

The Honorable Philip B. Scott
Governor
109 State Street, Pavilion
Montpelier, VT 05609

Dear Governor Scott,

Thank you for your actions to address the health and economic impacts of the COVID-19 pandemic, including your Administration's establishment of the State of Vermont Economic Mitigation & Recovery Task Force. The business community is eager to resume normal operations, to the extent that is possible while certain safety-driven limitations remain in effect.

The restart phase of recovery brings unique challenges, including questions around policies employers will need to implement to comply with new state and federal regulations, while also ensuring the privacy and labor rights of their employees are upheld. Medically based reopening plans that rely on social distancing and other pandemic mitigation practices may raise significant regulatory and legal liability risks, and we encourage your Task Force to consider the concerns and recommendations below:

- Federal and state laws designed to maximize the health privacy of individuals could conflict with potential reopening requirements. During the COVID-19 emergency and recovery period, employers will need a broad safe harbor to make necessary inquiries regarding an employee's health status to determine if an employee should return to work.
- The mandated use of personal protective equipment (PPE) such as masks, respirators, and physical barriers can require employers to be responsible for ensuring the availability of such equipment and related training for employees. This can be an impossible requirement if PPE becomes recommended in all workplaces. To mitigate some of the challenges and liability risks during what will be an unprecedented transition period to new workplace safety requirements, we recommend regulators make clear that PPE recommended to combat the spread of COVID-19 are not subject to standard VOSHA requirements around workplace PPE. Without action, workers' compensation issues dealing with shortages of PPE or its incorrect use are also likely to increase in frequency.
- Employers are concerned about employment practices related to the pandemic, including around wage-and-hour issues, leave policy, and travel restrictions. In addition, employers may be at risk if they do not accommodate employees who either insist on returning to work even though they have not completed health screenings, are high-risk, or refuse to return to work and provide adequate support for such a refusal. We would recommend the task force examine methods to provide a safe harbor for temporary employer-implemented workplace policy changes designed to respond to coronavirus requirements.
- Exposure liability is another significant area of concern for the business community. It encompasses multiple types of claims that could be brought against businesses that have been designated as "essential" as well as large swaths of the remaining business community once the economy is reopened. The threat of exposure-related lawsuits also will deter some businesses from reopening even after it is determined that they may safely operate by following the guidance of appropriate health authorities.

We would recommend the task force also examine policies that could provide employers with temporary protection from this area of liability.

Thank you for considering our concerns and recommendations. We look forward to working with the Task Force as it undergoes the mission of planning for a smooth, safe, and orderly reopening of Vermont's economy. Please contact Charles Martin (cmartin@vtchamber.com) with any questions.

Sincerely,

A handwritten signature in cursive script that reads "Betsy Bishop".

Betsy Bishop
President