



What You Need To Know About Louisiana's COVID-19 Protections For Businesses

Insights

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The COVID-19 pandemic has created significant uncertainty for businesses across the country – but there is some good news for Louisiana employers and businesses. As offices, worksites, and other places of businesses reopen, many had been concerned about possible litigation brought by an employee or patron who claims to have contracted COVID-19 while on the premises. Fortunately, Louisiana has enacted legislation to limit business liability related to these types of COVID-19 claims. What do employers and businesses need to know?

Litigation Shield Laws, Summarized

The following are the highlights of these laws.

- **Immunity for Injury or Exposure During Business Operations:** Businesses and government entities will not be liable for damages resulting from exposure to COVID-19 in the general course of business unless (i) the defendant failed to substantially comply with COVID-19 guidance; or (ii) engaged in gross negligence. Since there are multiple sources of guidance on the local, state, and federal level, compliance with one set of guidance is sufficient.
- **Limited Event Liability:** Event planners, venues, trade show organizers, and other similar businesses are provided immunity from civil liability for damages from COVID-19 injury or exposure unless the damages are the result of gross negligence or wanton misconduct.
- **No Tort Remedy for Employees:** Employees who allegedly contract COVID-19 and are not covered by Louisiana Workers' Compensation Law do not have a tort remedy for exposure against their employer unless the exposure to COVID-19 was caused by an intentional act.
- **PPE Distribution Protection:** Businesses that design, manufacture, label, or distribute personal protective equipment (PPE) in response to the COVID-19 public health emergency will not be liable for injury or death caused by such PPE unless the damages resulted from gross negligence or willful or wanton misconduct.
- **Restaurant Protection:** Restaurants will not be civilly liable for injury or death from COVID-19 infection transmitted through the preparation of and serving food and beverage products during the COVID-19 public health emergency unless the injury was the result of gross negligence or willful and wanton misconduct. The protection is provided for restaurants providing dine-in and take-out service. While the law does not state that restaurants must comply with the applicable

guidelines, it does note that if two or more sets of guidelines were applicable at the time of the alleged exposure, substantial compliance with one of the standards is sufficient.

How You Can Lose Protection

Each of these statutes provides that a business may lose the immunity if it exhibits gross negligence or commits willful and wanton misconduct that leads to the alleged injury. Establishing these standards is difficult for plaintiffs. Louisiana defines “gross negligence” as the want of even slight care and diligence and the want of that diligence which even careless men are accustomed to exercise. In common terms, gross negligence exists when there is an entire absence of care. To reach the level of gross negligence, an offender must not only show a lack of care, but must show an entire, utter, complete, or extreme lack of care.

Meanwhile, “willful or wanton misconduct” is the act of engaging in intentional or reckless misconduct that caused the COVID-19-related injury.

What Should You Do?

Only one of the statutes expressly states that compliance with the guidelines and procedures applicable to your business is necessary to trigger these protections. While the others do not contain similar language, it is highly likely that failing to make an effort to comply with safety guidelines will be significant evidence against businesses seeking the immunities. For this reason, you should familiarize yourself with the following specific guidance:

- [Louisiana’s State Fire Marshall Guidance](#)
- [Louisiana Governor’s Office](#)
- [Louisiana Statewide Stay at Home Order Guidelines](#)
- [New Orleans Re-Opening Guidelines](#)
- [New Orleans Department of Health Phase 2 Guidelines](#)

Louisiana has provided businesses with a high level of protection that would require some truly careless conduct to be lost. To maintain the benefits of this statutes, you should make sure your policies and procedures are in line with applicable guidance while verifying compliance with those policies.

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips’ Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, any attorney in our [New Orleans](#) office, or any member of our [Post-Pandemic Strategy Group Roster](#). You can also review our [FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers](#) and our [FP Resource Center For Employers](#).

This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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