



NORTH CAROLINA
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Open for Business During the Times of COVID-19: Is Your Company Prepared?



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EXPECT EXCELLENCE®

This Program Will Discuss:

- Key employment law issues
- Key OSHA requirements
- COVID-19 Liability Protections

Key Employment Law Considerations

J. Travis Hockaday

Top Return to Work Questions under ADA/EEO Laws *(and answers...)*

- As we re-open:
 - Can we require employees to complete health-related questionnaires or answer health-related questions?
 - Can/should we take employee temperatures?
 - Can/should we test employees for COVID-19?
 - Can we require employees to wear face coverings? Prohibit employees from wearing face coverings?
 - Are we required to pay for face coverings if we require employees to wear them?

Top Return to Work Questions under ADA/EEO laws *(and answers...)*

- Can we require an employee who is over 65, who is pregnant, or who has underlying health conditions to take leave or work from home?
- Do we have to allow an employee to work from home if she asks to do so because she or a family member has an underlying health condition that makes her or the family member more vulnerable to COVID-19?
- Do we have to allow an employee to work from home if he asks to do so because he is concerned about contracting COVID-19 at work?
- See <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

Refresher on Ongoing Leave Entitlements *under the Families First Coronavirus Response Act*

- Two new forms of protected leave effective until 12/31/20:
 - Emergency Paid Sick Leave
 - Emergency FMLA Leave
- Normal FMLA rules still apply
- See [dol.gov/agencies/whd/pandemic](https://www.dol.gov/agencies/whd/pandemic)

Planning for Cost-Cutting Measures

reductions in force, temporary layoffs, furloughs, reductions in pay/hours

- Check for obligations under employment agreements, offer letters, severance plans/policies, etc.
- Consider wage and hour issues in connection with furloughs of exempt vs. non-exempt employees
- Provide proper advance notice as required by state law
- Consider benefit plan implications
- Consider federal WARN Act and state-specific “mini-WARN” laws
- Provide notice of unemployment insurance eligibility
- Comply with requirements for group layoff severance agreements
- Check for adverse impact

Reopening Safely Under OSHA

Stephen T. Parascandola

Introduction to OSHA and its Role in Reopening America

- Primary Law Governing Worker Safety
- Standards and Rules
- Guidance (including CDC Guidance)
- “General Duty Clause”

Elevator Pitch: “How Do I Not Run Afoul of OSHA Today?”

- Federal, State and Local Reopening Criteria
- OSHA Rules and Guidance
- Applicable Best Practices

Specific OSHA Standards and Rules Relating to COVID-19 and the Workplace

- Covid-19 is a Somewhat Novel OSHA Issue
- Look to Existing OSHA Standards and Rules for Framework
- Hazard Assessments, PPE, and Preparedness and Response Plans are Good Examples

Best Practices

- Local Governments
- Industry Guidance
- Role of Best Practices and the General Duty Clause

Multi-Employer Workplaces

- Multi-Employer Liability Under OSHA
- Multi-Workplace Buildings
- Contractors, Vendors, and Shared Spaces

Dealing with Employee Complaints

- Types of Complaints
- Responding to Complaints
- Responding to Inspections Arising from Complaints

Coronavirus Reporting and Recordkeeping Requirements under OSHA

- Reporting Coronavirus Incidents
- Coronavirus Recordkeeping Requirements

The Role of the CDC and COVID-19 Guidance

- General Guidance for Employers Responding to COVID-19
- Industry-Specific Guidance for COVID-19 Risks
- Guidance for Cleaning and Disinfecting Workplaces

COVID-19 Liability Protections

Christopher G. Smith

GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2019

SENATE BILL 704 RATIFIED BILL

AN ACT TO PROVIDE AID TO NORTH CAROLINIANS IN RESPONSE TO THE CORONAVIRUS DISEASE 2019 (COVID-19) CRISIS.

The General Assembly of North Carolina enacts:

PART I. ECONOMIC SUPPORT

WAIVE ACCRUAL OF INTEREST ON DEFFERED PAYMENT OF CORPORATE INCOME AND FRANCHISE TAX AND INDIVIDUAL INCOME TAX AND EXTENT CERTAIN TAX-RELATED DEADLINES

Senate Bill 704

SECTION 4.14.(a) Chapter 66 of the General Statutes is amended by adding a new Article to read:

Article 48.

Limited Business Immunity.

§ 66-460. Essential businesses; emergency response entities; liability limitation.

- a) Notwithstanding any other provision of law and subject to G.S. 66-461, the following entities shall have immunity from civil liability:
- 1) An essential business that provides goods or services in this State with respect to claims from any customer or employee for any injuries or death alleged to have been caused as a result of the customer or employee contracting COVID-19 while doing business with or while employed by the essential business.
 - 2) An emergency response entity with respect to claims from any customer, user, or consumer for any injuries or death alleged to have been caused as a result of the COVID-19 pandemic or while doing business with the emergency response entity.

Senate Bill 704

b) The immunity from civil liability provided in this section shall not apply if the injuries or death were caused by an act or omission of the essential business or emergency response entity constituting gross negligence, reckless misconduct, or intentional infliction of harm. This section does not preclude an employee of an essential business or emergency response entity from seeking an appropriate remedy under Chapter 97 of the General Statutes for any injuries or death alleged to have been caused as a result of the employee contracting COVID-19 while employed by the essential business or emergency response entity.

§ 66-461. Applicability.

This Article applies to acts or omissions occurring on or after the issuance of the COVID-19 essential business executive order and expires when the COVID-19 emergency declaration is rescinded or expires.

Senate Bill 704

§ 66-462. Definitions.

The following definitions apply in this Article:

- 1) COVID-19. - The coronavirus disease 2019.
- 2) **COVID-19 emergency declaration. - Executive Order No. 116 issued March 10, 2020**, by Governor Roy A. Cooper, including any amendments issued by executive order, subject to extensions under Chapter 166A of the General Statutes.
- 3) **COVID-19 essential business executive order. - Executive Order No. 121 issued March 27, 2020**, by Governor Roy A. Cooper, including any amendments issued by executive order, subject to extensions under Chapter 166A of the General Statutes.

Senate Bill 704

§ 66-462. Definitions.

The following definitions apply in this Article:

- 4) Emergency response entity. - Businesses, not-for-profit organizations, educational institutions, and governmental entities that manufacture, produce, or distribute personal protective equipment, testing equipment, or ventilators, or process COVID-19 testing results.
- 5) Essential business. - Businesses, not-for-profit organizations, educational institutions, and governmental entities identified in the COVID-19 essential business executive order. The term also applies to any business that the Department of Revenue determines is essential.

Senate Bill 704

§ 66-463. Severability.

This Article shall be liberally construed to effectuate the public purpose of ensuring that essential businesses can provide goods and services to the public during the COVID-19 pandemic. The provisions of this Article are severable. If any part of this Article is declared to be invalid by a court, the invalidity does not affect other parts of this Article that can be given effect without the invalid provision.

SECTION 4.14.(b) This section is effective when it becomes law and applies to claims filed on or after March 27, 2020.

Questions?

About Our Firm

About Smith Anderson

- Founded in 1912, Smith Anderson is the largest business and litigation law firm headquartered in the world-renowned Research Triangle region and one of the largest in North Carolina
- 135+ lawyers located in a single office in downtown Raleigh
- We serve a diverse group of regional, national and international companies ranging in size from large public companies to emerging growth businesses
- Our experience crosses national and international markets, positioning us to handle matters for our clients wherever their business has operations or transactions
- For more information, please visit www.smithlaw.com



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Travis Hockaday has practiced with Smith Anderson since September 2003 and leads the firm's Employment, Labor and Human Resources practice group. His practice focuses on providing employment-related counseling and risk management advice to clients in a variety of industries, both public and private, and identifying and managing employment-related issues in mergers, acquisitions and reorganizations. He also represents clients in state and federal courts and agencies throughout North Carolina and other jurisdictions.



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Steve Parascandola is recognized as one of North Carolina's leading environmental, health and safety lawyers by *Chambers USA: America's Leading Business Lawyers*, *The Best Lawyers in America*®, *Marquis' Who's Who in American Law*, *Business North Carolina's Legal Elite*, and *North Carolina Super Lawyers*. He leads Smith Anderson's Governmental Affairs, Administrative and Regulatory Law team, including the Environmental and OSHA practice groups.



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Chris Smith is co-chair of the firm's Business Litigation team and is a trial and appellate lawyer who counsels clients on business strategy matters. He manages large multi-party and multi-jurisdiction litigation projects and mission-critical projects for our clients. He both prosecutes and defends claims, and advises clients on business risk management in a variety of areas. He serves on the firm's Management Committee.



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Kerry Shad's practice focuses on representing employers in all types of employment related litigation. She regularly defends employers against EEOC charges and lawsuits in federal and state courts involving alleged discrimination, harassment and retaliation. Kerry advises companies of all sizes, including global companies, on a wide variety of employment law issues across a range of industries, including pharmaceutical and CRO, technology, retail, hospitality and manufacturing. Kerry is Co-Chair of the firm's Diversity & Inclusion Committee and serves on the firm's Management Committee.