The Senate majority leader had said this week that there would be no deal with Democrats without legal protections for employers against pandemic claims.

By Jeff Stein and Erica Werner
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The White House is willing to cut a deal with Democrats that leaves out Senate Republican legislation aimed at protecting employers, hospitals and schools from coronavirus-related lawsuits, according to two people with knowledge of internal White House planning.

The White House wants and is pushing for the “liability shield” as a top priority but would be willing to sign off on a deal that lacks the legal protections, those people said. Senate Majority Leader Mitch McConnell (R-Ky.) controls the Senate floor and could shoot down any deal that leaves out what he has said is a necessary component of any stimulus package.

One of the people familiar with the administration’s thinking said the measure was “considered important but not absolutely essential.”

The deal making flexibility conflicts with the ultimatum McConnell has given Democrats that any congressional stimulus package must make it significantly harder for workers and customers to sue employers and businesses for damages related to the coronavirus.

McConnell has said that he will not bring up legislation for a vote in the Senate if it does not include the liability measure. “We’re not negotiating over liability protection,” McConnell told CNBC on Tuesday. “We’re not negotiating with Democrats over that.”

This “red line,” as McConnell calls it, has appeared to be a major obstacle in negotiations. Congressional Democrats have strongly objected to granting such legal protections, arguing that it would give businesses and employers wide latitude to endanger their workers without fear of repercussion.

But White House officials are less attached to the issue, seeing the shield as something the administration can live without in the stimulus package, according to the two people, who spoke on the condition of anonymity to discuss private strategy.

On Wednesday, President Trump told reporters that the White House wants to move quickly to approve a partial extension of unemployment benefits and an extension of a federal eviction moratorium, which expired on Friday. Trump did not mention the liability shield.

Treasury Secretary Steven Mnuchin also floated a partial stimulus package that would include the eviction moratorium and a reduced extension in unemployment benefits. Congressional Democrats...
have rejected the piecemeal approach, and Mnuchin has said the two parties remain “far apart” on a broader package.

“We want to work on the evictions so that people don’t get evicted. We’ll work on the payments for the people,” Trump said on the White House lawn on Wednesday. “And the rest of it, we’re so far apart, we don’t care. We really don’t care. We want to take care of the people.”

White House Chief of Staff Mark Meadows told reporters on Thursday that the liability shield “remains a red line for the leader in my discussions with him earlier today.” Meadows added, “Certainly, Secretary Mnuchin and I see that as being part of a broader package,” but he said the White House supports a temporary extension in unemployment benefits without the liability protections.

Any deal between the White House and congressional Democrats that does not include the liability shield could pose a challenge for McConnell, who has for months made it his No. 1 priority. The White House has publicly said several times that it considers the liability shield a top priority, and Meadows has expressed openness to including it in a short-term deal.

“If we can do that along with liability protection, perhaps we put that forward, get that passed as we can negotiate on the rest of the bill in the weeks to come,” Meadows said Sunday on ABC News.

Mnuchin also said earlier this month, “The president’s committed to do what we need to do in the next bill to protect kids, protect jobs, protect liability.”

A White House spokesperson reaffirmed that the liability shield remains a top priority and declined to comment on the state of negotiations.

Tensions between the White House and congressional Republicans have emerged throughout stimulus negotiations. Top Senate Republicans, for instance, rejected Trump’s repeated calls for a payroll tax cut. Congressional Republicans have also expressed concern that the administration is giving away too much to House Speaker Nancy Pelosi (D-Calif.) in negotiations. For example, congressional Republicans have complained about Mnuchin originally agreeing in March to the $600-per-week increase in federal unemployment benefits.

The liability shield, co-written by McConnell and Sen. John Cornyn (R-Tex.), would only allow workers and consumers to sue employers for damages if they can prove a business was “grossly negligent” in actions that led to them contracting the virus.

On top of that requirement, the legislation provides immunity from legal claims if the employer makes “reasonable efforts” to comply with government guidelines, such as the recommendations by the Centers for Disease Control and Prevention on safely reopening and those set by states. Some worker advocacy groups have criticized these rules as too lax, saying they could be met without enforcing safety guidelines.

The proposal would also deter lawsuits over coronavirus-related claims by funneling such cases through the federal court system. It would create new documentation and verification requirements for plaintiffs — including a list of people they met with in the 14-day period before the onset of virus symptoms — while giving employers the right to countersue over “meritless” allegations. It would also allow the Justice Department to sue attorneys with a “pattern” of coronavirus lawsuits.

McConnell has stressed that the shield would apply not just to private businesses, but also to schools, universities, hospitals, nonprofit organizations and similar establishments. The American Council on
Education, a higher-education lobbying group, has written to lawmakers in support of McConnell’s legislation, as have other education groups.

Congressional Republicans and business organizations have characterized the liability shield as a necessary step for reopening the economy. The measure also has been strongly backed by Larry Kudlow, the president’s senior economic adviser. Republican lawmakers say Democrats only oppose the idea out of loyalty to trial lawyers who benefit from filing lawsuits.

“Nobody should have to face an epidemic of lawsuits on the heels of the pandemic that we already have related to the coronavirus,” McConnell said earlier in July. Workers’ groups and Democrats have said the liability shield will have devastating consequences for employees who are already facing unsafe conditions in workplaces across the country. They note that Trump’s Labor Department has cited just a handful of employers for workplace safety violations during the pandemic, despite thousands of complaints.

Hugh Baran, staff attorney at the National Employment Law Project, said the standard for employer wrongdoing set forward in the GOP proposal is so high “a worker could never expect to meet it.”

But conditions for workers around the country remain unsafe. Close to 900 health-care workers have died of the coronavirus by treating patients in nursing homes, hospitals and similar settings. Tens of thousands of meatpacking workers have contracted the coronavirus and 86 of them had died as of late May. The McConnell-Cornyn package would prevent families of workers from filing lawsuits seeking financial compensation for loved ones lost to covid-19, the disease caused by the novel coronavirus.

“Essentially you get complete, blanket immunity as a matter of law even if you do nothing at all to protect your workers,” Baran said. “It puts us all at risk of infection.”