

What South Florida businesses should know about Covid-19 liability as Florida reopens

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Florida may be in the [third and final phase of its reopening](#), but that doesn't mean Covid-19 has disappeared from the state.

That's why South Florida businesses should continue to follow federal and local safety regulations to protect themselves from potential litigation, according to local experts.

Gov. [Ron DeSantis](#) recently backed a move to place limits on Covid-19-related lawsuits against businesses, arguing that fear of lawsuits is holding back the economy.

But even if the Florida Legislature does approve those liability protections for businesses – a measure DeSantis said could be considered in a potential special legislative session in November – businesses shouldn't operate as if the pandemic is over.

"Just because you can do things like operate at full capacity doesn't necessarily mean you should," said [Marbet Lewis](#), an attorney at Miami-based Spiritus Law, referring to DeSantis' decision to lift all state-level Covid-19 restrictions.

The rule allows local governments to limit restaurant and bar capacity to 50% if they can justify those restrictions to the state government.

Both Broward and Palm Beach counties [lifted capacity restrictions on restaurants](#) after DeSantis' announcement, but only Broward requires restaurants to space tables six feet apart as the U.S. Centers for Disease Control and Prevention recommends. Miami-Dade restaurants are only allowed to reach 100% capacity if they include outdoor seating, with six-foot distance between tables.

Entering phase three puts some South Florida business owners in a precarious position, Lewis said. The region is the epicenter of the state's Covid-19 outbreak, and new cases are still reported every day.

But small businesses, especially in retail and hospitality, are desperate to boost capacity to recoup their losses after a more than six months of closures and restrictions, Lewis said. Those that cannot afford to keep six-foot distance between tables should still take other safety precautions, she added.

"If that distance can't be met, try to incorporate plexiglass or other barriers between tables to protect patrons," she said.

Although the DeSantis' order prevents local governments from collecting fines for people who violate mask mandates, Lewis said that only applies to individuals, not businesses. The

suspension of fines is actually a problem for some businesses because it places the burden of enforcement on them alone, she said.

"There's no backup from local government, but the business is still liable if a patron refuses to wear a mask indoors. So now they have to enforce this by themselves or risk a fine," she said.

Businesses have been slammed by liability lawsuits since the Covid-19 outbreak began in March, said [Anita Byer](#), CEO of Setnor Byer Insurance and Risk. Some of those lawsuits allege a customer contracted Covid-19 at the business, a difficult accusation to prove.

Byer said many of her business clients have liability insurance policies that exclude contagions like viruses, so they're on the hook if a patron sues. That's why the business community, including organizations like Florida Retail Federation and the Florida Restaurant and Lodging Association, are rallying around restricting Covid-19 liability lawsuits.

"Businesses need to know they won't be slammed by litigation and put out of business," she said.

Byer said she assumes liability protections would only apply to businesses that can prove they implemented measures protect employees and customers from the virus.

Florida Chief Financial Officer [Jimmy Patronis](#) recently [issued a statement outlining](#) what he identified as his three guiding principles for liability protections, which include " an expectation that business owners have taken reasonable steps to ensure they're watching out for the health and safety of their employees and customers."

The best way a business can protect itself is to have a clear Covid-19 safety plan in place that is communicated with employees said Spiritus Law's Lewis.

For some businesses, that won't be an option. Lewis said a growing number of insurers and landlords are demanding to see Covid-19 safety policies to ensure businesses are taking proactive steps to protect employees and customers.

"The best advice I can give any business or venue is to stick to the CDC guidelines, even if it's more strict than state law," she said. "That's the the best way to shield themselves from liability because it shows they want to follow the safest path possible."

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