

State Analysis Guide

Liability, Immunity, and Workers' Compensation Issues

This *State Analysis Guide* is intended to assist state health agency staff and legal counsel with locating and analyzing their state's laws, rules, policies, and implementation plans with regard to liability, immunity, and workers' compensation issues. Space is provided on the document to insert references or summaries of appropriate state or local authorities. Because each state's law is unique, this guide may not identify all issues that arise in the course of analyzing a state's law. **In all instances the language and requirements of specific state/local laws, regulations, ordinances, rules, policies, guidances, case law, and other sources of legal authority overrule this general analysis guide. This resource is for informational purposes only and is not intended as a substitute for professional legal or other advice.**

Issues for Analysis		State/Local Information
Liability Issues		
Identify scenarios in which liability issues can arise in the context of a public health emergency response and the potential types of liability that could occur in each:		
	Deployment of state personnel	
	Deployment of volunteers or other nongovernmental personnel	
	Distribution of countermeasures (vaccines, drugs, equipment) and other supplies at public facilities and at private facilities	
	Administration of countermeasures (vaccines, drugs, equipment) and other supplies by governmental personnel and by volunteers and other nongovernmental personnel	
	Surveillance and data collection activities; data disclosure	
	Imposition of quarantine and other social distancing measures	
	Other	
Identify the elements for the following torts and other potential theories of liability under your state's laws:		
	Intentional torts	
	Negligence—general	

Issues for Analysis		State/Local Information
	Medical malpractice	
	Exceeding scope of practice	
	Breach of privacy and confidentiality	
	Premises liability	
	Gross negligence	
	Strict liability	
	Other	
Identify potential sources of statutory and regulatory violations that could be used to find liability for persons involved in emergency response activities:		
	Federal	
	State	
	Local	
	Other	
Identify potential constitutional bases for liability:		
	Federal	
	State	
Identify potential criminal bases for liability that could occur within the context of a state emergency response.		
	Federal	
	State	
	Local	
	Other	
Immunity Issues		
Identify immunities, liability protections, and other defenses potentially available to the following persons or activities previously analyzed in the section above:		
	Deployment of state personnel	

Issues for Analysis		State/Local Information
	Deployment of volunteers or other nongovernmental personnel	
	Distribution of countermeasures (vaccines, drugs, equipment) and other supplies at public facilities and at private facilities	
	Administration of countermeasures (vaccines, drugs, equipment) and other supplies by governmental personnel and by volunteers and other nongovernmental personnel	
	Surveillance and data collection activities; data disclosure	
	Imposition of quarantine and other social distancing measures	
	Other	
Identify laws granting governmental immunity; analyze the circumstances in which immunity attaches or is waived and the persons entitled to immunity (government employees, contractors, volunteers, etc.):		
	Federal	
	State	
	Local	
	Other	
Identify other laws that expressly provide immunity or other liability protections for persons or entities involved in emergency response activities and other laws that could be used to provide liability protections. For each, identify the circumstances in which the protection attaches or is waived, and the persons entitled to protection (government employees, contractors, volunteers, etc.):		
	State or federal emergency authorities/powers laws	
	State or federal general volunteer protection laws	
	State or federal healthcare volunteer protection laws	
	State Good Samaritan laws	
	State entity liability protection laws	
	Other	

Issues for Analysis		State/Local Information
Identify any immunities and liability protections provided under mutual aid agreements. For each, identify the circumstances in which protections attach or are waived and the persons entitled to protection:		
	Emergency Management Assistance Compact (EMAC)	
	Other interstate agreements	
	Other intrastate agreements	
	International agreements	
	Other	
For the following torts and other potential theories of liability identified above, identify potential immunities, liability protections, and other defenses. For each, identify the circumstances in which protections attach or are waived and the persons entitled to protection:		
	Intentional torts	
	Negligence—general	
	Medical malpractice	
	Exceeding scope of practice	
	Breach of privacy and confidentiality	
	Premises liability	
	Gross negligence	
	Strict liability	
	Other	
Identify immunities, liability protections, and defenses that can be used to address potential sources of statutory and regulatory violations identified above:		
	Federal	
	State	
	Local	
	Other	

Issues for Analysis		State/Local Information
Identify potential immunities, liability protections, and defenses for the potential constitutional bases for liability identified above:		
	Federal	
	State	
Identify potential immunities, liability protections, and defenses for the potential criminal bases for liability identified above:		
	Federal	
	State	
	Local	
	Other	
Workers' Compensation Issues		
Identify your state's workers' compensation laws and analyze for the following:		
	Persons eligible for coverage (employees, volunteers and other non-employees, etc.)	
	Definitions for employee	
	Employers or activities specifically excluded from coverage	
	Other requirements or restrictions that may impact persons or entities involved in emergency response activities	
Identify any compensation acts or special funds for specific populations based on occupation, participation in a specific event, or other bases:		
	Federal	
	State	
	Local	
	Other	
Identify if the state mandates that employers provide any of the following benefits; note if benefits must be provided in full, partially, or not at all:		
	Paid sick leave	

Issues for Analysis		State/Local Information
	Short-term disability	
	Long-term disability	
	Other	

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