COVID-19 in the Courtroom: The Role of Mask Mandates and Source of Exposure on Negligence and Recklessness Decisions

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Abstract

The current study examined whether business owners would be found liable for an employee's illness from COVID-19 contracted at work. We varied whether there was a mask mandate at the time of the employee's exposure (Yes or No), how the employee was exposed (an unmasked customer, an unmasked owner who forgot her mask, or an unmasked owner who did not require masks in her store) and measured participants' political orientation. Participants ($N=257$) read and listened to a trial transcript about an employee that contracted COVID-19 at her workplace and was suing her employer for compensation to cover hospital bills. Participants were more likely to find the defendant negligent, reckless, and responsible when a mask mandate was present and when an unmasked owner led to the employee's COVID-19 exposure compared to an unmasked customer. Furthermore, the more conservative the participant, the less likely they were to find the defendant negligent, reckless, and responsible. In sum, presence of a mask mandate, owner exposure, and juror political orientation play an important role in civil litigation involving COVID-19.

Keywords Civil jury decisions · Negligence · Recklessness · Pandemic · COVID-19

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In 2020, Republicans in the US Congress tried to pass legislation that would protect business owners from coronavirus disease 19 (COVID-19)-related lawsuits (Morgan, 2020). Though they failed to pass legislation, their efforts suggest that they thought the lawsuits were going to come and further that they might be successful (i.e., juries would award damages). As the pandemic continued and some businesses remained open to survive, the likelihood of employees contracting COVID-19 remained high. However, no research has examined whether COVID-19-related lawsuits by employees against their employers would be perceived by jurors and whether they would be successful, or what factors might influence the outcomes of these impending civil suits. The purpose of the present study was to examine mock jurors' liability decisions and damage awards to plaintiffs harmed due to COVID-19, as well as to examine factors that might impact these decisions.

According to the Occupational Safety and Health (OSH) Act of 1970, employers in the USA must provide a workplace that is "free from serious recognized hazards" (Occupational Safety and Health, 1970). The responsibilities listed at the Occupational Safety and Health Administration (OSHA) website (OSHA, 2021) include two responsibilities that might be relevant to the COVID-19 pandemic. Listed among employer responsibilities is to:

1. Provide a workplace free from serious recognized hazards and comply with standards, rules, and regulations issued under the OSH Act.
2. Establish or update operating procedures and communicate them so that employees follow safety and health requirements.

Similar labor laws exist in other western countries such as Canada (Canada Labour Code, 1985) and the UK (Health

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and Safety at Work etc. Act, 1974). These labor laws place the responsibility on employers to keep their workers safe. Resultantly, employers who fail their duty of care can face civil consequences if they are found negligent by a jury. Further, juries are allowed to award punitive damages to deter the defendant and others from engaging in similar conduct if the defendant's behavior was "willful," "wanton," or "reckless" (Morris, 1931). Thus, depending on the circumstances, employers might be found both negligent and reckless in COVID-19-related lawsuits if juries attribute the cause of the illness to the employer's behavior.

One source of possible liability comes from the requirement for face masks in public businesses. Arguably, face masks became a flashpoint during 2020 in the USA. While a vast majority of health officials emphasized the benefits of wearing face masks in public, there was considerable controversy about masks infringing on personal freedoms (McKelvey, 2020). The controversy over masks, as well as the lack of guidance from the federal government at the time, resulted in different counties and states having varying rules regarding masks (Lyu & Wehby, 2020). Even when mask mandates were in place at the county or state level, enforcement of such mandates was inconsistent across localities (Mann, 2020). Thus, business owners had to personally decide whether to implement mask mandates in their stores. Further, even when mask mandates were in place in their areas, many business owners still chose not to carry out the mandates (Cowen, 2020; Denver, 2020). This suggests owners' personal decisions about face masks in their businesses could be a source of liability, particularly when there is a state or county mandate in place. To understand the circumstances that might lead to a negligence or recklessness determination in COVID-19 lawsuits, we first discuss what we know about how individuals conceptualize negligence and recklessness, and how face mask behavior might impact those conceptualizations.

Negligence

Some previous researchers have examined lay peoples' perceptions of negligence in various settings. For instance, in a multi-study examination, Nuñez et al. (2014) found common underlying themes associated with laypersons' perceptions of negligence. They found the most important components of negligence were "not taking reasonable care" and "ignoring a dangerous situation" (Nuñez et al., 2014, Study 2). Further, results indicated the importance of an agent possessing the necessary knowledge (e.g., that their friend has a peanut allergy), but not awareness (e.g., that the cooking they were using had peanut oil in it), when determining that an agent acted negligently (Nuñez et al., 2014, Study 3). However, both knowledge and awareness

influenced punishment, such that the agent was punished the harshest when they possessed both. Shultz and Wright (1985) examined perceptions of negligence in another setting by comparing participants' moral attributions of a roofer who pushed shingles off a roof and damaged a statue in intentional, negligent, and accidental scenarios. Participants rated the roofer as more morally responsible and deserving of punishment in the intentional or negligent scenario (e.g., without looking to see if anything was below) than in the accidental scenario (while sneezing).

Thus, having knowledge of a potential danger and not taking reasonable steps to prevent that danger appear to be core features of laypersons' conceptions of negligence and result in a desire to hold an individual accountable. Given the literature described above, it is possible that employers who knew the COVID-19 pandemic posed a danger but did not take "reasonable care" to protect their employees from such danger might be found liable. Arguably, a vast majority of individuals, if not all, knew the pandemic posed a danger and leads to the question of, "What constitutes reasonable care by a business owner in a global pandemic?".

It is possible to imagine a scenario where a maskless customer enters a business, and several days later the Health Department notifies the store owner that the customer was COVID-19 positive while in the business. Later, the owner and employees are diagnosed with COVID-19. Even if the Health Department could trace the source of the illness to the unmasked customer, it is unclear whether the owner took "reasonable care" to protect their employees. On the one hand, it could be reasonable to assume that the owner should have asked the customer to leave or put a mask on. On the other hand, there were many instances in 2020 where customers became irate or attacked business owners or employees when they attempted to get customers to comply with mask requests. For example, a customer in a Washington grocery story assaulted a grocery store clerk and stole merchandise after being asked to wear a mask (Kim, 2021). Similar instances were reported in other parts of the USA (Porterfield, 2020). Thus, it is possible jurors may consider a business owner who does not confront a customer and therefore avoids potential personal harm as showing "reasonable care" under these circumstances. Alternatively, an owner who defies Centers for Disease Control (CDC) guidelines and does not wear a mask while working and/or does not require masks in their business may also violate the legal reasonable care standard. Finally, falling somewhere in the middle, an owner who usually wears a mask and requires masks in their business may or may not violate the reasonable care standard if they forget their mask one day and remained at work anyway. In the present study, we examined these three different scenarios (i.e., customer not wearing a mask, owner not requiring and not wearing

a mask, and owner requiring but forgetting their mask) to determine at what point mock jurors define an owner's behavior as negligent.

Recklessness

A concept that is related to negligence but has not received as much attention in the literature is recklessness. Legal definitions of recklessness often cite a disregard of risk for others, and when an agent knows (or should know) that their actions may cause harm (Melburg & Tedeschi, 1981). For example, in Wisconsin a person is defined as reckless if they create "an unreasonable and substantial risk of death or great bodily harm to another human being and the actor is aware of that risk" (Criminal Recklessness, 1987). In Texas, a person is reckless when "he is aware of but consciously disregards a substantial and unjustifiable risk" (General Principles of Criminal Responsibility, 1994). Thus, negligence is often conceived of as failing to consider possible harm, and recklessness is knowingly disregarding possible harm. While negligence and recklessness are both considered civil wrongs, recklessness is also recognized as a crime and is a more serious offense (Newhouse, 2016).

Though lay conceptions of intentionality and negligence have been extensively studied, recklessness has not. In an unpublished study (Flick et al., 2022), researchers asked participants to provide a definition of recklessness. The statements were coded along seven different dimensions: knowledge, desire, care, intent, disregarding risk, causality, and harm. The most common components of laypeople's definitions of recklessness were knowledge that the action could lead to the outcome, disregarding risk, causality, and harm. Desire for a harmful outcome or intending to harm was rarely mentioned by participants as a component of recklessness. Thus, lay definitions of recklessness have some components of negligence and are similar to legal definitions. In other words, laypeople appear to recognize that recklessness consists of knowledge that an action can cause harm and a disregard of that knowledge.

Two other studies yielded similar findings and additionally show that people assign more blame and punishment to reckless people than negligent people. Melburg and Tedeschi (1981) described a scenario where an ambulance driver struck a child in the street and varied the speed of the ambulance and the seriousness of the condition of the patient in the ambulance (broken leg or heart attack). Results indicated the greatest recklessness determinations, blame, and punishment were assigned to the ambulance driver who was driving fast with a patient who had a broken leg. The authors concluded that the ambulance driver was considered more reckless when he "was speeding (i.e., placed others at risk) without sufficient justification (i.e., when the patient had only suffered a broken

leg)" (Melburg & Tedeschi, 1981, p. 513). Shen et al. (2011) examined mock jurors' abilities to sort purposeful, knowing, reckless or negligent mental states. They found that participants distinguished between purposeful, reckless, and negligent states, assigned more punishment to the reckless than negligent individual, and assigned the greatest punishment to the agent that acted purposefully (Shen et al., 2011). Though there is less empirical literature on recklessness, existing research converges on a general definition of the term and indicates the desire to punish or hold individuals accountable is greater for reckless than negligent behaviors.

One COVID-19 pandemic action that might rise to the level of reckless behavior is when business owners disregard Department of Health mandates that require masks in public places. When states, counties, or municipalities instituted mask mandates in 2020, those mandates were widely publicized, often in major newspapers, local papers, and other media (Mervosh et al., 2020). Business owners were encouraged to post signage on their doors indicating masks were required to ensure public health safety (Health Order Enforcing, 2020). Yet, there were a non-trivial number of instances where business owners flouted the mandates. For instance, 115 businesses in Denver, Colorado, were cited for violating state-wide mask mandates in August 2020 (Denver, 2020). Further, a gym owner in New Jersey faced up to $1 million in fines for keeping their business open during a shut-down and not requiring masks (Cowen, 2020). Thus, some business owners had knowledge of mask mandates in place yet appear to have disregarded the risk of harm from maskless customers and employees. The question is whether mock jurors would label such behavior as reckless, and whether business owners would be held responsible if one of their employees contracted COVID-19. In the present study, we examined the influence of a county mask mandate on mock juror's perceptions of various scenarios describing exposure of an employee to COVID-19 that required hospitalization.

Political Orientation

Another variable that might affect jurors' willingness to hold business owners accountable during the pandemic is political orientation. As previously stated, the attempt to protect business owners from COVID-19-related lawsuits was initiated by Republican members of Congress. Further, there are ample data to suggest that views about the pandemic were divided on party lines and became more partisan as the pandemic continued. Data from Pew Research Center (Deane et al., 2021) suggest evidence of a partisan divide in public attitudes toward COVID-19 within the first few weeks of March 2020. While both parties perceived COVID-19 to be a threat to the US economy, a clear partisan divide was evident in the public's perception about whether COVID

posed a major threat to the health of the US population as Democrats (82%) were significantly more likely to believe the virus was a major threat to the health of the US population than Republicans (43%; Deane et al., 2021).

Additional evidence of the partisan divide over COVID-19 comes from Pew Research's Summer 2020 Global Attitudes Survey of 14 nations with advanced economies. Researchers sampled 14,276 adult respondents through nationally representative telephone surveys across these 14 nations (e.g., Canada, Denmark, Germany, USA). Results indicated that the USA was the most politically divided on perceptions of their country's response to the COVID-19 pandemic. Specifically, 76% of individuals who self-identified as Republican stated that they believed their country had done a good job dealing with the COVID-19 outbreak compared to only 29% of individuals who did not self-affiliate with the Republican Party (Dimock & Wike, 2020; Mordecai & Connaughton, 2020). Thus, there was a stark 47-point difference across political party lines in the USA. This difference was the largest of the 14 nations surveyed, with the second largest at 34 points (France).

As discussed above, one particularly important topic related to the COVID-19 pandemic has been mask wearing. In an open response survey of 9,200 US adults asking respondents to describe how the COVID outbreak has negatively affected them, the term "mask" was the fourth most commonly mentioned term (Van Kessel & Quinn, 2020). Not surprisingly, the issue of mask wearing in the USA has also fallen along political party lines. While data suggest both Democrats and Republicans are concerned about mask wearing, findings indicate they are concerned for very different reasons. Democrats express concerns over masks in regard to others not wearing masks, while Republicans express general skepticism about the practice of mask wearing (Deane et al., 2021). One particularly relevant quote from this survey came from a 36-year-old Democratic woman who stated, "I don't feel safe or protected by my managers, but I also can't say anything because I need the job" (Deane et al., 2021, pg. 8). Given the relevant data, we sought to understand how mock jurors' political orientation would predict their judgments of negligence and recklessness in a hypothetical COVID-19-related lawsuit. As previously mentioned, mask wearing may serve as a factor related to negligence and recklessness, especially if there is a county mask mandate in place for such actions.

Current Study

The current study utilized a mock civil case in which a business owner and two employees contracted COVID-19. Although the owner and one of the employees had mild symptoms, one employee required hospitalization and amassed $72,000 in

hospital bills. In a civil suit, the employee that was hospitalized sought $72,000 in compensatory damages to pay their hospital bills. Compensatory damages compensate the plaintiff for a sustained loss or injury through economic or non-economic damages. Further, jurors may also award the plaintiff punitive damages, which serve to punish the defendant for their wrongdoing and to deter future harmful behavior. We examined how mask mandate (present or absent), exposure type (unmasked customer, owner did not require masks and was not wearing a mask, owner required masks and forgot her mask), and participant political orientation affected mock jurors' decisions. We were particularly interested in whether mock jurors found the owner negligent or reckless, compensatory and punitive damages awarded to the plaintiff, and the amount of responsibility assigned to the business owner for the employee's illness.

Hypotheses

Hypothesis 1: Exposure Type Though we did not have any empirical literature to rely on, we expected that participants would be most likely to find the employer negligent if she did not require masks in her business and least likely if she did not ask a customer to put on a mask. As previously mentioned, there were many instances in 2020 where customers became irate or attacked business owners or employees when they tried to get customers to comply with mask requests (Kim, 2021; Porterfield, 2020). Thus, participants might be less likely to hold an owner responsible for COVID-19 exposure when the exposure came from a customer. Also, given that two exposure conditions (Customer and Owner Forgot Mask) might not meet the previously described criteria for recklessness, we expected that only when the owner did not require masks in her store would she be deemed reckless. We predicted similar outcomes for compensatory and punitive damages, with the smallest amount of damages awarded when the owner did not ask a customer to put on a mask and the highest when the owner did not require masks.

Hypothesis 2: Mask Mandate We expected that participants would be more likely to find the employer both negligent and reckless if, at the time of exposure, the county had a mask mandate compared to when the county did not have a mask mandate. Again, we have no empirical literature to support our hypothesis. However, given that mask mandates were widely publicized, we expected that a business owner who failed to follow known health mandates would be more likely to be held liable than when there were no mandates in place. Assuming that business owners who disregarded health mandates might be perceived as reckless, we also predicted that there would be a greater amount of punitive damages awarded when there was a mask mandate present. Additionally, we predicted that perceptions of recklessness would be associated with larger punitive damages.

Hypothesis 3: Exposure by Mandate Interaction Though we did not have empirical literature to support an interaction, we hypothesized there would be an interaction between the mask mandate and exposure conditions. We predicted that exposure condition might not be as large a predictor of negligence and recklessness when there was not, rather than when there was, a mask mandate in place. We predicted similar interaction findings for punitive damages. Thus, any relationship between exposure and negligence and recklessness ratings was predicted to be significantly greater in the mask mandate condition.

Hypothesis 4: Political Orientation Regardless of other findings, we predicted that the more conservative a participant's political orientation, the less likely the participant would be to find the business owner negligent and reckless. Though political orientation was predicted to impact negligence and recklessness ratings, we did not have any a priori hypotheses about how political orientation might affect compensatory or punitive damages.

Method

Participants and Design

Data were collected in March of 2021. Participants ($N = 257$; 61.48% female) were recruited from Amazon's Mechanical Turk (MTurk) workers through the platform CloudResearch (Litman et al., 2017). To be eligible for participation, participants had to be a US citizen and over the age of 18. Participants were compensated $1.00. The mean age of this sample was 44 ($SD = 13.48$). Most participants identified as White or European American (83.66%), with remaining participants identifying as Asian or Pacific Islander (7.78%), Hispanic or Latino (4.28%), Black or African-American (3.50%), or multiracial (0.78%). According to the recent census, the age average in the USA is 38.2 and approximately 57.8% of the population identifies as being White or European American (United States Census Bureau, 2020). Thus, our sample was slightly older and less diverse than the general population. On a scale from 1 (*Extremely Liberal*) to 7 (*Extremely Conservative*) participants' political orientation averaged 3.92 ($SD = 1.84$).

The design of the current study was a 3 (exposure type: *customer without a mask, owner forgot mask,* or *owner did not require masks*) by 2 (county mask mandate: *present* or *absent*) fully crossed between-subjects design. We also measured participants' political orientation to use as a quasi-independent variable. Dependent variables of interest were owner negligence and recklessness, percentage of liability assigned to the owner, and compensatory and punitive damages. The study received all necessary ethical approvals from the university's institutional review board.

Materials and Procedure

After consenting to participate, participants were asked to provide some basic demographic information, including sex, age, race, and political orientation. Given that political orientation might affect responses at trial, we asked participants to self-report their political orientation on a 7-point Likert scale prior to receiving any information about the trial. Although the use of a single-item political orientation measure might pose limitations, in general, a 5- to 9-point single-item scale is the most frequently used response option in political research (Kroh, 2007). Similar measures of political orientation have been frequently used in social science research as well (e.g., Marcus-Newhall et al., 2002; Michalski et al., 2022; Mowle et al., 2016).

Participants then listened to (and were given a transcript to follow along with) an approximately 14-min audio recording of a fictional trial summary in which an employee, Jennifer Paulson, was suing her employer for $72,000 in hospital costs as a result of COVID-19 infection. Although the trial summary was created for experimental purposes, it was loosely based off real-life incidences in which several businesses purposefully disregarded county mask mandates during the pandemic (e.g., see Considine, 2021). All participants first heard opening statements from the plaintiff's attorney and the defense attorney, followed by a direct examination and cross-examination of the plaintiff's witness, a contact tracer for the State Health Department. The contact tracer talked about how he was able to determine the likely source of the plaintiff's exposure to COVID-19 by contact tracing. Across conditions, the contact tracer stated that due to the specific circumstances regarding this case of exposure and the lack of exposure by other contacts, he was confident in the source of exposure (i.e., unmasked owner or unmasked customer). Next, participants listened to the direct examination and cross-examination of the defendant, who was the owner of the store and employer of the plaintiff. The defendant testified regarding her stance on masks, what happened the day her employee, the plaintiff, was exposed to COVID-19, and what happened after that day. Lastly, participants heard closing statements from the plaintiff's attorney and the defense attorney. Summaries were modified based on mask mandate and exposure condition.

The presence or absence of a county mask mandate was mentioned through the questioning of the two witnesses: the contact tracer from the county health department (for the plaintiff) and the defendant (for the defense). Both witnesses were asked whether there was a county mask mandate present at the time the plaintiff was exposed to COVID-19. In the *absent* condition, the defendant simply stated no, and the contact tracer stated no and that the county did not issue a mask mandate until a month after the plaintiff was exposed to COVID-19. In the mask mandate *present* condition, the

defendant simply stated yes, and the contact tracer stated that there was a mask mandate for all businesses in the county in effect at the time the plaintiff was exposed to COVID-19.

Exposure was also manipulated through the testimony of both witnesses. In the *unmasked customer* condition, a customer entered the employee's place of work without wearing a mask and shopped in the store for about 15 min before making a purchase and leaving. Neither the employer nor the plaintiff asked the customer to put on a mask, while in the store, with the owner arguing that business had been slow and they did not want to lose the sale. In the *owner forgot her mask* condition, the employer required masks in her store but was running late to open the store and discovered when she arrived that she had forgotten her mask. She remained in her store unmasked until she went home on her lunch break and picked up her mask. In the *owner did not require masks* condition, the employer never wore a mask in her store and did not require patrons to wear masks while in her store. Again, the source of exposure (unmasked customer or unmasked owner) was explicitly mentioned by the contact tracer for the State Health Department during his direct examination across all conditions.

Once participants listened to the trial summary, they were given judge's instructions that defined negligence and recklessness, the conditions under which the mock jurors could hold the defendant liable, and how to determine compensatory and punitive damages (see Appendix). Following instructions, participants provided dichotomous (yes/no) liability decisions for the defendant's negligence and recklessness. Subsequently, all participants indicated an amount of compensatory damages as well as punitive damages to be awarded to the plaintiff. Lastly, participants assigned a percentage of liability to each party for the plaintiff's hospitalization due to COVID-19. Participation in the study took an average of 20 min to complete.

Because participants for the study were from MTurk, we used several data control measures to ensure that we gathered high quality data. First, we used Computers and Humans apart (CAPTCHA) after the informed consent to identify non-human respondents (Liu & Wronski, 2018). Second, the trial was divided into several segments (opening, prosecution, defense, closing, and judicial instructions). Each audio segment was timed, and participants could not proceed until the time elapsed. Third, we included manipulation check questions to ensure that participants correctly identified what mandate and exposure condition they were in. Finally, we included an open-ended question that asked participants to briefly describe the study. Typically, inattentive participants do not respond well to open-ended questions (Moss & Litman, 2018), and we screened the data for incoherent responses or answers that showed low English proficiency. Using these control measures, we eliminated 16 participants who either failed manipulation checks or

provided low-quality answers to the open-ended question (some participants failed multiple performance measures). In sum, we collected responses from 273 participants who completed the study and used 257 completed surveys in our analyses.

Results

To test our hypotheses, we ran multiple logistic and linear regression models with exposure condition (0 = *customer no mask*), mandate condition (0 = *no mandate*; step 1), and the interaction between exposure and mandate (step 2) as predictor variables. We also included participant political orientation as a control variable in each step of the models.[1] Model assumptions were tested for each model and did not indicate any serious violations. Because we did not have specific hypotheses about the different exposure conditions, significant effects of exposure were followed up with simple Chi-square tests or pairwise comparisons with Bonferroni corrections. Our dependent variables of interest were negligence, recklessness, percentage liable, compensatory damages, and punitive damages. Sample sizes for each condition, as well as the number of people who found the owner negligent or reckless, can be found in Table 1.

Negligence

Results of the main effects only logistic regression model with negligence (0 = not negligent) as the dependent variable indicated all main effects were significant (see Table 2). When there was a county mask mandate, participants were 3.4 times more likely to find the defendant negligent compared to when there was not a county mask mandate ($\beta = 1.11$, $SE = 0.30$, $p < 0.001$). When the *owner forgot her mask* ($\beta = 1.30$, $SE = 0.38$, $p < 0.001$) and when the *owner did not require masks in her store* ($\beta = 1.00$, $SE = 0.30$, $p = 0.005$), participants were significantly more likely to find the defendant (the owner) negligent compared to when the customer was not wearing a mask. A simple Chi-square test between the two owner conditions (with Bonferroni corrected $p < .02$) revealed no significant differences between the conditions where the *owner forgot her mask*, or the *owner did not require masks* ($\chi^2(1) = ,84$, $p = .36$). There was also a significant main effect of participant political orientation such that participants who identified as more liberal were significantly more likely to find the defendant negligent than those who identified as more conservative ($\beta = -0.44$,

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[1] We also ran models in which we controlled for participant age and sex. Adding in these additional control variables did not significantly alter any of the findings reported.

Table 1 Frequency of Negligence and Reckless Determinations by Experimental Condition

Experimental Condition	N	Negligent Count	Negligent Percent	Reckless Count	Reckless Percent
Mandate					
Yes	132	100	76	85	64
No	125	70	56	57	46
Exposure					
Customer No Mask	83	45	54	36	43
Owner Forgot Mask	86	65	76	50	58
No Mask Required	88	60	68	56	64
Mandate X Exposure					
No Mandate					
Customer No Mask	41	16	39	13	32
Owner Forgot Mask	40	26	65	18	45
No Mask Required	44	28	64	26	59
Yes Mandate					
Customer No Mask	42	29	69	23	55
Owner Forgot Mask	46	39	85	32	70
No Mask Required	44	32	73	30	68
Observations	257				

$SE = 0.09$, $p < 0.001$). A one-point increase in conservative political orientation was associated with a 36% decrease in the odds of finding the owner negligent. Overall, step 1 accounted for 18% of the variance. When adding the interaction between exposure condition and mandate condition into step 2 of the model, the variance accounted for did not significantly increase (19%) and neither interaction term was significant ($ps > 0.08$).

Recklessness

A similar logistic regression model was run with recklessness (0 = not reckless) as the dependent variable. Again, step 1 indicated all main effects were significant ($R^2 = 12\%$; see Table 3). When there was a county mask mandate, participants were 2.5 times more likely to find the defendant reckless compared to when there was not a county mask mandate ($\beta = 0.92$, $SE = 0.28$, $p < 0.001$). When the *owner forgot her mask* ($\beta = 0.79$, $SE = 0.34$, $p = 0.02$) and when the *owner did not require masks* in her store ($\beta = 1.18$, $SE = 0.35$, $p < 0.001$), participants were significantly more likely to find the defendant reckless compared to when the *customer was not wearing a mask*. A simple Chi-square test between the two owner conditions (with Bonferroni corrected $p < 0.02$) revealed, contrary to our predictions, no difference between the conditions where the *owner forgot her mask* or the *owner did not require masks* ($\chi^2(1) = 0.35$, $p = 0.57$), although the findings were in the expected direction. Again, the main effect of participant political orientation was significant such that participants who identified

Table 2 Negligence Determinations

Predictors	Negligent Odds Ratios	CI	p	Reckless Odds Ratios	CI	p
(Intercept)	3.42	1.57 – 7.74	**0.002**	2.68	1.16 – 6.34	**0.022**
Mandate	3.05	1.71 – 5.57	**<0.001**	6.00	2.25 – 17.08	**0.001**
Exposure (No Mask Required)	2.71	1.36 – 5.53	**0.005**	4.92	1.88 – 13.54	**0.002**
Exposure (Owner Forgot Mask)	3.67	1.79 – 7.82	**0.001**	5.49	2.04 – 15.62	**0.001**
Political Orientation	0.64	0.54 – 0.76	**<0.001**	0.63	0.52 – 0.75	**<0.001**
Mandate * Exposure (No Mask Required)				0.29	0.07 – 1.15	0.081
Mandate * Exposure (Owner Forgot Mask)				0.44	0.10 – 1.97	0.281
Observations	257			257		
R² Tjur	0.181			0.194		

Reference Group for Exposure condition is Customer No Mask; Bolded p-values indicate p < 0.05

Table 3 Recklessness Determinations

Predictors	Reckless			Reckless		
	Odds Ratios	CI	p	Odds Ratios	CI	p
(Intercept)	1.83	0.88 – 3.85	0.109	1.51	0.65 – 3.42	0.327
Mandate	2.51	1.47 – 4.35	**0.001**	3.81	1.48 – 10.21	**0.006**
Exposure (No Mask Required)	3.27	1.68 – 6.53	**0.001**	4.97	1.94 – 13.45	**0.001**
Exposure (Owner Forgot Mask)	2.20	1.14 – 4.31	**0.020**	2.73	1.04 – 7.38	**0.043**
Political Orientation	0.68	0.58 – 0.80	**< 0.001**	0.68	0.58 – 0.79	**< 0.001**
Mandate * Exposure (No Mask Required)				0.44	0.11 – 1.62	0.218
Mandate * Exposure (Owner Forgot Mask)				0.67	0.17 – 2.54	0.556
Observations	257			257		
R^2 Tjur	0.153			0.159		

Reference Group for Exposure condition is Customer No Mask

as more liberal were significantly more likely to find the defendant reckless than those who identified as more conservative (β = -0.38, SE = 0.08, p < 0.001). Each one-point increase in conservative political orientation was associated with a 32% decrease in the odds of finding the owner reckless. When adding the interaction between exposure condition and mandate condition into step 2 of the model, the variance accounted for did not change (12%) and neither interaction term was significant (ps > 0.22).

Percentage Liable

To determine whether our predictor variables predicted the amount participants felt the defendant was liable (reported as a percentage), we ran a two-step linear regression model and again found all main effects to be significant ($R^2 = 2\%$; see Table 4). Participants found the defendant significantly more liable when there was a county mask mandate (M = 69.77%, SD = 34.94%) compared to when there was not a county mask mandate (M = 54.61%, SD = 38.35%; β = 15.89, SE = 4.30, p < 0.001). When the *owner forgot*

her mask (M = 66.78%, SD = 36.97%; β = 13.77, SE = 5.32, p = 0.01) and when the *owner did not require masks* in her store (M = 65.31%, SD = 37.46%; β = 14.57, SE = 5.32, p = 0.007), participants found the defendant significantly more liable compared to when the *customer was not wearing a mask* (M = 54.77%, SD = 36.89%). A pairwise comparison corrected to p < .02 revealed no significant differences for the two owner conditions (t (1) = -.14, p = .89). Again, the main effect of participant political orientation was significant; participants who identified as more liberal reported the defendant was significantly more liable than those who identified as more conservative (β = -6.55, SE = 1.18, p < 0.001). When adding the interaction between exposure and mandate into step 2 of the model, the variance accounted for did not change (2%) and neither interaction term was significant (ps > 0.27).

Compensatory Damages

Before running our model with compensatory damages as the dependent variable, we reduced our sample to include only those who said the defendant was negligent (n = 170).

Table 4 Percentage of Liability Assigned to the Defendant

Percentage of Liability				Percentage of Liability		
Predictors	Estimates	CI	p	Estimates	CI	p
(Intercept)	70.31	58.41 – 82.22	**< 0.001**	67.09	54.02 – 80.16	**< 0.001**
Mandate	15.89	7.41 – 24.36	**< 0.001**	23.28	8.27 – 38.28	**0.002**
Exposure (No Mask Required)	14.57	4.10 – 25.05	**0.007**	20.50	5.61 – 35.38	**0.007**
Exposure (Owner Forgot Mask)	13.77	3.30 – 24.24	**0.010**	19.05	3.79 – 34.32	**0.015**
Political Orientation	-6.55	-8.88 – -4.22	**< 0.001**	-6.69	-9.04 – -4.33	**< 0.001**
Mandate * Exposure (No Mask Required)				-11.58	-32.41 – 9.24	0.274
Mandate * Exposure (Owner Forgot Mask)				-10.19	-31.30 – 10.93	0.343
Observations	257			257		
R^2 / R^2 adjusted	0.163 / 0.149			0.167 / 0.147		

Reference Group for Exposure condition is Customer No Mask

Exploration of the distribution of compensatory damages in the reduced sample indicated three outliers who reported compensatory damages greater than three standard deviations above the mean ($M = \$68,414.97$, $SD = \$44,258.26$, $median = \$72,000$). These three participants awarded \$2 million ($n = 2$) and \$3 million ($n = 1$) to the plaintiff. After removing these three outliers, the compensatory damages were still highly skewed ($skew = 5.93$). Thus, we log-transformed the compensatory damages variable and ran our linear regression model on our reduced sample ($n = 167$), starting with only main effects ($R^2 = 1\%$). Results indicated no significant main effects (step 1 $R^2 = 1\%$; ps > 0.13) or interaction terms (step 2 $R^2 = 1\%$; ps > 0.16; see Table 5).

Punitive Damages

In order to examine whether punitive damages were impacted by either a mask mandate or exposure, we again examined only those who said the defendant was negligent ($n = 170$). We first examined whether rating the defendant as reckless was associated with a decision to award punitive damages. We coded whether or not participants who found the owner to be reckless awarded any punitive damages in the case ($n_{no} = 48$ or $n_{yes} = 120$) and conducted a Chi-square test to see whether there was an association between ratings of recklessness and punitive damages. The analysis revealed a significant effect of recklessness on the decision to award damages ($\chi^2 (1) = 13.21$, $p < .001$). Of the participants who found the owner to be reckless, 78% ($n = 106$) awarded punitive damages. Of the participants who found the owner not to be reckless, 44% ($n = 14$) awarded punitive damages.

Next, we examined the amount of punitive damages. Two outliers were identified as being more than three standard deviations above the mean ($M = \$61,929.27$, $SD = \$153,763.20$, $median = \$20,000$). These two participants awarded the plaintiff \$3 million and \$9 million in punitive damages. After removing these two outliers, the punitive damages were still highly skewed ($skew = 4.8$), leading us to log-transform the punitive damages variable. A linear regression to examine the amount of punitive damages included only participants who awarded punitive damages ($n = 118$) and indicated one significant effect in step 1 ($R^2 = 2\%$). When the *owner did not require masks* in her store, participants awarded the plaintiff significantly more in punitive damages ($M = \$74,750.02$, $SD = \$135,265.30$) compared to *when the customer was not wearing a mask* ($M = \$55,697.13$, $SD = \$178,197.20$; $\beta = 1.47$, $SE = 0.48$, $p = 0.002$). A pairwise comparison of the two owner exposure conditions revealed a significant effect ($t(1) = 2.01$, $p = 0.048$); participants awarded more punitive damages when the *owner did not require masks* ($M = \$74,750.02$, $SD = \$1,035,265.30$) than when she *forgot her mask* and worked unmasked ($M = \$51,631.71$, $SD = \$157,124.10$). No other main effects were significant (ps > 0.14). Results of step 2 indicated no significant interaction terms ($R^2 = 2\%$; ps > 0.31; see Table 6).

Exploratory Analyses

We did not predict any interactions between political orientation and our manipulated variables. However, given the significance of political orientation in our main analyses, we tested whether political orientation interacted with any of our manipulated variables. We found no significant two-way interactions between political orientation and mandate condition or exposure condition on any of our dependent variables (i.e., negligence, recklessness, percent liable, or damages). Thus, although our findings indicated that a more conservative political orientation was associated with less punitive decisions against business owners, this was not moderated by whether a mask mandate was in place, or how an employee was exposed to COVID-19.

Table 5 Compensatory Damages

Predictors	Compensatory Damages			Compensatory Damages		
	Estimates	*CI*	*p*	*Estimates*	*CI*	*p*
(Intercept)	11.03	10.74 – 11.33	**< 0.001**	11.09	10.72 – 11.45	**< 0.001**
Mandate	0.08	-0.13 – 0.29	0.473	-0.02	-0.45 – 0.41	0.925
Exposure (No Mask Required)	0.12	-0.15 – 0.40	0.372	-0.01	-0.45 – 0.42	0.958
Exposure (Owner Forgot Mask)	0.03	-0.24 – 0.29	0.844	0.00	-0.44 – 0.44	0.997
Political Orientation	-0.05	-0.11 – 0.01	0.125	-0.04	-0.10 – 0.02	0.157
Mandate * Exposure (No Mask Required)				0.23	-0.33 – 0.79	0.415
Mandate * Exposure (Owner Forgot Mask)				0.03	-0.52 – 0.58	0.908
Observations	167			167		
R^2 / R^2 adjusted	0.020 / -0.004			0.026 / -0.011		

Reference Group for Exposure condition is Customer No Mask

Table 6 Punitive Damages

Predictors	Punitive Damages			Punitive Damages		
	Estimates	CI	p	Estimates	CI	p
(Intercept)	8.67	7.61 – 9.72	**< 0.001**	9.09	7.74 – 10.44	**< 0.001**
Mandate	0.43	-0.34 – 1.20	0.275	-0.30	-1.93 – 1.33	0.719
Exposure (No Mask Required)	1.47	0.51 – 2.42	**0.003**	0.80	-0.82 – 2.41	0.330
Exposure (Owner Forgot Mask)	0.73	-0.25 – 1.71	0.144	0.17	-1.53 – 1.87	0.843
Political Orientation	-0.05	-0.25 – 0.16	0.655	-0.02	-0.24 – 0.19	0.827
Mandate * Exposure (No Mask Required)				1.03	-0.98 – 3.05	0.311
Mandate * Exposure (Owner Forgot Mask)				0.82	-1.28 – 2.91	0.442
Observations	120			120		
R^2 / R^2 adjusted	0.080 / 0.048			0.088 / 0.040		

Reference Group for Exposure condition is Customer No Mask

We also tested whether ratings of owner responsibility mediated our findings regarding mask mandate, owner exposure, and political orientation on negligence. As can be seen in Table 7, the analyses revealed that responsibility was a mediator for all three variables. When mask mandates were in place and an unmasked owner led to COVID-19 exposure, participants rated the owner as being more responsible, which in turn led to increases in negligence determinations. Further, as participants' political orientation became more conservative, they rated the owner as less responsible, which predicted a decrease in negligence determinations.

Discussion

Generally, we found that our manipulated and measured variables predicted negligence and recklessness decisions, as well as perceptions of the business owner's responsibility. Exposure also predicted the amount of punitive, but not compensatory damages, awarded in the case. Specifically, if there was a mask mandate in place when the plaintiff became ill with COVID-19, the owner was more likely to be held liable. Further, when the owner's behavior led to the plaintiff's COVID-19 exposure, participants were more punitive toward the owner relative to when a customer was responsible for the employee's COVID-19 exposure. Contrary to expectations, participants did not treat the owner who forgot her mask and the owner who did not require masks differently. Finally, political orientation significantly predicted some of mock jurors' decisions, such that the more conservative the participant, the less likely they were to view the owner as negligent or reckless. Though these findings generally held across our dependent variables, there were some nuanced findings that are discussed in greater detail below.

Negligence, Recklessness, and Responsibility Decisions

Before participants could consider compensatory or punitive damages, they were asked to determine if the owner was negligent and/or reckless and determine the percentage of responsibility that the owner had for her employee's COVID-19 exposure. Most participants (70%) found the owner to be negligent, and this was particularly true when there was a county mask mandate in place at the time of the plaintiff's exposure. Similar findings were found for ratings of recklessness and the owner's percentage of liability. When a mask mandate was in place, participants were more likely to find the owner to be reckless and to attribute a greater percentage of responsibility to the owner.

Table 7 Mediational Analysis with Owner Responsibility as a Mediator

Variable	Estimate	SE	Z-value	p(>|z|)
Mask Mandate				
Mandate—> Negligence (c)	.057	.04	1.415	.157
Mandate—> Responsibility (a)	15.165	4.555	3.329	**.001**
Responsibility—> Negligence (b)	.009	.001	17.196	**.001**
Indirect Effect	.141	.043	3.268	**.001**
Owner Exposure				
Exposure—> Negligence (c)	.071	.042	1.683	.092
Exposure—> Responsibility (a)	11.263	4.923	2.288	**.022**
Responsibility—> Negligence (b)	.009	.001	17.468	**.001**
Indirect Effect	.105	.046	2.26	**.023**
Political Orientation				
Orientation—> Negligence (c)	-.019	.011	-1.726	.084
Orientation—> Responsibility (a)	-5.948	1.212	-4.906	**.001**
Responsibility—> Negligence (b)	.009	.001	16.602	**.001**
Indirect Effect	-.054	.012	-4.705	**.001**

As previously mentioned, owners have an obligation to provide a workplace for their employees that is "free from serious recognized hazards" (OSHA, 1970). Legally, business owners are obligated to take "reasonable care" to provide a safe workplace, and we hypothesized that failing to follow a county mask mandate might violate the reasonable care standard and lead to increased negligence decisions. That was evident in the present study and suggests that business owners that ignored mask mandates during the pandemic may face unsympathetic jurors in the event they find themselves in such lawsuits.

We also found that participants were more likely to find the owner negligent when the owner's direct behavior was responsible for her employee's COVID-19 exposure (as opposed to when an unmasked customer led to the exposure). Though we predicted that an owner who purposefully worked without a mask would be more likely to be found negligent than an owner who accidentally forgot her mask, we did not find any differences in the owner conditions. Thus, the owner's behavior—regardless of whether she purposefully did not wear a mask or forgot her mask—led to findings of negligence. Again, the same was true for recklessness decisions and owner responsibility. As previously mentioned, a study of lay definitions of negligence found that the important components of negligence were "not taking reasonable care" and "ignoring a dangerous situation" (Nuñez et al., 2014), and intentionality was not found to be a component of lay definitions of recklessness (blinded for review).

Though we predicted that owners who typically follow COVID-19 safety precautions would be held less liable than owners who consistently disregarded COVID-19 precautions, findings indicated otherwise. Whether the person intended a harmful consequence was not an issue. The fact that we did not find any differences in the two owner conditions supports previous findings that intentionality is not a part of lay people's definition of or decision-making regarding negligence or recklessness (Nuñez et al., 2014). Whether or not the owner typically followed COVID-19 precautions, she did not follow the precautions on the day her employees were exposed. Thus, she did not take reasonable care, and participants were more likely to find her both negligent and reckless. Interestingly, however, intentionality did affect participants' punitive damage awards in the current study. Given that punitive damages serve to punish the defendant for their conduct, it appears participants increased their punishment when they believed the defendant acted intentionally (i.e., did not require masks in their store). These findings are in line with previous research that suggests intentional actions that lead to harmful outcomes are punished more severely, compared to negligent or accidental actions (e.g., Shultz & Wright, 1985). Future research should further examine the role of intentionality in legal judgments (e.g., recklessness

decisions) compared to punishment decisions (e.g., punitive damage awards).

With regard to owner responsibility, both mandates and exposure type impacted perceptions of owner responsibility. Participants thought the owner bore more responsibility when there was a mask mandate in place and the owner was in her store without a mask. Further, ratings of owner responsibility mediated the relationship between our manipulated and measured variables and negligence determinations. As one might expect, when mask mandates were in place or when the owner directly exposed her employees to COVID-19, participants attributed greater responsibility for subsequent illnesses to the owner. This increased responsibility mediated the positive relationship between mask mandates and owner exposure to negligence. The more that participants believed the owner was responsible for the outbreak, the more likely they were to believe the owner was negligent.

As predicted, political orientation affected decisions about the owner's negligence, recklessness, and responsibility. The more conservative the participant, the less likely they were to find the owner negligent or reckless and ascribed less responsibility to the owner. The question that arises from these findings is whether there is an association between political orientation and decisions in civil cases more generally, or if the political nature of the present case was the primary influence. Regarding political orientation and general civil trial decision making, there is surprisingly little empirical work that examines this issue. However, one unpublished doctoral dissertation (Bensko, 1995) found no effect of political orientation on verdict decisions in a civil case. If true, then the case itself might have yielded decisions that fell among party lines. As previously mentioned, there is ample evidence of a partisan divide over COVID-19 and especially regarding mask mandates (Van Kessel & Quinn, 2020). Survey research has displayed that Conservative Americans are less likely to see COVID-19 as a health threat and are more skeptical of the benefits of masks (Deane et al., 2021). Importantly, although the USA was a prominent example of partisan divides on COVID-19 issues, similar divides were found in other countries. For example, researchers have found that political conservatism was related to COVID-19 skepticism in Canadian samples (Pennycook et al., 2022; Pickup et al., 2020). A Pew Research Center study found that in 17 advanced world economies (e.g., Australia, Germany, Canada, Spain) those on the ideological right were more likely to believe there should be fewer COVID-19 restrictions in their country (Connaughton, 2021).

Our findings suggest a fairly strong effect of political orientation on determinations of negligence, recklessness, and owner responsibility. The more conservative

the participant, the less responsibility they ascribed to the owner, which in turn led to fewer liable verdicts. Recall that for every one-point increase in conservative political orientation there was a 36% decrease in the likelihood of finding the defendant negligent. The opposite would be true for every one-point increase in liberal political orientation. Those odds could have a significant impact on a COVID-19 civil case.

Compensatory and Punitive Damages

Interestingly, although political orientation was a significant predictor of negligence, recklessness, and responsibility perceptions, it was not a significant predictor of either compensatory or punitive damages. Conservative political orientation reduced the likelihood that a participant would find the owner either negligent or reckless, but once a participant decided that an owner acted negligently or recklessly, political orientation no longer played a significant role in subsequent decisions. Instead, the manipulated variable of exposure type was the primary predictors of damages, more specifically of punitive damages.

Regarding compensatory damages, none of our manipulated or measured variables predicted the amount of compensatory damages. This seems reasonable because the plaintiff was asking for a specific amount of money ($72,000) to cover her hospital bills, and the median amount awarded by participants was $72,000. The amount requested provided participants with an exact amount of money to compensate for the hospital bills. The judge's instructions (see Appendix) included the amount that was being requested and instructed participants that they could award none, some, or all the plaintiff was requesting. Thus, the amount requested served as an anchor for participants, and many used that anchor to make their decisions about the amount of money to award in compensatory damages. Those that awarded less money often awarded exactly ¼, ½ or ¾ of what was requested, again suggesting that the $72,000 served as an anchor for participants in determining compensatory damages.

Punitive damages were more likely to be awarded in this case when participants held that the defendant acted recklessly. With regard to *amount* of punitive damages, like previous analyses, exposure type was a significant predictor. Our findings were slightly different from what we found in previous analyses, though. Participants awarded an average of $55,697 in the customer exposure conditions, but interestingly, we found a significant difference in the two owner conditions. Participants awarded a greater amount of punitive damages in the case where the owner did not require masks in her store

($M = $74,750.02), than when the owner forgot her mask and worked in the store for a few hours ($M = $51,631.71). There were no differences between the customer exposure condition and when an owner forgot her mask but continued to work in the store. Thus, punitive damages appear to be more tied to the owner's willful disregard for safe COVID-19 practices, which is in line with legal and lay definitions of recklessness.

Limitations, Future Directions, and Implications

One limitation to the current study is that we used a relatively simple case, and it was only one case in which an owner might have been responsible for employees' COVID-19 exposure. For example, although the unmasked customer condition yielded the fewest negligence decisions, 45% of the sample held the owner responsible. Perhaps some felt the owner was responsible because she noticed the unmasked customer but did not act because she did not want to lose a sale (i.e., she acted intentionally). If the owner's intentions were varied (e.g., she did not notice the unmasked customer) there might be fewer people willing to hold her responsible.

In the present study, the plaintiff's COVID-19 exposure was also relatively straightforward, and contact tracing was able to pinpoint how the plaintiff was exposed to COVID-19. However, the source of COVID-19 exposure for any particular individual is typically not so explicit. To hold an individual liable for negligence, a defendant must be found negligent, and it must be determined that the negligence *is the cause of the harm* to the plaintiff. Future research should examine how directly owner behavior must be linked to employee harm to find an owner liable. For example, if a customer exposes an owner to COVID-19 and the owner later exposes their employees, is the owner seen to be the direct cause of harm or not? In addition, our study did not explore the plaintiff's behavior, nor the behavior of other store employees. The results might differ depending on whether the plaintiff and other employees in the store were masked at the time of exposure. The effect of plaintiff behavior could be explored in future work.

Further, given the timing of our data collection we did not examine how vaccination status might also play a role in liability. We collected these data in March of 2021, when vaccines were not widely available. Thus, most people were not vaccinated. Given the fact that vaccines are now widely available, whether businesses require or encourage vaccinations might also be a source of interest. There are data to suggest that views about vaccinations, like the use of masks, are sharply divided among party lines. For example, states with the lowest vaccination rates are states that voted for President Trump in the 2020 election (Ivory et al., 2021; Montanaro,

2021). Further, surveys of American citizens repeatedly show that vaccine hesitancy is greatest among Republican compared to Independent or Democrat voters (Cowan et al., 2021) and that this hesitancy grew over the course of the pandemic (Fridman et al., 2021). Finally, resistance to vaccines is not limited to the USA. In February 2022, Canadian truck drivers shut down key border crossings between Canada and the USA and created gridlock in Ottawa protesting vaccine requirements (Horowitz, 2022). More than 200 people were arrested during those protests, but none of their cases have yet gone to trial (Austen, 2022). Protests against vaccine passports have also been seen throughout Europe (Associated Press, 2022). Thus, political orientation might be an important predictor in civil cases involving vaccines. In addition, given that the link between political orientation and COVID-19 perceptions has been found in other major countries, political orientation might even impact criminal cases such as the cases of the Canadian truck drivers who were arrested during the Ottawa protests. As this is one of the first studies to examine how lack of COVID-19 precautions could lead to decisions about negligence and recklessness, there are many other variables that could be considered in future work.

In the present study, we examined how mask usage and mandates affected perceptions. However, mandates for mask usage have waned in most parts of the world and may be less relevant to views regarding negligence or recklessness going forward. Though masks may no longer be required or necessary in some parts of the world, our work suggests that employers are expected to follow health mandates (whether to use masks, get vaccinated, et cetera). Failing to do so could make business owners liable when their employees are harmed.

Finally, our sample was also less diverse, older, and over-represented by females than what is reported by the US Census (United States Census Bureau, 2020). Nonetheless, given that none of the demographic variables affected our dependent variables of interest, we are confident that our findings would generalize to other samples. Though our MTurk participants were all living in the USA and were jury eligible, they were living in different parts of the country. Typically, jurors for a civil trial are recruited from the same community and may share some experiences that can be relevant to a case outcome. The lack of shared experiences of our participants might be particularly important because COVID-19 practices and experiences varied widely across the country. Some counties and states mandated masks, while others did not. Some states saw high rates of COVID-19 transmission, and some did not. Some states have a greater percentage of liberal voters, while others have a greater percentage of conservative voters. We also did not ask people about

their COVID-19 experiences. People who have had a serious COVID-19 illness or who lost a loved one to COVID-19 might have very different perceptions about COVID-19 precautions. Future research should examine how personal experiences and geographical differences (whether within the USA or in other countries) relate to COVID-19 case decisions.

While not without limitations, our findings provide some noteworthy practical implications for both psychology and legal professionals. For instance, clinicians and psychology professionals who regularly interact with clients should be particularly aware of ongoing COVID-19 protocols in their states and local communities. Our results suggest that clinicians should strictly enforce COVID-19 protocols in their workspace given failure to do so will result in increased likelihood of negative outcomes should they find themselves involved in such lawsuits. From a legal professional perspective, civil attorneys in such cases should be concerned with specific factors depending on the focus of the case. When focused on influencing legal determinations of negligence and recklessness, attorneys should pay particular attention to jurors' political orientation. Alternatively, our results suggest that if attorneys are concerned with damage awards in a particular case, juror political orientation will be of little importance. Rather, attorneys should prioritize argument formation based on perceptions of defendant responsibility and intentionality, given these were important predictors of punitive damage awards.

Conclusion

In the current study, we found that participants in a mock civil trial were likely to hold a business owner liable when employees were exposed to COVID-19 due to lax behavior on the part of the owner or when the owner failed to enforce a county mask mandate. Participant political orientation was also a significant predictor of participant decisions, with more conservative participants being less likely to hold a business owner accountable for a COVID-19 outbreak in the store. While at the time of this writing none of these lawsuits have been tried in front of juries, lawsuits by employees have begun to surface across the country (Toutant, 2020). Further, after the delta variant became dominant in the USA, there was renewed pressure to reimpose mask rules in public places (Towey, 2021), potentially increasing the frequency of such lawsuits. Thus, our findings have the potential to inform us of future COVID-19 lawsuits and have identified several variables (i.e., mask mandates, owner behavior, and political orientation of the juror) that might predict case outcomes.

Appendix: Judge's Instructions

Negligence is the failure to use reasonable care to prevent harm to oneself or to others. A person can be negligent by acting or by failing to act. A person is negligent if that person does something that a reasonably careful person would not do in the same situation or fails to do something that a reasonably careful person would do in the same situation. Employers have a duty of care to their employees, which means that they should take all steps, which are reasonably possible to ensure their health, safety, and well-being. You must decide how a reasonably careful person would have acted in Barbara Bennett's situation.

Jennifer Paulson claims that she was harmed by Barbara Bennett's negligence. To establish this claim, Jennifer Paulson must prove all of the following:

1. That Barbara Bennett was negligent;
2. That Jennifer Paulson was harmed; and
3. That Barbara Bennett's negligence was a substantial factor in causing Jennifer Paulson's harm.

Recklessness is a culpability of a higher degree than negligence. A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that illness or death may occur, and this disregard is a gross deviation from conduct that a reasonable person would exercise in the same situation.

In addition, the plaintiff, Jennifer Paulson, alleges that the defendant, Barbara Bennett was reckless because she knew there was a pandemic but (did not require people to wear masks in her store/did not make a customer put on a mask while in the store/stayed in her store when she realized she forgot her mask). In order to prevail on this count, the plaintiff must prove, by a preponderance of the evidence that:

The defendant, Barbara Bennett engaged in the alleged reckless conduct; and.

The reckless conduct proximately caused the damages claimed by the plaintiff.

If you decide that Jennifer Paulson has proved her claim against Barbara Bennett, you also must decide how much money will reasonably compensate Jennifer Paulson for the harm. This compensation is called "damages." The amount of damages must include an award for each item of harm that was caused by Barbara Bennett's wrongful conduct, even if the particular harm could not have been anticipated.

Jennifer Paulson does not have to prove the exact amount of damages that will provide reasonable compensation for the harm. However, you must not speculate or guess in awarding damages. Plaintiff Paulson is asking for a sum of $72,000 to compensate for hospital bills. It is up to you whether she is awarded none, some or all of what she is asking for.

If you decide that Barbara Bennett's conduct caused Jennifer Paulson harm, you may also award punitive damages. Punitive damages are intended to punish and deter reckless conduct. It is not compensation, rather is a penalty that the wrong doer must pay. There is no fixed formula for determining the amount of punitive damages, and you are not required to award any punitive damages.

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