

# Michelle Jacobs, Deborah Coldwell, Mini Kapoor and Sally Dahlstrom in *Franchising.com*: Practical Strategies to Limit Premises Liability Claims Involving COVID-19

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September 16, 2020 Michelle Jacobs, Deborah Coldwell, Mini Kapoor

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**PRACTICES** Franchise and Distribution, Franchise Litigation

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Franchise businesses that open their doors to customers, guests, and other visitors during the pandemic must be vigilant, not only to keep their premises safe to those who enter, but also to avoid lawsuits by individuals who claim they contracted Covid-19 on a business premise.

The legal landscape surrounding such claims is still somewhat uncertain. Plaintiffs are just beginning to test potential legal theories in this specific context and, with congressional negotiations regarding the next coronavirus stimulus package at a current impasse, the availability of a federal immunity remains unknown. This article describes the current legal landscape, including potential claims that could arise and the current scope of immunity laws, and offers best practices that franchisees and franchisors (with company-owned stores or who are sued in a direct or vicarious liability case) should consider for limiting Covid-related claims based on alleged infection on a franchised business's premises.

## Claims that may arise

A plaintiff who claims to contract Covid-19 on a franchised business's premises is most likely to assert a type of negligence claim called premises liability. Premises liability law varies by jurisdiction, but in general, a plaintiff would have to prove that: 1) Covid-19 infection posed an unreasonable risk of harm on the premises; 2) the business premises owner had notice of the risk; 3) the owner failed to make the premises reasonably safe; and 4) the plaintiff was injured as a result. Depending upon the jurisdiction, plaintiffs may also assert negligence per se, arguing that the defendant violated a statute, rule, or regulation related to Covid-19 and the plaintiff contracted the illness as a result.

Plaintiffs are also testing the boundaries of other, less obvious theories, such as public nuisance, which has already been asserted by employees who claim to have contracted Covid-19 at their workplace. A public nuisance is generally defined as an unreasonable interference with a right common to the general public. Public nuisance claims traditionally focused on an alleged interference with the use of land, but in recent decades plaintiffs have pushed the boundaries of public nuisance claims, with mixed rates of success, to address alleged injuries related to asbestos, firearms, climate change, tobacco, and opioids, among other things. Plaintiffs are now apparently trying to further stretch the bounds of public nuisance jurisprudence to include the Covid-19 crisis, as well.

Excerpted from *Franchising.com*. To read the full article, click [here](#).