

Are You Immune? Your Business May Be: Executive Order Protects Businesses from Civil Liability Due to COVID-19 Exposure

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In a bit of much needed good news for Arkansas businesses during the current COVID-19 crisis, on June 15, 2020, Governor Asa Hutchinson signed Executive Order 20-33 (the "Order") which provides businesses immunity from civil liability as a result of exposure to COVID-19. The threat of litigation arising from alleged exposure to COVID-19 was noted as a major concern by representatives of the Economic Recovery Task Force, a group made up of thirty-five industry and state business leaders organized by the Governor to develop strategies for economic recovery from the effects of COVID-19. The Order comes on the heels of a May 28, 2020 recommendation by the task force to provide protection from COVID-19 related litigation for businesses and employers, either by legislation or executive order. [\[1\]](#)

The immunity provided by the Order is not absolute. Immunity does not apply to willful, reckless, or intentional misconduct; however, it is presumed that businesses and their employees are not acting willfully or recklessly if they are substantially complying, or are in good faith attempting to comply with public health and safety directives issued by the state. Further, the immunity provided by the Order does not extend to workers' compensation claims filed by employees as a result of COVID-19 exposure. In fact, Executive Order 20-35, also signed on June 15, 2020, expands workers' compensation coverage for employees who contract the virus within the scope of employment. [\[2\]](#) The Order is effective immediately and lasts until the state of emergency is terminated; however, Governor Hutchinson noted that the Order will be reviewed when the Arkansas General Assembly convenes in January 2021. [\[3\]](#)

At a minimum, the Order provides some clarity and protection for business owners and employers during this trying time. If you'd like to read the entire Order, a link to the PDF is below.

[Executive Order 20-33](#)

[\[1\]](#) Arkansas's Economic Recovery Task Force Interim Report (May 28, 2020), https://arkansasready.com/site/assets/files/1517/arkansas_economic_recovery_task_force_interim_report.pdf.

[\[2\]](#) See Ark. Exec. Order No. 20-35 (June 15, 2020), https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-35.pdf.

[3] See Ark. Exec. Order No. 20-03 (March 11, 2020), https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-03_.pdf (declaring a state emergency due to COVID-19).