

Idaho's Coronavirus Limited Immunity Act

Practitioner Comment¹

by Paul Stark

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During the debate on the bill that would become the Coronavirus Limited Immunity Act, the proponents of the bill argued the need for broad liability protection from tort liability related to the transmission of coronavirus. Much of the testimony in favor of immunity from civil liability predicted a massive number of lawsuits heading to the courts and the dire need for protection. What we have learned, however, is that the need for such immunity never came to fruition. In fact, most experts report a surprising lack of lawsuits related to coronavirus nationwide.

According to the American Bar Association, the number of tort claims filed in relation to coronavirus in 2020 were far less than was predicted. "Despite predictions made in the early months of the coronavirus pandemic, lawsuits alleging that COVID-19 caused physical or economic harm were limited in 2020."² According to Lex Machina's annual report, "Out of the 173 torts cases caused by COVID-19 filed through 2020 Q3, most are negligence cases against cruise lines."³ It is important to note here that the Lex Machina report was through the third quarter of 2020, or September. This means that even before legislation such as the Coronavirus Limited Immunity Act, the nation was not seeing the tort lawsuits as predicted. According to Law.com, "Lawsuits alleging that COVID-19 caused harm, both economically and physically, did not reach the stratospheric proportions once predicted at the start of the pandemic."⁴ Even the Idaho Freedom Foundation's prediction about increased lawsuits if the bill was passed was dead wrong. "Legislation will be introduced during the upcoming special session that supporters say will protect businesses from Covid-19 lawsuits. Supporters are wrong: If anything, the legislation will invite lawsuits, especially those aimed at small businesses."⁵

In short, the fear of coronavirus-related lawsuits emphatically argued during the extraordinary session of August 2020 was just that: fear. Now after many months of data and Idaho showing some of the highest numbers of coronavirus cases since the beginning of the pandemic, we are still not seeing the lawsuits that were predicted in August.

What we have seen, however, is that once the Coronavirus Limited Immunity Act was enacted, several school districts throughout Idaho immediately reduced efforts to protect students and staff by the downgrading safety protocols and procedures. Upon passage of this immunity legislation, several school districts changed their reopening plans with reduced

¹ The text of this comment is taken from a letter written by Paul Stark to the Idaho House Judiciary, Rules & Administration Committee on Jan. 27, 2021, as written testimony regarding the Coronavirus Limited Immunity Act, which the Idaho Legislature passed during its August 2020 extraordinary session.

² Amanda Robert, What Types of Lawsuits Were Filed over COVID-19 in 2020?, ABA JOURNAL (Jan. 4, 2021, 1:15 PM), <https://www.abajournal.com/news/article/law-firms-schools-identify-lawsuits-filed-over-covid-19-in-2020>; see also Lex Machina, Lex Machina Releases 2020 Torts Litigation Report, CISION PR NEWSWIRE (Nov. 19, 2020, 11:00 AM), https://www.prnewswire.com/news-releases/lex-machina-releases-2020-torts-litigation-report-301177161.html?c=eml_cleartime.

³ Lex Machina, *supra* note 2.

⁴ See Amanda Bronstad, Lawsuits Filed in 2020 over COVID-19 Were Diverse, but Limited, LAW.COM (Dec. 29, 2020, 3:49 PM), <https://www.law.com/2020/12/29/lawsuits-filed-in-2020-over-covid-19-were-diverse-but-limited/>.

⁵ Wayne Hoffman, COVID-19 Immunity Legislation Will Produce Lots of Lawsuits, Idaho Freedom Foundation (Aug. 21, 2020), <https://idahofreedom.org/covid-19-immunity-legislation-will-produce-lots-of-lawsuits/>.

safety procedures. The Idaho State Department of Education worked with all interested parties to develop the Idaho Back to School Framework as a tool for reopening and safety measures. After the passage of the Coronavirus Limited Immunity Act, however, we witnessed many school districts throughout the state disregard the Back to School Framework.

Most Idaho school teachers signed a contract in late spring and early summer for teaching in the 2020-2021 school year. These teachers, when signing their individual contracts, relied upon the promises made by school districts to have fidelity with the adopted reopening plans in place at the time of the signing those contracts. Indeed, those reopening plans like all local board policies are incorporated and made part of the individual teacher contracts. Many educators then witnessed those reopening plans (upon which they relied) be quickly disregarded once the Coronavirus Limited Immunity Act was passed. Safety measures in some locations took a backseat, once legal accountability was reduced through this grant of immunity. Under this law, only in the most extreme of situations would a school district ever be liable, which consequently gave license to put individual students and staff at risk. We have heard reports of numerous educators contracting the virus because of the reduced safety measures, as well as deaths.

It should be noted that this is not true in every school district. Indeed, a great number of school districts have done the right thing by their students and staff. We applaud those school districts where responsible actions have continued despite the granting of broad immunity. It is unfortunate, however, to see some educators risking the health of themselves and their families as a result of this legislation.

On behalf of the thousands of educators represented by the Idaho Education Association, we ask that the Coronavirus Limited Immunity Act be allowed to expire on July 1, 2021. The basis for the immunity in the first place has not materialized. The negative effects of reduced accountability has, in fact, materialized in some locations. With the increased availability of several vaccine options becoming more and more available every day, there is simply no reason to continue with this harmful legislation.