



Kentucky Senate Proposes Bill To Protect Businesses From Pandemic-Related Liability

Insights

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The 2021 Kentucky General Assembly got underway last week and, as expected, the leaders wasted no time setting their COVID-19 legislative agenda. Of particular importance for Kentucky businesses is Senate Bill 5, which, if adopted, would provide personal injury liability protections to certain Kentucky businesses, schools and individuals. Specifically, businesses and individuals who directly or indirectly invite or permit another person onto their premises would be shielded from liability for injuries, loss, or other damages to that person arising from conditions subject to a declared emergency. The scope of the proposed law is quite sweeping in that it would apply retroactively to all activity since March 6, 2020 – the beginning of the COVID-19 pandemic. What do Kentucky employers need to know about this proposal?

Proposal Has Nuances – And Remains Vague Regarding Employment Scenarios

Unsurprisingly, Senate Bill 5 does not provide protections for businesses or individuals who act in a malicious or grossly negligent manner, or intentionally ignore executive orders or guidelines relating to a declared emergency. This provides an additional incentive for businesses and individuals to follow federal and state guidelines and recommendations pertaining to COVID-19, such as guidelines from the Centers for Disease Control and Prevention – doing so will help shield your business from potential liability. Senate Bill 5 also provides that, to the extent a claim for personal injury is made against a business or individual for injuries arising from a declared emergency, such claim must be filed within one year after the injury is first discovered.

Senate Bill 5 also protects essential businesses and individuals from liability, absent willful, gross negligence or intentional misconduct, from any death of or injury to an individual or damage to property resulting from an act or omission related to the provision of an essential service. Such protection would be afforded during the period from when an emergency is declared until one year after the emergency declaration is withdrawn, revoked, or lapses.

Of note, the current draft does not specifically shield employers from personal injury claims made by employees. As a result, workers' compensation benefits may still be applicable to employee claims for work-related COVID-19 injuries. Moreover, Senate Bill 5, as currently written, does not appear to curtail enforcement action by Kentucky's Occupational Safety and Health Administration. These issues might be addressed in future iterations of Senate Bill 5 as it winds its way through the legislation process. It was submitted to the Kentucky Senate's Economic Development, Tourism, and

legislation process. It was submitted to the Kentucky Senate's Economic Development, Tourism, and Labor Committee on January 7 for debate, and we will monitor the legislative progress and provide updates as they are made available.

Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information about COVID-19-related litigation being filed across the country, you can visit Fisher Phillips' [COVID-19 Employment Litigation Tracker](#), contact your Fisher Phillips attorney, or any attorney in our [Louisville](#) office.

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