

We Need to Protect Reopened Businesses from a Lawsuit Pandemic

By

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As we restart the economy, U.S. businesses that survive the novel coronavirus pandemic could now face a lawsuit pandemic. That is why Senate Majority Leader Mitch McConnell (R-Ky.) is insisting that any further covid-19 relief legislation include liability protections for U.S. businesses. House Speaker Nancy Pelosi (D-Calif.) calls that “disgraceful.” No, what is disgraceful would be to leave already battered U.S. businesses exposed to legions of overzealous trial lawyers who are champing at the bit to file frivolous lawsuits.

To understand this fight, put yourself in the shoes of a small- or medium-sized-business owner today. Until March, you were doing fine. Indeed, the biggest challenge you had was finding workers — because unemployment was so low that there were more than 1 million more job openings than unemployed Americans to fill them.

Then, suddenly, a once-in-a-generation pathogen arrived on our shores from China — and the government ordered you to cease operations to protect the public health. Overnight, most of your revenue dried up. You were forced to furlough or lay off most of your workers, and now you don’t know if you will be able to pay your rent. If you don’t open soon, your business may go under.

Now, after almost two months, you are being told you can reopen. You know opening up is a risk, because the virus has not yet been defeated, but you have no choice. So, you do everything you can to operate safely. You follow all the guidelines that the Centers for Disease Control and Prevention and your local health authority recommend — cleaning equipment regularly and requiring your workers and customers to wear masks and practice social distancing.

But despite your best efforts, one of your employees gets sick — and sues you for negligence. Or perhaps you seek to verify an employee’s covid-19 status or their vulnerability due to underlying health conditions, and they sue you for violating their health privacy. Or maybe you decide not to hire an at-risk worker, and they sue you for age or disability discrimination. Or perhaps shortages of masks and protective gear persist, and so you allow your workers to provide their own — and are sued for failing to supply or train your employees in the use of personal protective equipment.

And it’s not just reopened businesses like yours that need protection. Think of all the grocery stores, pharmacies and other firms that continued to operate through the worst of the pandemic. Are we as a country going to reward them for keeping us supplied during the lockdown by exposing them to frivolous litigation? How about companies that shifted operations to make items that are new to them, such as cleaning products and hand sanitizers? Should they be subject to lawsuits because they stepped up in a crisis to produce things our country desperately needed?

The trial lawyers' lobby cites a poll showing Americans oppose giving businesses "guaranteed immunity" against covid-19-related lawsuits. But no one is arguing for that kind of blanket protection. Republicans are asking for limited, temporary, targeted liability protections during the covid-19 national emergency and recovery period — and Americans support that by overwhelming margins.

According to a U.S. Chamber Institute for Legal Reform poll, 82 percent of Americans agree that when restaurants, stores and other businesses are allowed to open again they should be not be "sued by people who claim they contracted the coronavirus at that place of business unless the business was grossly negligent." And 84 percent support "protecting businesses like grocery stores and pharmacies, which have been allowed to stay open as essential businesses, from lawsuits related to the coronavirus."

In other words, Americans want liability protections for businesses who do their best to operate safely, but they want those protections written carefully so they do not shield bad actors. Why would Democrats oppose such reasonable measures? Because the Democratic Party is a wholly owned subsidiary of the trial lawyers' lobby, who send Democrats 95 percent of their political donations.

To get our economy moving again, we are asking business owners to do something inherently risky: restart operations before we have a therapeutic, much less a vaccine that can immunize people from the virus. When the government first asked businesses to shut down, Congress helped them mitigate the economic risk by passing more than \$2.6 trillion in economic support. Now that we are asking them to reopen, it makes sense to help them mitigate the legal risk by offering them limited protection against frivolous lawsuits that will expire when the danger passes.

McConnell is right to stand his ground.