



A Sign Of The Times: Georgia Businesses Receive COVID-19 Liability Protection

Insights

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Businesses in Georgia now have protection from civil lawsuits arising out of alleged COVID-19 exposure, transmission, infection or potential exposure. The Georgia COVID-19 Pandemic Business Safety Act (GCPBSA), which is now in effect, protects businesses and individuals in many circumstances from COVID-19 exposure claims (and other types of claims) that accrue before July 14, 2021. You must take some specific proactive steps to receive this protection, however – so you need to make sure you understand the details of this new law.

Details Of The GCPBSA

The GCPBSA creates a rebuttable presumption that a plaintiff bringing a civil case in Georgia against a person or business related to COVID-19 assumed the risk of exposure, transmission, infection, or potential exposure related to COVID-19. Assumption of the risk is normally a defense that a business or individual being sued has to prove, requiring proof that a plaintiff (1) has actual knowledge of the risk of danger they claim caused them harm; (2) understood and appreciated the risk and danger; and (3) voluntarily exposed themselves to that risk.

The GCPBSA, however, reverses the burden of proof on this issue. Under the new law, a plaintiff bringing a COVID-19-related claim will have to show that the plaintiff *did not* assume the risk of exposure, transmission, infection, or potential exposure related to COVID-19. If the plaintiff cannot do this, then a defendant will likely prevail in any such lawsuit.

Note, however, that the presumption is rebuttable. In other words, a plaintiff can try to establish that they did not assume the risk, but this must be established before a claim may proceed. This shifting of the burden of proof will not apply to allegations of gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm.

The Magic Language Defendants Must Use To Trigger GCPBSA Protection

In order to utilize the GCPBSA's protections, businesses must include on receipts or proof of purchase for entry in at least 10-point Arial font placed apart from any other text, the following warning:

Any person entering the premises waives all civil liability against this premises owner and operator for any injuries caused by the inherent risk associated with contracting COVID-19 at public

gatherings, except for gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm, by the individual or entity of the premises.

For businesses or individuals who do not sell tickets for entry onto their property, the liability protections under the GCPBSA can be triggered by posting signage in at least one-inch Arial font placed apart from any other text at all points of entry to their property that states the following:

Warning

Under Georgia law, there is no liability for an injury or death of an individual entering these premises if such injury or death results from the inherent risks of contracting COVID-19. You are assuming this risk by entering these premises.

What Should Employers Do?

Post signage at the entrance to your property with the language above regardless of whether you sell tickets for entry to your premises. But, as discussed here, no strategy can eliminate your obligation to take reasonable actions to protect employees and customers. The CDC and OSHA have published guidelines and guidance that your businesses should follow, and all Georgia businesses should comply with Governor Kemp's latest executive orders. Demonstrating you followed such guidance and orders is the best proof you acted reasonably in responding to COVID-19 hazards.

As you continue the process of reopening, you should familiarize yourself with our alert: 5 Steps To Reopen Your Workplace, According To CDC's Latest Guidance. You should also keep handy our 7-Step Plan For Handling Confirmed COVID-19 Cases in the event you learn of a positive case at your workplace. For a more thorough analysis of the many issues you may encounter from a labor and employment perspective, we recommend you review our FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers and our FP Resource Center For Employers.

Conclusion

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 Atlanta office, or any member of our Post-Pandemic Strategy Group Roster.

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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