

# GILL RAGON OWEN

— ATTORNEYS —

425 W. Capitol Ave, Suite 3800, Little Rock, AR 72201

[www.gill-law.com](http://www.gill-law.com) • (501) 376-3800

## **ARKANSAS GOVERNOR ISSUES THREE EXECUTIVE ORDERS ON CIVIL LIABILITY PROTECTIONS**

On June 15, 2020, Governor Asa Hutchinson, joined by the Arkansas House and Senate leadership, announced three executive orders providing certain civil liability protections for businesses and healthcare workers.

### **Executive Order 20-33:**

[Executive Order 20-33](#) provides businesses with immunity from liability for “damages or injuries caused by or resulting from exposure to COVID-19 on the premises.” The immunity does not apply to willful, reckless, or intentional misconduct resulting in injury or damages. The order provides a presumption that a person and the person’s employees are not committing willful, reckless, or intentional misconduct if the person and the person’s employees are (a) substantially complying with the health and safety guidelines issued by the Governor or the Secretary of the Department of Health; or (b) acting in good faith while attempting to comply with health and safety directives or guidelines issued by the Governor or the Secretary of the Department of Health. This immunity does not extend to workers’ compensation benefits paid by or on behalf of an employer to an employee. The order applies to all actions, lawsuits, or claims filed after the date of its execution and expires when the emergency declaration is terminated.

Businesses should carefully follow all directives and guidelines to maximize potential protections available under this order. Guidelines and Directives for various business sectors are available on the Arkansas Department of Health’s [COVID-19 webpage](#).

### **Executive Order 20-34:**

[Executive Order 20-34](#) provides civil liability for healthcare providers while treating COVID-19 patients. The order requests that all “Healthcare Providers” provide Emergency Management Functions in Arkansas. Healthcare Providers is defined as all healthcare providers who are licensed, certified, or otherwise authorized by law to administer health care within the state. Emergency Management Functions include:

- Triage, diagnostic testing, and/or treatment to individuals with known or suspected COVID-19;
- Cancelling, postponing, or denying elective procedures for an illness or condition that does not fall within the scope of the COVID-19 public health emergency;
- Redeploying or cross training staff not typically assigned to such duties, to the extent necessary to respond to the COVID-19 pandemic;
- Enacting crisis standards of care measures, such as modifying numbers of beds, preserving PPE, and triaging access to services or equipment; and
- Reducing recordkeeping requirements to the extent necessary for Healthcare Providers to perform tasks as may be necessary to respond to the COVID-19 public health emergency.

The order provides that Healthcare Providers providing these Emergency Management Functions shall be immune from civil liability, except in the case of willful, reckless, or intentional misconduct.

**Executive Order 20-35:**

[Executive Order 20-35](#) provides that workers may, in certain circumstances, receive workers' compensation benefits if they contract COVID-19. Requiring employees to perform work when the employer has knowledge that, within the normal course and scope of the employee's job performance, exposure to SARS-CoV-2 or COVID-19 is possible or likely *is not* intentional conduct that would remove the employer from the protections of the Workers' Compensation Law. The order further provides that SARS-CoV-2 and COVID-19 meet the definition of "occupational disease" as used in the Workers' Compensation Law. Employees asserting the occupational disease must still meet all requirements of proof for an occupational disease, including a causal connection between employment and the disease. This order applies to all claims filed after the date of its execution and expires when the emergency is terminated.

For more information on these orders, and other COVID-19 related topics, please review our COVID-19 Resources page here: <https://www.gill-law.com/covid-19-resources/#>