

New York AVOID Act

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On December 19, 2025, Governor Kathy Hochul signed the Avoiding Vexatious Overuse of Impleading to Delay (AVOID) Act into law, which will have a significant impact on third-party practice and risk transfer assessment in New York state. This law amends CPLR Section 1007 to impose strict time limits on the commencement of third-party complaints and is set to take effect on April 18, 2026 (120 days after enactment).

The AVOID Act requires defendants to commence a third-party action arising from a contractual relationship between the third-party plaintiff and third-party defendant within 60 days of filing their answer in the main action. All other claims, such as those sounding in contribution or common law indemnification, must be commenced within 60 days of becoming aware that a third-party defendant may be liable for all or part of a claim.

The time to commence further third party practice is further limited as follows:

- A second third-party action must be commenced within 45 days after service of a third-party defendant's answer.
- A second third-party defendant must commence their action within 30 days after service of its answer.
- Subsequent third-party actions must be commenced within 20 days after service of the answer.

The AVOID Act does not make any distinction between contractual versus non-contractual bases for liability in the sections regulating second third-party practice.

The act does not permit any extension longer than 30 days without an order of the court, provided that neither the defendant or third-party defendant can file a third-party complaint 12 months after having filed an answer in the action without written consent of both the court and the plaintiff. Moreover, a third-party complaint cannot be filed after the filing of the Note of Issue. A third-party complaint filed after the Note of Issue shall be severed or dismissed without prejudice.

Notably, sole exception to these time periods applies only to third-party actions against a plaintiff's employer where 1) the third-party action seeks indemnification for a grave injury as defined by the Workers' Compensation Law; or 2) the identity of such employer had not been known to the defendant or third-party defendant or otherwise identified until the time periods set by the act expired. The third-party complaint must be filed within 120 days of the later of either event. Actions in violation of these time constraints cannot proceed without consent of both the plaintiff and the court.

Finally, should a third-party action be severed from the initial action, a motion to consolidate will not be permitted.

The amendment directly impacts a defendant's ability to commence common third-party actions for contractual indemnification, breach of contract for failure to procure insurance, common law indemnification and contribution. After this law takes effect, counsel for defendants, third-party plaintiffs and third-party defendants must now assess all potential avenues for risk transfer upon answering, and consider impleading all potential parties at the outset of litigation. In the interim, consider filing prospective third-party complaints before these time constraints are applied.

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