

Senators, Business and Labor Feel Their Way on Virus Liability

By Ben Brody | May 12, 2020 7:13PM ET

Congressional Republicans have made liability protection for employers a nonnegotiable demand in any new coronavirus stimulus, but Senator [Lindsey Graham](#), an ally of President Donald Trump, says that regulators have a role to play in the workplace.

The government must “tell the employers what they need to do to protect the workers and hold them accountable if they don’t,” Graham, the chairman of the Judiciary Committee, said at a hearing of his panel on Tuesday afternoon.



Photographer: Caroline Brehman/CQ Roll Call/Bloomberg

Lindsey Graham on May 12.

Witnesses told the senators that federal guidelines that have been blocked by the Trump administration will be crucial to getting employees back to work and preventing their bosses from being sued.

With the nation emerging from a long lockdown that has paralyzed the economy, the U.S. Chamber of Commerce and other business groups as well as prominent conservatives have advocated curbs on lawsuits from customers and workers who contract the coronavirus. Senate Majority Leader [Mitch McConnell](#) has taken up the cause and vowed that no new stimulus legislation pass Congress without liability restrictions.

Trump has warned of “litigation heaven” that could impede his campaign to revive business activity.

[Earlier: House Democrats Unveil \\$3 Trillion Aid Bill With Cash for States](#)

Many Democratic lawmakers reject any such proposal, but House Speaker [Nancy Pelosi](#) told MSNBC that while she supports expanded workplace regulation, there was a “common goal” and “we’ll have that discussion.”



Photographer: Saul Loeb/AFP/Bloomberg

Nancy Pelosi on May 12.

House Democrats on Tuesday proposed a new, \$3 trillion virus relief bill.

Witnesses at the Tuesday Senate hearing, representing both labor and businesses, agreed that enforceable rules could give workers recourse while providing employers a defense in cases and certainty in reopening, although business witnesses and many of the Republicans on the panel, including Graham, argued for reforms to the liability system.

The rules would likely come through the Occupational Safety and Health Administration, but the administration has already blocked the Centers for Disease Control and Prevention from issuing specific reopening guidance to daycare centers, restaurants, theaters and other businesses out of concern the recommendations were too prescriptive.

“If in fact the federal government remains off the playing field in setting these kinds of standards, then inevitably the courts are going to do it,” David Vladeck, a law professor at Georgetown University and former Federal Trade Commission official, said in his testimony.

[Read More: U.S. Chamber Lobbies Against Rules, Liability as States Reopen](#)

The lack of CDC guidance, which would not be binding, has left businesses in regions of the country that are already reopening looking for pointers on safety in guidelines by a patchwork of state, local and industry groups.

“It seems to me that one primary goal out of this hearing is to get the standards in place for business,” said Graham, a South Carolina Republican. “The big hole in the puzzle right now is the standards.”

Some trade groups and executives say that litigation could bankrupt companies and may force businesses to remain closed.

“It would just be so tragic if the small business owners that survived all of this, they finally make it to the other side only to get sued,” Karen Harned, executive director of the Small Business Legal Center at the National Federation of Independent Business trade group, said before the hearing.

Her group and others want to protect businesses against lawsuits by those who say they contracted the virus on premises, and advocate a temporary shield for those companies that have worked to protect employees and customers.

“I’m asking for this committee for a very limited-time liability protection for businesses,” Kevin Smartt, chief executive officer of [Kwik Chek Food Stores Inc.](#), a Texas-based chain of convenience stores. “I’m not looking for bad actors or people that were grossly negligent.”

The Chamber and other groups have long assailed plaintiffs’ lawyers and liability laws as a threat to American commerce, and some Democrats and labor groups charge that the current proposals are simply another ploy to strip workers of protections -- at a time when they and the public already face grave danger.

“Before this pandemic, businesses had to act responsibly and follow federal safety guidelines,” Senator [Dianne Feinstein](#) of California, the top Democrat on the committee, said at the hearing. “It’s hard to see why they shouldn’t have to do the same in the face of a deadly virus.”

Some scholars of tort law have also said that the bar to suing is already high because of the difficulty in establishing where a victim contracted the virus, which can lie silent for days.

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