Auth. v. New Jersey Tpk. Supervisors Ass'n, 143 N.J. 185, 196-97 (1996).
7. **Contributory Negligence:** New Jersey applies a modified comparative negligence standard under which the degree of fault assigned to Plaintiff must not exceed 50% for damages to be awarded. N.J. STAT. ANN. § 2A:15-5.1.
8. **Assumption of the Risk:** In most instances, assumption of risk is not a viable defense in New Jersey. Doherty v. Trenton Tr. Co., 42 N.J. Super. 398, 403 (App. Div. 1956) ("The principle of assumption of risk contemplates that one with knowledge of a risk, or of facts sufficient to put a reasonably prudent person on notice of risk, must exercise the degree of care that the risk requires").
9. **Statutory Cap on Non-Economic Damages:** New Jersey has no statutory cap on non-economic damages.
10. **Death Cases:** New Jersey recognizes both survival and wrongful death actions.
11. **Punitive Damages:** Punitive damages are awarded as punishment or deterrence for particularly egregious conduct. Punitive damages are capped at five times the amount of compensatory damages or \$350,000, whichever is greater. N.J. STAT. ANN. § 2A:15-5.9.

## FAQs:

**Can a plaintiff recover for fear of exposure to COVID-19?** There is no precedent for COVID-19 claims in New Jersey, but New Jersey does recognize claims for both intentional and negligent infliction of emotional distress. To prevail on a claim for intentional infliction of emotional distress, the plaintiff must establish: (1) intentional and outrageous conduct by the defendant; (2) proximate cause; and (3) distress that is severe. Buckley v. Trenton Sav. Fund Soc'y, 111 N.J. 355, 365-66 (1988). The short latency period may impact the viability of such claims.

**Will Commercial General Liability Insurance apply to COVID-19 claims?** Possibly. Claims will be largely fact sensitive and dependent on the specific language of the insurance carried by the business. Contraction of COVID-19 will likely qualify as bodily injury in the scope of general liability insurance.

**Is there immunity from COVID-19 claims?** On April 13, 2020, New Jersey Governor Phil Murphy signed into law a bill granting immunity to healthcare providers and hospitals treating patients for COVID-19. The law retroactively provides criminal and civil immunity to physicians, nurses, emergency medical technicians, and others who are treating patients for COVID-19 in New Jersey. The law shields healthcare workers from personal injury and wrongful death lawsuits arising from their treatment of COVID-19 patients. S. 2333, 2020 Leg., 219th Sess. (N.J. 2020).

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

- Follow or exceed local, state, and federal CDC standards/recommendations for prevention, hygiene, sanitization, and safety.
- 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 ordering, 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 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](#)

- [New Jersey COVID-19 Information Hub](#)
- [State of New Jersey Department of Health](#)
- [New Jersey COVID-19 FAQ](#)
- [New Jersey Department of Health](#)
- [Immunity Statute](#)

**This Compendium outline contains a brief overview of certain laws concerning various litigation and legal topics. The compendium provides a simple synopsis of current law 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.**