



Commercial Litigation ADVISORY ■

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COVID-19 Impacts on Statutes of Limitations

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The COVID-19 pandemic and its attendant court closures have led governors and courts across the country to issue varying orders that affect the timeframes for pending and new litigation. The result is a patchwork of tolled statutes of limitations and scheduling delays that may significantly impact parties' rights, strategies, and liabilities. Businesses and their counsel need to pay close attention to these changes to protect themselves from litigation surprises as cases progress and new ones are filed.

What States Have Been Doing

Several states have set a *hard end date* for the period when statutes of limitations will be tolled for state-law claims due to COVID-19 closures and disruptions. These extensions are subject to potential future revision, of course, depending on conditions in each state.

- In [Massachusetts](#), all statutes of limitations are tolled from March 17, 2020 until May 3, 2020. When calculating how many days are left in the limitations period, the court will determine how many days remained after March 16, 2020 until the original deadline, and that same number of days will be deemed to remain as of May 4, 2020.
- All of [Iowa](#)'s statutes of limitations are tolled from March 17, 2020 until May 4, 2020.
- [New York](#) recently extended the tolling of its statute of limitations for all filings from March 7, 2020 until [May 7, 2020](#).

Other states have ordered more *flexible tolling* for their statutes of limitations. Generally, the tolling duration will depend on when the state's governor lifts the state of emergency.

- In [Connecticut](#), Governor Lamont's executive order suspended the statute of limitations until the public health emergency is terminated.
- In [Nevada](#), Governor Sisolak's executive order suspended the statute of limitations from March 12, 2020 until 30 days after the state of emergency ends.
- In [Maryland](#), all statutes of limitations are tolled by the number of days that the courts are closed to the public due to the COVID-19 emergency.

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- In Kansas, the state legislature passed a [bill](#) that gave the chief justice of the Kansas Supreme Court the authority to extend or suspend any deadlines or time limitations established by statute. The state's chief justice has [ordered](#) "all statutes of limitations and statutory time standards or deadlines applying to the conduct or processing of judicial proceedings ... suspended *until further order*."

Finally, at least two states have left the authority to toll the statutes of limitations or to alter the court calendar to the discretion of the lower courts.

- [California](#) superior courts may petition the chief justice of the Supreme Court of California for an emergency order to recognize a "holiday" to recalculate the filing deadlines, extend temporary restraining orders, and extend the time for a criminal trial to be held.
- [Texas](#) has granted its courts the authority to extend the statute of limitations in any civil case for a stated period ending no later than 30 days after the emergency order has been lifted.

Conversely, [Alabama](#) has explicitly stated that its supreme court does *not* have the authority to suspend statutory limitations periods.

Key Takeaways

Litigants need to keep apprised of statutes of limitations to know the proper timing for when they can, and where they should, file lawsuits. Likewise, the different treatment of statutes of limitations among states also affects how to measure whether and when a lawsuit has become untimely. If litigation commences in a state that did not toll its statute of limitations, a plaintiff could consider seeking equitable tolling because of the COVID-19 emergency, which would vest the ultimate timing decision with the trial court. This tactic would likely give rise to many disputes. The discrepancies among states may also give rise to forum-shopping, if jurisdiction and venue are appropriate in multiple states.

- Know the timing rules in the states where you operate. The laws among states will likely differ, which may substantially impact your litigation matters.
- Don't assume that courts and legal procedures have all paused. Some matters continue, and you should be prepared for matters in states with undetermined tolling and suspension end dates when their states of emergency are lifted.
- Check federal laws and federal court operations. For diversity claims filed in federal court, the state's tolling of its statute of limitations may apply depending on the *Erie* doctrine. However, it is important to check with the federal court's postings to ensure you don't miss important deadlines.
- Retain knowledgeable counsel. Working with counsel that are well-versed with the timing nuances of litigation is crucial in this period of uncertainty and frequent change to ensure that claims are not foreclosed or viable defenses missed due to timing issues.

Alston & Bird has formed a multidisciplinary [task force](#) to advise clients on the business and legal implications of the coronavirus (COVID-19). You can [view all our work](#) on the coronavirus across industries and [subscribe](#) to our future webinars and advisories.

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